

***SPAULDING V. ZIMMERMAN:***  
**EXPLORING THE ETHICS AND MORALITY OF LAWYERS AND PHYSICIANS IN PRACTICE**

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INTRODUCTION

The case of *Spaulding v. Zimmerman*,<sup>1</sup> decided by the Supreme Court of the State of Minnesota in 1962, is used throughout law schools in the United States (U.S.) to highlight the moral and ethical tensions that can occur when a lawyer acts according to professional norms of zealous advocacy on behalf of a client. This case appears in almost every textbook about legal ethics, and legal ethics is taught as a required course in every U.S. law school. The case also provides the opportunity for us to compare the ethical obligations of lawyers with the ethical obligations of physicians,<sup>2</sup> and how the written ethics rules of those two professions may conflict with commonly held notions of morality.

This paper will consist of three parts. First, I will discuss briefly the facts in the *Spaulding vs. Zimmerman*. The facts discussed include those that are in the court's opinion as well as some additional facts about the case that scholars uncovered by reviewing the record on appeal in the Minnesota Supreme Court, a newspaper article concerning the accident, and telephone conversations with some of the surviving parties, family members of those in the accident, and lawyers.<sup>3</sup> Next, I will discuss some of the ethical issues the lawyers and the physician in this case faced. Finally, I will raise some questions for us to consider concerning the ethical tensions lawyers and physicians face when they perceive that what is demanded of them in their professional roles may be different than what they find to be personally ethical or moral.

The final aspect of this paper, the exploration of the tension lawyers and physicians may face between their behavior in their professional roles and what may be viewed as moral or ethical outside of their professional roles, is often referred to as role-differentiated behavior or role-differentiated morality.<sup>4</sup> In this sense, role-differentiated behavior may demand that a lawyer or physician put aside his or her own personal sense

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<sup>1</sup> 116 N.W.2d 704 (Minn. 1962).

<sup>2</sup> In this paper the words "doctor" and "doctors" refer only to medical doctors and are used interchangeably with "physician" or "physicians."

<sup>3</sup> See Roger C. Cramton & Lori P. Knowles, *Professional Secrecy and Its Exceptions: Spaulding v. Zimmerman Revisited*, 83 MINN. L. REV. 63, 63 n.2 (1998).

<sup>4</sup> See Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUMAN RIGHTS 1, 3 (1975). Professor Richard Wasserstrom popularized the concept of role-differentiated behavior in examining the criticism that the lawyer-client relationship often renders the lawyer either amoral or immoral in dealings with persons other than his or her clients. See *id.* at 1. Professor Robert Lawry explains that the concept of "role-differentiated morality means that lawyers are not morally accountable for decisions they make to aid clients, so long as those decisions do not run afoul of the law or the relevant lawyer code of conduct." Robert P. Lawry, *Executing the Wrong Person: The Professionals' Ethical Dilemmas: Dammed and Damnable: A Lawyer's Moral Duties with Life on the Line*, 29 LOY. L.A. L. REV. 1641, 1643 (1996).

of morality in the interest of the type of actions demanded by the professional role. Thus, once a lawyer undertakes to represent a client, the lawyer is expected to seek the client's objectives as long as those objectives are legal without regard to the moral worth of those objectives. For example, a lawyer may be obliged to assist a client in evicting a poor family from property the client owns, even if it means the family will become homeless. Similarly, once a physician takes on a patient, the physician is obliged by his or her professional role to treat the patient, even if the patient has committed awful crimes and may continue to be potentially dangerous if his life is saved.

