

Defense Against the Dark Arts: Understanding and Challenging Health Care Corruption



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The Traditional Measures of Health Care Dysfunction

- Costs
 - Keeps rising, and faster than in other developed countries
- Quality
 - Not improving, certainly not in proportion to cost
- Access
 - Improvement not clear post-ACA

What Is Going Wrong? – the Conventional Wisdom

- Expensive technology
 - “New treatments and technologies are more expensive than ever”
- Changing demographics
 - “The population is getting older and sicker”
- Excess demand –
 - “Too many people are seeking care they don’t need”
- Provider-driven demand
 - “Health care providers are all too willing to provide care that people don’t need”

Do We Need a New Approach?

- Despite reforms based on the conventional wisdom, problems with cost, quality, access keep getting worse
- Although expensive technology, changing demographics, patient demand, and provider-driven demand are present in all developed countries, things are getting worse faster in the US
- Cost, quality, access may not be the only indicators of health care dysfunction

A Big Clue - Health Professional Dissatisfaction

- Since the 1980's, health care professionals have been increasingly dissatisfied
- Proportion of physicians who felt they make the wrong career choice:
 - 1973 - 15%, 1995 - 40% (1)
- Massachusetts physicians in 2001 – 62% dissatisfied with practice environment (2)
- Kaiser survey in 2002 – 45% of physicians would not recommend medicine as a career (3)
- US Physicians in 2012 (4)
 - 45% burned out (>50% - emergency, general internal medicine, neurology, family medicine)

More Clues - Anecdotes, 1998 -2002

- “How are you doing?” – “not so good...”
- The Texas rejoinder
- The case of the disgruntled foundation project officer – “primary care is dying...”

A Cautionary Tale: The Dysfunction of American Health Care (2003)

- Crude qualitative study, based on interviews with small group of physicians (later expanded)
- Main finding: physicians had a fundamental concern about threats to their core values
 - “The mission was hijacked, taken over by people to further their personal agenda.” - Pennsylvania physician
 - “My boss is a crook.” [Question – you mean you don’t like or agree with him?] “No, he’s a crook, but I don’t have enough evidence to go to the district attorney.” – NJ physician [interview not in the article]

Proposed Causes of the Threats to Core Values

- Domination of large, bureaucratic organizations which do not honor these values
- Conflicts between competing interests and demands
- Perverse incentives
- Ill-informed, incompetent, self-interested or *corrupt* leadership
- Attacks on the scientific basis of medicine

Health Care Corruption- Cases

- We found numerous cases of what appeared to be outright corruption
- Some were discussed in whispers, at best in local media, not in health care or medical literature
 - The “anechoic effect” - it is just not done/ or it is taboo to talk about such things in polite academic/ health care society
- Example: AHERF

The Allegheny Health Education and Research Foundation (AHERF) Case: Background

- From Allegheny General Hospital in Pittsburgh (1968) to largest health care system in Pennsylvania (1997)
- CEO was Sherif Abdelhak, called a “visionary,” “genius,”
- By 1995, Abdelhak earned \$1.2 M, 3 times the median for a health system CEO
- Abdelhak gave John D. Cooper Lecture at AAMC (1996), published in *Academic Medicine*
 - “We will need to create new forms of organization that are more flexible, more adaptive, and more agile than before”
 - “Unleash the creativity and productive potential of every individual and provide an environment that encourages teamwork”

The AHERF Case: Events

- In 1997, although Abdelhak was still publicly announcing expansion plans, debt was soaring
- Losing \$1 M/day, Abdelhak raided restricted endowments
- In 1998, Abdelhak fired, AHERF declared Chapter 11 bankruptcy, \$1.2 billion in debt, second largest bankruptcy in US at that time
- Allegheny University of Health Sciences downsized, multiple hospitals closed, multiple lay-offs
- Multiple lawsuits filed
 - Securities and Exchange Commission settled civil fraud charges against AHERF ex-CFO McConnell and two Vice Presidents
 - SEC filed suit against AHERF auditors
- Abdelhak sought plea bargain, sentenced to 11-23 months
- Abdelhak later changed name, effectively vanished, died in 2014, death announced 2015, never accepted responsibility