#### PART I: THE UNDERLYING FACTS IN *SPAULDING V. ZIMMERMAN*

The case of *Spaulding v. Zimmerman* involved a minor, David Spaulding, who was twenty years old at the time of a serious accident. David Spaulding was a passenger in an automobile driven by John Zimmerman when the automobile Zimmerman was driving was involved in an accident with another automobile, driven by Florian Ledermann. David Spaulding was one of six occupants in the Zimmerman automobile, and the other occupants included John Zimmerman's father and brother and another person who worked for a construction company owned by the Zimmermans. Spaulding's brother was also one of the occupants in the Zimmerman automobile, and the Spaulding brothers worked for the Zimmermans, who were also their neighbors. There were also six occupants in the automobile driven by Ledermann.<sup>5</sup>

The Zimmerman and Ledermann automobiles collided at an intersection on a country road where there were no stop signs or other traffic control devices, and where visibility was obscured due to crops growing in the fields. When the automobiles collided, one person in each automobile was killed and nine of the remaining ten occupants were seriously injured. David Spaulding's injuries were serious and included a brain concussion, multiple rib fractures, and broken clavicles.

After the accident, family physician and two specialists, an orthopedic specialist and a neurologist, examined David Spaulding. The orthopedic specialist took X-ray studies of his chest, and his physicians found his heart and aorta to be normal. Spaulding's father brought a lawsuit on his son's behalf for his injuries against Zimmerman and Ledermann. Both Zimmerman and Ledermann were insured, and their insurance policies provided them both with legal counsel to represent them in lawsuit and with liability coverage for Spaulding's claims against them.

At the request of the defendants and pursuant to a court rule, Dr. Herwitt Hannah, a neurologist hired by one of the defendants' insurance companies, examined David Spaulding and found an aorta aneurysm, which was a dilation of the aorta and the arch of the aorta. Dr. Hannah said that the aneurysm was a "serious matter" and that it might rupture and cause Spaulding's death. Dr. Hannah also reported that it was possible that

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<sup>5</sup> The factual discussion in this section relies upon the facts in the court decision of *Spaulding v. Zimmerman*, *supra* note 1, and a law review article by Professors Roger Cramton and Lori Knowles. *See generally* Cramton & Knowles, *supra* note 3.

the accident had caused the aneurysm, but that he would have to see the earlier X-rays and medical records to know for sure.

Dr. Hannah reported the results of the medical examination to the lawyers for one of the defendants. The lawyers for the defendants, Zimmerman and Ledermann, did not inform them of the life-threatening condition of David Spaulding nor consult with them concerning whether the aneurysm should be disclosed to Spaulding or his lawyers. Dr. Hannah's report was revealed to at least one of the insurance companies, but it is unclear if the defense lawyers, hired by the insurance companies to represent Zimmerman and Ledermann, consulted with the insurance companies about whether to disclose the aneurysm prior to settlement discussions with Spaulding's lawyers. Legal commentators have concluded that the defense lawyers probably made the decision not to disclose the aneurysm on their own.<sup>6</sup>

The day before the trial was scheduled to start, Spaulding's claims for his injuries were settled for \$6,500. Spaulding and his lawyer did not know about the aneurysm when the case was settled. If Spaulding and his lawyer had known about the aneurysm, it is believed that they would have sought more damages and thereby exposed the insurance companies to increased loss. Commentators do not believe that Spaulding would have sought damages beyond the insurance policy limits, and thus would not have exposed the Zimmerman or Ledermann families to personal liability.<sup>7</sup>

The law in Minnesota at the time of the accident and settlement required a person to be twenty-one year old to be an adult. Spaulding, who was sixteen days away from turning twenty-one years old when the case was settled, was still a minor. As a minor, the settlement had to be approved by the court. His lawyer filed the petition with the court and sent a copy to the defense lawyers. The petition contained a description of the injuries discovered by Spaulding's physicians, but it did not list the aneurysm discovered by Dr. Hannah.

Almost two years later, while having a medical exam necessary for the military, the same family physician who examined Spaulding after the accident discovered the life-threatening aneurysm. Examinations at this time indicated that the accident had caused the aneurysm. Spaulding had immediate surgery. Although this is not stated in the court opinion, Spaulding lost his speech as a side effect of the surgery to correct the aneurysm.

After the surgery, Spaulding, then an adult, filed a lawsuit to set aside the earlier settlement and to seek additional damages for the aneurysm on the basis of a mutual mistake of fact at the time of the settlement. The lawyers representing the defendants produced Dr. Hannah's report of the aneurysm to prove that there was no mutual mistake

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<sup>6</sup> See Cramton & Knowles, *supra* note 3, at 69.

<sup>7</sup> Professor Cramton and Knowles observe that two factors indicate that the parties did not contemplate recovery beyond the policy limits: the accident involved families in a rural town at a time when such persons were not very litigious, and the doctrines of contributory and imputed negligence at the time posed some risks with jurors, who might reject all of the claims or uphold the claims of one family against the other, if the parties made claims against the personal assets of each other. *Id.*

of fact, because the defense had known of the aneurysm. Spaulding amended his petition to allege fraudulent concealment and that the defense had breached a duty to disclose the aneurysm to the court.

The trial court agreed with the defense that there had not been any fraud because the defense lawyers had not made any false statements in reaching the settlement. The court reasoned that due to the adversary relationship between the parties “no rule required or duty rested upon the defendants or their representatives to disclose this knowledge [of the aneurysm].”<sup>8</sup>

The trial court held, however, that the adversary relationship had ended when the petition for the approval of the settlement was filed with the court. The court held that when the settlement was filed for approval the defense lawyers should have corrected the inaccuracy in the petition that listed the other injuries but not the aneurysm. The defense lawyers’ failure to correct the information provided to the court provided the court with the discretion to set aside the original settlement because the court had not considered the aneurysm in ruling that the settlement was fair to Spaulding, who had been a minor at the time. The Minnesota Supreme Court affirmed the trial court’s decision, and remanded the case for a new trial. Spaulding later settled with the defendants for an undisclosed amount of money.

Neither the trial court nor the Minnesota Supreme Court found that the lawyers for the defendants had acted unethically according to the ethics rules or law in concealing the aneurysm. In fact, the trial court stated that had Spaulding been an adult at the time of the settlement the court would have denied the motion to vacate the settlement, leaving Spaulding with whatever remedies he may have had against his own physicians or lawyer. Presumably, the court is referring to a possible medical malpractice action against one or more of his own physicians if there had been a failure to properly diagnosis his injuries, or a legal malpractice action against his lawyer for failing to request discovery of Dr. Hannah’s medical report prior to settling the case.

Neither the trial court nor the Minnesota Supreme Court addressed the role of Dr. Hannah. The role of Dr. Hannah also is not usually discussed in legal ethics courses in the U.S. The following section, however, will consider the comparative ethical duties and roles of lawyers and physicians in light of *Spaulding v. Zimmerman*.

## II. SOME ETHICAL ISSUES: THE PROFESSIONAL ROLES OF LAWYERS AND PHYSICIANS

What does it mean to be a lawyer? What does it mean to be a physician? What are the professional values or norms that define these two professions? How do physicians and lawyers handle their work? *Spaulding v. Zimmerman* raises these and other questions concerning the professional roles of lawyers and physicians, and how generally accepted attitudes about the norms of the legal and medical professions may conflict with commonly accepted notions of what is moral or ethical. This section will provide a brief overview of some of the ethics rules and the generally accepted views of

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<sup>8</sup> 116 N.W.2d at 709 (quoting the trial court’s order vacating the settlement).

what it means to be a lawyer or physician that will be helpful in exploring some of the professional roles of lawyers and doctors.

### A. *The Lawyer's Adversary Role*

In the adversary system of justice in the United States, the lawyer is considered a “zealous advocate” for the client.<sup>9</sup> A famous example of what it means to be a zealous advocate is found in Henry Brougham’s defense of Queen Caroline before England’s House of Lords in 1820, when he suggested that he would take every step necessary to advance his client’s interests even at the expense of possible damage to King George IV. Henry Brougham stated:

[A]n advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons, and, amongst them, to himself, is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on reckless of consequences, though it should be his unhappy fate to involve his country in confusion.<sup>10</sup>

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<sup>9</sup> The first set of ethics rules adopted by the American Bar Association (ABA) was the 1908 Canons of Ethics, and the concept of zeal appears as Canon 15, which states:

The lawyer owes “entire devotion to the interests of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability,” to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy.