The AHERF Case: Revelations and Responses

- Abdelhak revealed to have ruled by intimidation:
 - Dominated board, forced admission of his wife to medical school and had dean who protested fired
 - Speech to faculty, “Don’t cross me or you’ll live to regret it.”
 - “Most faculty realized this was a dictatorship.... It was an organization run by fear and reprisal.”
- Outrage by ex-AHERF Doctors:
 - “colossal disaster that could have been avoided,” “obscene,” “an atocity,” “repugnant”
 - Abdelhak “never took responsibility for bringing the system down”
- Uwe Reinhardt, health economist: “the lunacy that is acceptable would make you throw up”
- Tepid response of national organizations:
 - CEO of AAMC: “unprecedented for a medical school to be caught up in this type of bankruptcy”
 - LCME: would help place students if AUHS bankrupt
 - JCAHO: Hahnemann Hospital “not cited for any deficiencies”
 - AMA, ACP, AAFP, other specialty organizations, ACGME, ABIM, other boards, DHHS - ?

The AHERF Case: in the Literature

- Burns et al article in Health Affairs, covered events through mid-1999, but not outcome of most legal proceedings, and concentrated on debt financing issues[1]
- Nothing in any large-circulation journal (including news sections)
- Nothing in *Academic Medicine* since Abdelhak's paper
 - which has never been cited
- First article that mentioned Abdelhak's conviction: Poses in Euro J Int Med in 2003[2]



1. Burns LR. Health Affairs 2000; 19: 7. 2. Poses RM. Eur J Int Med 2003; 14: 123

AHERF Key Points



- Small group of insulated leaders, largely unaccountable
 - put their self-interest first
 - intimidated professionals, suppressed dissent
- The organization's governance structure failed to inhibit them
- Bad results for patients, professionals, students, the community,...
- Despite magnitude of case and its effects, little coverage beyond local media at the time, and the case remains largely unknown.
- In the 1990s, leaders of large health care organizations still were subject to negative consequences for their bad behavior (but since then, not so much)

Health Care Corruption

- Definition and Scope
- Varieties of Corruption
- Enabling Factors

Definition of Corruption

- *Abuse of entrusted power for private gain*
 - Transparency International
 - Note that this is an ethical (or moral?) definition, not a legal one
 - Whether or not a specific act is legal depends on the jurisdiction

Transparency International's 2006 Global Corruption Report on Health Care

- *Corruption - alongside poverty, inequity, civil conflict, discrimination and violence - is a major issue that has not been adequately addressed....* It leads to the skewing of health spending priorities and the leaching of health budgets, resulting in the neglect of diseases and those communities affected by them; it also means that poor people often decide against life-saving treatment, because they cannot afford the fees charged for health services that should be free. *Corruption in the health care sector affects people all over the world.*
- *Corruption might mean the difference between life and death for those in need of urgent care. It is invariably the poor in society who are affected most by corruption*



Transparency International's Global Corruption Report II

- But *the scale of corruption is vast in both rich and poor countries. Corruption deprives people of access to health care and can lead to the wrong treatments being administered.*
- *Corruption in the health sector is not exclusive to any kind of health system. It occurs in systems whether they are predominantly public or private, well funded or poorly funded, and technically simple or sophisticated. No other sector has the specific mix of uncertainty, asymmetric information and large numbers of dispersed actors that characterise the health sector. As a result, susceptibility to corruption is a systemic feature of health systems*



2005 MEMO Survey

- 2005 survey, FPs and GIMs, 4 metro areas, 3 states, plus rural sample; 287/420 response rate
- Included 5 items from newly developed perceived leadership integrity index
- Important minorities of physicians reported their practice/ academic leaders:
 - >15% oppose physicians' efforts to support core values
 - >25% put minimizing costs and >15% self-interest ahead of quality of care
 - ~10% would punish whistle-blowers
 - >15% are dishonest