CANONS OF PROFESSIONAL ETHICS (1908).

The term is “zealous advocate” is derived from Canon 7 of ABA’s Model Code of Professional Responsibility, adopted in 1969 to replace the 1908 Canons of Ethics, and which states, “A Lawyer Should Represent a Client Zealously Within the Bounds of the Law.” MODEL CODE OF PROFESSIONAL RESPONSIBILITY Canon 7 (1970). [hereinafter MODEL CODE]. In 1981, the ABA adopted the Model Rules of Professional Conduct to replace the Model Code, and the concepts of zeal and zealous representation also appear in the current Model Rules. The Preamble to the Model Rules states: “These principles include the lawyer’s obligation zealously to protect and pursue a client’s legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.” MODEL RULES OF PROFESSIONAL CONDUCT pmb1. (2003) [hereinafter MODEL RULES]. A comment to the rule discussing the lawyer’s obligation to act with diligence provides: “A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.” *Id.* at R. 1.3 cmt. 1. More than forty states and District of Columbia base their ethics rules on some version of the Model Rules, and most of the remaining states base their ethics rules on some version of the Model Code. See Peter A. Joy, *The Relationship Between Civil Rule 11 and Lawyer Discipline: An Empirical Analysis Suggesting Institutional Choices in the Regulation of Lawyers*, 37 LOY. L.A. L.REV. 765, 769 n. 13 (2004).

<sup>10</sup> 2 Trial of Queen Caroline 8 (1821).

The concept that a lawyer must place the interests of the client above all other interests expresses the view held by most people and almost all lawyers in the U.S. Lawyers view themselves as zealous advocates advancing their clients' goals by any means necessary, as long as those means are legal. This view or norm of the legal profession involves a degree of indifference to the interests of the opposing parties and witnesses. Indifference to the interests of others fosters a view of moral neutrality or moral non-accountability, which maintains that a lawyer acting in the role as a zealous advocate in an adversary system is just doing his or her job without regard of the interests of others. Thus, lawyers believe that society should judge the acts of a lawyer only by whether or not the lawyer follows the law and the rules of ethics for lawyers.

The adversary system and the obligation to be a zealous advocate combine to provide a moral justification for lawyer professional behavior that might otherwise be thought of as immoral. In the case of *Spaulding v. Zimmerman*, the only issues the court addressed concerning the defense lawyers' not revealing the aneurysm was whether the lawyers did anything illegal or violated a legal ethics rule. The court did not consider whether the defense lawyers acted according to commonly accepted norms expected by persons in non-professional roles, nor did the court consider the potential harm to Spaulding perpetuated by the lawyers' silence.

The primary ethics rule in effect at the time of decision in *Spaulding v. Zimmerman* required the defense lawyers "to preserve his client's confidences," and the only exceptions were when the client consented to the disclosure of information, when "the lawyer is accused by his client," or when there is an "announced intention of a client to commit a crime."<sup>11</sup> Today, the basic ethics rule on client confidentiality is essentially the same, though there is now an exception that permits disclosure "to prevent reasonably certain death or bodily harm."<sup>12</sup> Even under the new rule, disclosure in a case similar to *Spaulding v. Zimmerman* is not required because a lawyer "may" reveal information to prevent certain death or bodily harm but is not required to do so.

A lawyer also has some obligations to the legal system as "an officer of the court." The role of an officer of the court is usually limited to following court procedures

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<sup>11</sup> The ABA added a provision to the Canons of Ethics in 1928 to require a lawyer to maintain confidentiality of client information. CANONS OF PROFESSIONAL ETHICS Canon 37 (1928).

<sup>12</sup> The current rule on client confidentiality states:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to secure legal advice about the lawyer's compliance with these Rules;
- (3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client, or
- (4) to comply with other law or court order.

MODEL RULES, *supra* note 9, at 1.6.

and not being involved in presenting false evidence to the court. The primary duties a lawyer owes to a client in the adversary system, duties of loyalty and confidentiality, are rarely affected by the duties the lawyer owes as an officer of the court.