A Qualitative Study of Academic Faculty

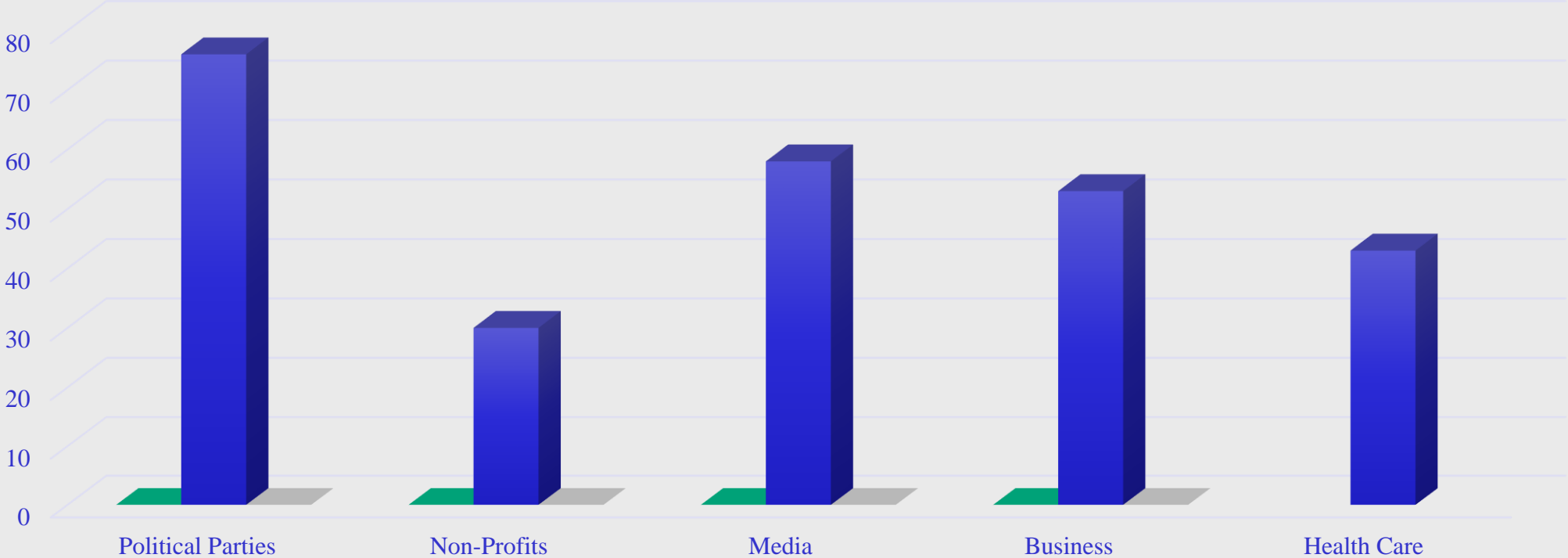
- Leaders put money ahead of mission
- Leaders are dishonest, unethical:
 - “major *unethical* use of funding”
 - “*fraudulently* creating data for a research project”
 - “we’re *lying* to people who are doing our ... evaluations”
 - “what he had to do – hide money, *lie* about money or ... *cook the books*”
 - [from 2006-7 interviews on faculty and institutional values for initiative promoting “organizational culture in academic medicine that helps all faculty reach their potential” at 5 medical schools]

Pololi et al Survey – We’re Only In It for the Money

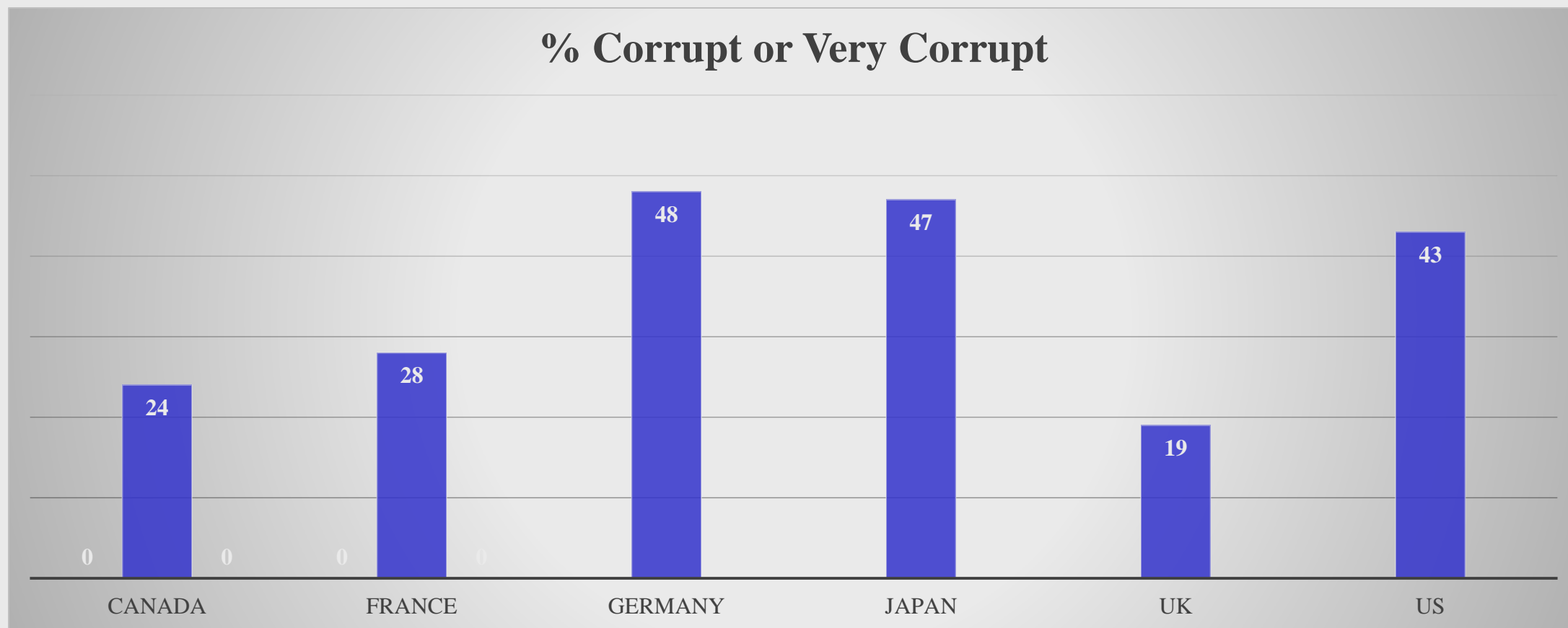
- 51% - “the administration is only interested in me for the revenue I generate”
- 50% - institution does not value teaching
- >50% - values of institution not aligned with own values
- 46% - seriously considering leaving
 - [from >5000 faculty at 26 representative US medical schools, 53% response rate]

2013 TI Global Corruption Survey – US

% Corrupt or Very Corrupt



2013 Survey - Health Care Corruption by Country



Health Care Corruption

- Definition and Scope
- Varieties of Corruption
- Enabling Factors

Types of Corrupt Acts

- Payments, Kickbacks, Bribes
- Deception, Fraud
- Extortion

Payments, Kickbacks, Bribes

- Explicit (that is, usually illegal)
 - To government official in exchange for contract, grant, favorable policy
 - To physician in exchange for prescription, use of product (e.g., medical device), or referral
- Implicit (usually not illegal)
 - Payment to employee leaving for government position in anticipation of favorable treatment (revolving door)
 - Government official providing favorable treatment with expectation of later employment (revolving door)
 - Payment to health professional or in support of his/her career for favorable teaching, research (“conflict of interest”)

Deception, Fraud

- Explicit
 - Misleading advertising or other deceptive practices to market good or services
 - Billing for unnecessary services or services not provided
- Implicit
 - (Manipulation/ suppression of clinical research for marketing purposes)
 - “Academic” endeavors (teaching, publication) for marketing purposes

Extortion

- “Most states define extortion as the gaining of property or money by almost any kind of force, or threat of 1) violence, 2) property damage, 3) harm to reputation, or 4) unfavorable government action.”(1)
- Example?
 - Charging egregiously inflated prices for medical services, drugs, devices etc that could prevent untimely death, treat severe illness?

(1) - <http://criminal.findlaw.com/criminal-charges/extortion.html>

Participants in Health Care Corruption

- Political/ Governmental
- Large organizations
 - Pharma, device, biotech, hospitals/ hospital systems, managed care/ health care insurers, health care information technology vendors, consultants, lobbying/ marketing/ public relations firms, contract research organizations, medical education and communication companies, academic medical institutions, health care foundations, accrediting organizations, professional societies, patient advocacy groups, etc
- Health care professionals

The Scope of Health Care Corruption

- Numerous cases
- Nearly every conceivable combination of organization, setting, action
- Many habitual offenders
 - Example: Pfizer

Example: Pfizer's Legal Settlements: 2000-2010

- 2002: \$49 million to settle allegations of fraudulently avoided paying fully rebates to Medicaid for Lipitor
- 2004: \$430 million for off-label promotion of Neurontin
- 2007: \$34.7 million for off-label promotion of Genotropin
- 2009: \$2.3 billion and guilty plea for illegal promotion of Bextra
- 2009: \$4.5 million for defrauding Wisconsin Medicaid
- 2010: \$142.5 million after jury finding of violation of RICO (racketeer influenced corrupt organization) act for Neurontin promotion