In the *Spaulding vs. Zimmerman* case, the defense lawyers placed David Spaulding's life in danger by failing to disclose the aneurysm, but they did not breach any recognized ethical rule or law. If the defense lawyers had disclosed the aneurysm to Spaulding's lawyer, the disclosure would have exposed the defendants to greater liability that the insurance companies would have been responsible for paying. Thus, the defense lawyers were protecting the interests of insurance companies, and perhaps the defendants if the claims would have exceeded the insurance coverage, by keeping the information secret. In this way, they were living up to the lawyer's role as an advocate.<sup>13</sup>

### *B. The Physician's Role of Patient Care*

The medical profession is known as a healing profession. The Principles of Medical Ethics in effect at the time of *Spaulding v. Zimmerman* stated that "[t]he principle objective of the medical profession is to render service to humanity with full respect for the dignity of man."<sup>14</sup> Thus, the general role for a physician is to put the health of a patient first, and to do whatever can be done to help a patient.

The norm of physicians placing the health of patients first even frames issues concerning medical research. If medical research involves serious medical risks to the medical subject and no expected benefit to the subject, then the medical research cannot be done. Simply stated, physicians are expected to favor the health of others.

In the *Spaulding v. Zimmerman* case, keeping the information about the aneurysm secret from Spaulding put him at great risk, and there was no possible benefit to Spaulding in keeping this secret from him. Given the underlying norm of for physicians to place the health of patients first, how could the physician who discovered the aneurysm withhold the potentially life-saving information from Spaulding?

It is possible that the physician expected that the lawyers for the defendants would have told Spaulding, but there is no evidence of this. There is evidence that the physician did not take any steps at all either to warn Spaulding or to see that Spaulding would be warned. It is more probable that the physician in this case did not consider Spaulding a patient, and thus may have believed that he did not owe any duty to Spaulding. At the time of the accident, the ethical guidelines for physicians were not as clear as they are today.

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<sup>13</sup> Although not discussed by the court in its decision, the defense lawyers in *Spaulding v. Zimmerman* are believed to have withheld information concerning the aneurysm from their clients. If they failed to discuss the aneurysm with their clients, Zimmerman and Ledermann, then they breached their ethical duty to keep their clients advised of the status of the case. This breach of an ethical duty to their clients, however, would not provide Spaulding with any rights. Because that ethical breach does not implicate Spaulding's rights, the analysis in this paper does not fully explore that dimension of the defense lawyers' conduct.

<sup>14</sup> American Medical Association, Principles of Medical Ethics (1957) (on file with author).

Today, there is an ethical guideline that defines relationships between physicians and individuals when the physician performs a medical examination such as Dr. Hannah's examination of Spaulding on behalf of one of the defendant's insurance company. When such examinations occur, "a limited patient-physician relationship should be considered to exist."<sup>15</sup> The ethical guideline further provides: "The physician has a responsibility to inform the patient about important health information or abnormalities that he or she discovers during the course of the examination. In addition, the physician should ensure to the extent possible that the patient understands the problem or diagnosis."<sup>16</sup>

Thus, under the current medical ethics guidelines, the physician examining Spaulding should have provided him with information about the aneurysm. In the absence of this guideline, however, the physician was left with only his own sense of what was expected of him in his role as a physician employed by an insurance company to conduct an independent medical examination. Similar to the defense lawyers, paid by the insurance companies, who took it upon themselves not discuss the aneurysm with their clients, the physician also demonstrated sole allegiance to the insurance company paying for the examination.

### III. TENSIONS BETWEEN PROFESSIONAL ROLES AND PERSONAL MORALITY

*Spaulding v. Zimmerman* raises several questions about professional roles of lawyers and physicians and tensions between their professional roles and personal morality. Some of those questions are:

1. How should we evaluate the morality of the failure of the defense lawyers and the physician who examined Spaulding to tell Spaulding, his lawyer, or his doctors about the aneurysm?
2. Should we hold the examining physician to a different standard than we hold the defense lawyers? Why or why not?
3. Does the fact that the defense lawyers and the examining physician may not have violated the ethics rules of their professions morally justify their failure to act to protect Spaulding?
4. Should the ethics rules of a particular profession, law or medicine, displace moral reasoning? Why or why not? In other words, are there reasons to permitting lawyers or physicians to rely on ethics rules that may lead to act in ways that would otherwise be viewed as immoral?