Pfizer's Legal Settlements: 2011 -

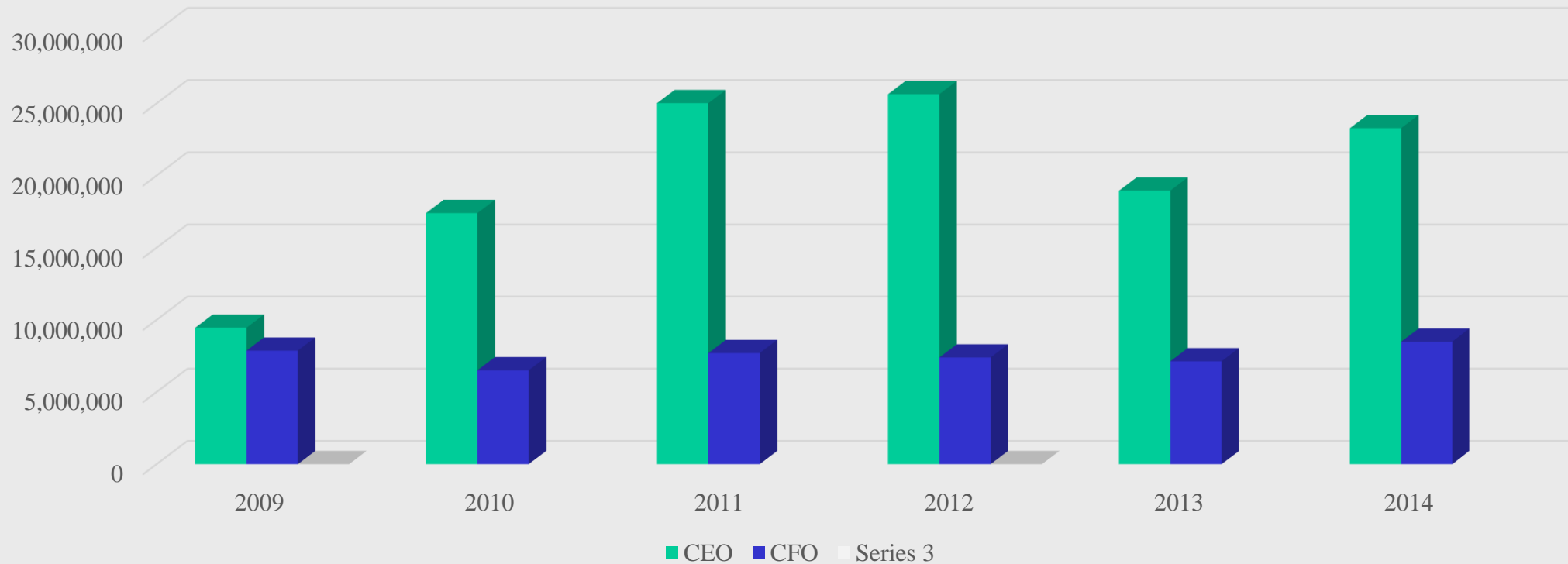
- 2011: \$2.5 million for inflating drug prices charged NY
- 2011: \$264.9 million for class-action suit re asbestos exposure
- 2011: \$14.5 million for illegal marketing of Detrol
- 2012: \$60 million for bribing foreign physicians
- 2012: \$43 million for deceptive marketing of Zyvox, Lyrica
- 2012: \$55 million for deceptive marketing of Protonix (Wyeth)
- 2013: \$18 million for defrauding Texas Medicaid
- 2014: \$190 million for violating anti-trust laws via Neurontin marketing
- 2014: \$325 million for marketing Neurontin for unapproved uses
- 2015: \$400 million for deceiving investors about marketing of Neurontin

Pfizer Leader's Impunity

- Pfizer signed corporate integrity/ deferred prosecution agreements
 - 2002 – to create compliance mechanism to stop illegal marketing
 - 2004, 2007, 2009 – ditto
- No individual at Pfizer ever prosecuted
- No executives suffered any negative consequences
- Company never restructured, bankrupt
- Impunity has surfaced as a major enabler of corruption since the 1990s

Pfizer Executive Compensation

Chart Title



Pfizer's Legal Settlements: Implications

- Top leaders rewarded for short-term revenue generation
- Top leaders no longer accountable for ethical or legal violations = impunity
- Perverse incentives favor money over patient care, money over ethics and morality

Health Care Corruption: Health Care Professionals

- Recall: health care professionals entrusted to provide best possible care to individual patients, (and academics entrusted to provide honest and accurate teaching and to conduct research with integrity)
- Many cases in which corporations charged with giving bribes/kickbacks to physicians to induce them to prescribe or use products, or refer patients
 - But individuals rarely punished

Pharmaceutical Bribes/ Kickbacks to US Physicians

- GSK US DOJ 2012 Settlement (1):
 - “GSK's sales representative reflected in their call notes their use of money, gifts, entertainment and other kickbacks to induct doctors to prescribe GSK drugs....”
 - “In order to induce physicians to prescribe and recommend its drugs, GSK paid kickbacks to health professionals in various forms, including speaking or consulting fees, travel, entertainment, gifts, grants, and sham advisory boards, training,.... “
- Johnson & Johnson Risperdal multi-state settlement 2012 (2):
 - “Using... sham consulting programs for physicians, and lucrative agreements for doctors who prescribed off-label, J&J sought to enhance Risperdal’s off-label market penetration....”
- Abbott 2012 settlement (3):
 - “covers allegations that Abbott offered and paid illegal remuneration to health care professionals ... to induce them to promote and/or prescribe Depakote .”

1. www.justice.gov/opa/documents/gsk/us-complaint.pdf 2. Voreacos D, Fisk MC. Bloomberg, Aug 30, 2012. 3. www.justice.gov/opa/pr/2012/May/12-civ-585.html

Just Some More Examples

- Political corruption – e.g., VA Gov McDonnell convicted of receiving bribes from health care company
- Revolving door – e.g., director of Boston Scientific, Cerner, Medco became White House health reform czar, director of CMS now at AHIP
- Regulatory capture – e.g., the RUC, run by AMA and mainly subspecialty societies sets all Medicare payment levels for doctors
- Pharmaceutical, biotech, device companies' illegal marketing
- Pharmaceutical, biotech, device companies' foreign bribes
- All Sorts of Organizations Defrauding the Government
- Etc, etc, etc

More Examples of Large Organization Corruption than One Can Count

- Involved some of our largest health care organizations of all kinds
- Many organizations are multiple offenders
- Involved kick-backs, bribery, fraud, anti-trust violations, misbranding, adulteration of drugs/ devices, etc, etc
- Leaders of big organizations very well paid and influential beyond their individual organizations (e.g., as board members, advisers, etc)
- When large organizations involved, leaders rarely suffer any negative consequences
- But small scale cases (e.g., clinic guilty of Medicaid fraud) often lead to jail for perpetrators

Challenges to Increasing Role of Government: Examples of Prevalent Revolving Door

- Donna Shalala, Secretary of DHHS, to board of directors of UnitedHealth (2001)
- Dr Elias Zerhouni, Director of NIH, to Chief of R+D, Sanofi (2008)
- Dr Andrew von Eschenbach, Commissioner of the FDA, to Center for Health Transformation (multiple pharma clients)
- Mark McClellan, director of CMS, then commissioner of FDA (2006), to Johnson and Johnson board (2013)
- Dr Julie Geberding, Director of CDC, to President of Merck Vaccines (2009)
- Michael Leavitt, Secretary of DHHS (2009), to board of Medtronic (2011)

Challenges to Increasing Role of Government: Examples of Prevalent Revolving Door II

- Marilyn Tavenner, from Columbia/HCA to director of CMS (2011), to AHIP (2015)
- Nancy DeParle, on boards of Boston Scientific, Cerner, Medco, to White House as health reform “czar” (2009), then to board of CVS (2013)
- Dr Vivek Murtha, founder of contract research organization TrialNetworks, to Surgeon General (2013)
- Andy Slavitt, from UnitedHealth (Optum) to director of CMS (2015)
- Kathleen Sebelius, Secretary of DHHS to Humacyte board (2015)

Challenges to Government Single Payer Health Insurance: the Revolving Door

- At least European experts think the revolving door is corruption, albeit legal in many countries
- Numerous recent examples of high level US government officials transiting the revolving door
- How do we avoid corruption via the revolving door affecting a US government run single payer health plan?
 - The revolving door already affects Medicare

Conflicts of Interest and Physicians

- Physicians often protest that payments to them from health care industry, e.g., from pharma for consulting, giving talks, etc do not influence their professional judgment or activities
- Yet economists say financial incentives make the world go round
- It is likely that payments to physicians increase the risk that
 - They will make patient care decisions in the interests of the payers
 - Their teaching or research might be biased in favor of the payers
- Physician COIs are very prevalent and may involve a lot of money