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<sup>15</sup> American Medical Association, Opinions of the Council on Ethical and Judicial Affairs, E-10.03 Patient-Physician Relationship in the Context of Work-Related and Independent Medical Examinations (on file with author).

<sup>16</sup> *Id.*



5. Should the ethics rules for lawyers establish that the interests of another person must come before the client's interests? If so, under what circumstances should another person's interests come before a client's interests?

Each of these questions asks us to evaluate the conduct of lawyers and physicians beyond considerations for what the law or their respective professional ethics rules provide. Each of these questions also focuses on tensions between professional rules of ethics and commonly accepted views on morality.

*Spaulding v. Zimmerman* illustrates how difficult legal, ethical, and moral reasoning can be. A lawyer or physician faces an easiest issue when her or she is called upon to do something that is legal, ethical under the norms of their professions, and also commonly accepted as moral even for persons not in a professional role. The vast majority of what lawyers and physicians do probably falls into this category.

If a lawyer or physician is called upon to do something that is legal and also ethical under the profession's rules of ethics, but questionable under commonly held notions of morality, that is much harder. That is exactly the type of situation the defense lawyers faced in *Spaulding v. Zimmerman*, and to some extent, the situation faced by the examining physician, Dr. Hannah. The legal ethics rules at the time did not provide a basis for the defense lawyers to tell Spaulding of the aneurysm, and the lawyers acted consistent with their roles as advocates for their clients in an adversary system. The medical ethics rules were less clear for the examining physician, Dr. Hannah, however, who was in the role of an examining physician and not a treating physician. Should he treat Spaulding like a patient and warn him of the aneurysm, or should he consider his only allegiance to be to the insurance company that was paying him? Given the uncertainty, Dr. Hannah did not warn Spaulding.

*Spaulding v. Zimmerman* also serves as a reminder that perhaps the formal ethics rules of the legal and medical professions need further revision. For example, the medical profession has revised its guidelines to prevent an examining physician from withholding information to someone in Spaulding's position, by creating a limited patient-physician relationship.<sup>17</sup> Today, an examining physician would be required to reveal the aneurysm.

The legal ethics rules have also changed. Today, the legal ethics rules in most states give the option to the lawyer to reveal information necessary "to prevent reasonably certain death or substantial bodily injury."<sup>18</sup> Thus, even if a client would not want such information revealed to an opposing party, a lawyer could ethically reveal information such as an aneurysm to potentially save an opposing party's life. Although most states give the lawyer the discretion to reveal such information, there are some states that require such information to be revealed. The different approaches to this issue

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<sup>17</sup> See notes 15-16 and accompanying text.

<sup>18</sup> MODEL RULES, *supra* note 9, at 1.6. See also note 12 and accompanying text.

reflect the debate in the legal profession about when a client's interest should yield to the interests of others, even in matters of life or death.

#### CONCLUSION

If *Spaulding v. Zimmerman* serves as a reminder that professional roles can and do conflict at times with commonly held notions of morality, it also reminds us that perhaps professionals tend to identify too much with the interests of those paying them. The defense lawyers, paid by the insurance companies, did not even consult with their clients Zimmerman and Ledermann concerning the discovery of the aneurysm. If they had, their clients may have warned Spaulding or instructed them to warn him. The examining physician, Dr. Hannah, also paid by an insurance company, disclosed the aneurysm to the defense lawyers but not to Spaulding. If the insurance company had requested Dr. Hannah to reveal the aneurysm to Spaulding, we can assume he would have done so. In the end, payments by third parties to lawyers to represent clients or to physicians to treat, examine, or render medical opinions for patients, contain inherent conflicts of interests for both professions.