Definition of Individual Conflict of Interest

- Institute of Medicine

- “Conflicts of interest are defined as circumstances that create a risk that professional judgments or actions regarding a primary interest will be unduly influenced by a secondary interest.”
 - “Primary interest include promoting and protecting the integrity of research, the quality of medical education, and the welfare of patients.”
 - Per Lo B, Field MJ. *Conflict of Interest in Medical Research, Education, and Practice*. National Academies Press, Washington, DC: 2009

Conflicts of Interest – A Risk Factor for Corruption

Corruption: Abuse of entrusted power for private gain (Transparency International)

“Conflicts of interest are defined as circumstances that *create a risk* that professional judgments or actions regarding a primary interest (that is, *entrusted power*) will be unduly influenced (*possibly leading to abuse*) by a secondary interest (*providing private gain*).”

Conflicts of interest are a risk factor for, and thus increase the probability of corruption

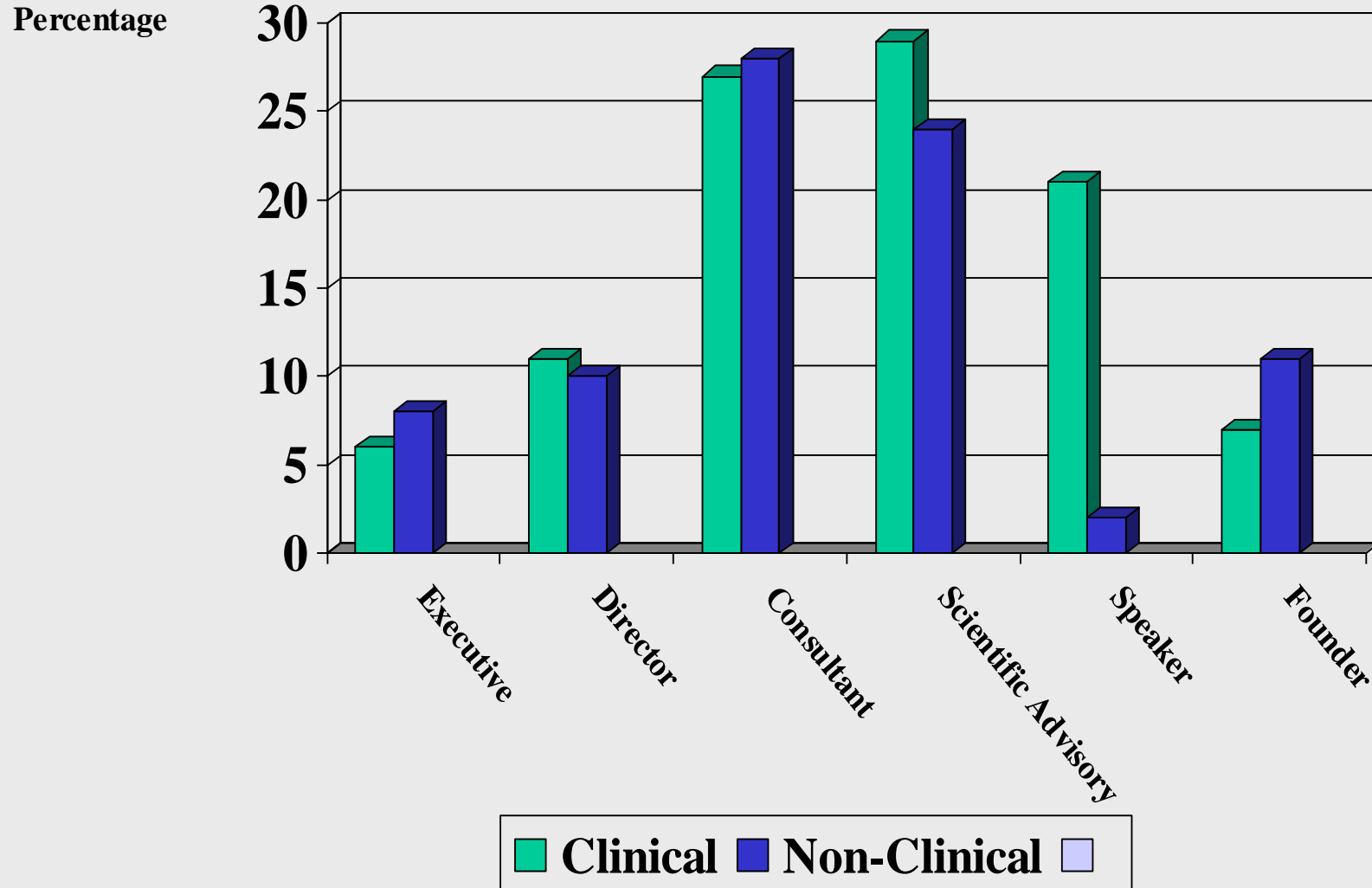
Conflicts of interest are prevalent in health care, especially academic health care, and especially among its leadership

Prevalence of Conflicts of Interest: Campbell Department Chair Survey

- Surveyed chairs of medicine, psychiatry, two other clinical departments, microbiology, one other nonclinical department at all medical schools and 15 largest independent teaching hospitals
- Asked about specific kinds of industry relationships of individual chairs
 - Executive of company
 - Member of board of directors
 - Paid consultant
 - Member of scientific advisory board
 - Member of speakers' bureau
 - Founder of company

Campbell EG et al. JAMA 2007; 298: 1779-1786.

Prevalence of Conflicts of Interest: Campbell Department Chair Survey



“60% of department chairs had some form of personal relationship with industry”

Prevalence of Health Care For-Profit Corporate Board Members in Academic Leadership Positions

- 85 academic institutions, including 69 medical schools, had corporate board member on faculty, in leadership, and/or as trustee
- 19/20 top NIH funded medical schools had a board director
- Individual institutions had as many as 29 corporate directors
- 17 health system CEOs, 11 VPs and executive officers, 8 medical school deans, 16 department chairs were board members
- Corporate board members have legal duties to *ensure companies' financial performance... How much corruption is driven by such COIs?*

Anderson TS. BMJ 2015; 351: h4826

Challenges to Government Single-Payer Health Insurance: Conflicts of Interest Affecting Rate Setting

- Medicare physician payment rates currently use the resource based relative value system (RBRVS)
- RBRVS updates de facto are determined by private AMA committee, the RBRVS update committee (RUC)
- RUC membership was secret for years
- Now we know RUC members are predominantly sub-specialists, may have significant financial COIs from relationships with for-profit health care corporations, including drug and device companies
- How do we assure payment setting in single-payer systems not unduly affected by COIs?

Health Care Corruption

- A vast problem that we almost never talk about, much less address.....
- Why is discussion taboo?
- What can we do to address it?

Taboo

- Why?
 - People who get rich and powerful from corruption do not like public discussion of this
- How?
 - Deception – may be enhanced by availability of modern public relations and marketing
 - Positive Incentives – from conflicts of interests to bribes
 - Negative incentives – peer pressure (often from those with conflicts), legal pressure (non-disclosure/ confidentiality clauses, libel/ slander actions, etc), harassment/ threats/ intimidation/ violence

Why Is Corruption Still Flourishing?

What We Have Not Covered

- Historical factors leading to worsening US health care corruption since the mid 20th century
 - ~ one workshop
- History of corruption in the US since the revolution
 - ~ two-semester course
- Current health care corruption in political, economic, social context
 - ~ two-semester course
- Corruption since the beginning of written history
 - ~ graduate degree program

Advice from the Past

- “Do not pervert justice or show partiality. Do not accept a bribe, for a bribe blinds the eyes of the wise and twists the words of the innocent.” – Deuteronomy 16:19
- “No one can serve two masters. Either you will hate the one and love the other, or you will be devoted to the one and despise the other. You cannot serve both God and money.” – Matthew 6:24
- “He who pays the piper calls the tune.” – old English proverb
- “It is difficult to get a man to understand, when his salary depends upon his not understanding.” – Upton Sinclair, 1935

Resources on (Health Care) Corruption

- Harvard Edward J Safra Center for Ethics Project on Institutional Corruption (2010-2015)
- Transparency International
- U4
- Basel Institute on Governance
- European Healthcare [Anti-] Fraud and Corruption Network

Resources We Don't Have

- Any North American organizations dedicated to addressing health care corruption
- Any academic programs on health care corruption
 - One graduate course at BU by Taryn Vian
- Any foundations with interest in addressing health care corruption

What is the Solution to Health Care Corruption?

- At medical conferences, usually presentations end with a set of solutions
- Often the solutions involve drugs, devices, procedures or programs
- Often the presenters have personal interests, sometimes financial, in promoting same
- Tradition of offering packaged, often marketable solution may arise from commercialization of health care and influence of marketing on health care
- We don't have a simple set of solutions for a complex age-old problem

H L Mencken

- **“there is always a well-known solution to every human problem — neat, plausible, and wrong.”**