

HOW ETHICAL ARE CODES OF ETHICS, OR DOES IT DEPEND UPON THE PROFESSION? A RESPONSE TO MCGEE¹

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Abstract

Consumers in the past have often had a difficult time in evaluating the services of professionals, such as accountants, medical doctors and lawyers. These professions, for various motives, have not historically advertised to the general public. Part of the reason for this lack of advertising can be attributed to their professional organizations. In the accounting field, the American Institute of Certified Public Accountants is the leading trade association. For attorneys, it is the American Bar Association, and for medical doctors, the American Medical Association. This study found that each of these three disciplines, and their respective professional trade associations, all have rules governing ethical behavior, especially where professional advertising and public relations practices are involved. This study, which contrasts the ethical tenants of these codes of ethics with Robert W. McGee's *Codes of Ethics can be Unethical*, agreed with some of Dr.

¹ Robert W. McGee, Codes of Ethics Can be Unethical. *Journal of Accounting, Ethics & Public Policy* 1(2): 269-274 (1998).

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McGee's arguments and disagreed with others. Each of these groups has guidelines their respective governing organizations require, and they are designed to protect the practitioner as well as their clients. All of these codes of ethics appear to require ethical behavior by their respective memberships.

INTRODUCTION AND BACKGROUND

In the *Journal of Accounting, Ethics & Public Policy*, Dr. Robert McGee states:

"In this article I will mostly be discussing the AICPA's Code of Professional Conduct, its predecessors and state clones, although many of the comments I make would be equally applicable to the codes of ethics of other professional groups, whether in accounting, law, medicine or other professions. The main criticism of professional codes of ethics is that their provisions are often aimed at protecting the private interests of their members rather than the public interest."²

This current article will rebut some of Dr. McGee's arguments, as well as agree with some of them. Justification will be given in each instance. It is believed that in many professions, e.g., law and medicine, codes of ethics are designed to benefit the public interest. Well-recognized, professional trade associations represent the accounting, legal, and medical fields, as well as the advertising and public relations fields, whose tactics are used by most professionals to promote their services. The associations in this article include the American Institute of Certified Public Accountants (AICPA), American Bar Association (ABA), American Medical Association (AMA), American Advertising

² Robert W. McGee, *Codes of Ethics Can Be Unethical*, *Journal of Accounting, Ethics & Public Policy* 1(2): 269-74 (1998).

Federation (AAF) and the Public Relations Society of America (PRSA). Discussion will be presented on each of the codes of ethics.

The main point the authors will address is that each organization's codes of ethics are in place to protect the client, patient or customer, as well as the prospective client, patient, or customer. This is in opposition to Dr. McGee's main criticism that professional codes of ethics are often aimed at protecting the private interests of their members rather than the public interest.

At this point, a clear distinction should be made between ethical/unethical and legal/illegal behavior, as the terms are sometimes thought of as being synonymous, especially if the legal offense is a misdemeanor. Ethical or unethical behavior is the gray area between "right and wrong" as defined by individuals. It is a moral issue. It may involve the decision-maker's background B how he/she was brought up as a child and what type of religious instruction, if any, they received.

Legal/illegal behavior deals with the law, whether it be instituted by a municipality, state or at the federal level. Laws can be considered as statutory, based on common law, or be a ruling from some governmental agency. This paper will touch on ethical and legal issues. Now to the discussion, where emphasis will be placed on the contrasting of ethical/legal issues affecting accounting practitioners, with ethical/legal issues affecting the legal and medical professions.

SELECTED ADVERTISING & PUBLIC RELATIONS ISSUES AFFECTING THE ACCOUNTING, LEGAL & MEDICAL PROFESSIONS

Advertising

Dr. McGee continues with the following statement: "In the past, codes of ethics have prohibited advertising and all kinds of solicitation."³ This is true in the accounting field, as well as in the

³ McGee (1998), *supra* at 271.

legal and medical professions. Most attorneys and medical doctors looked with disfavor upon anyone in those professions even remotely considering the possibility of advertising their services during the 1800's and early 1900's in the U.S, due to the large number of unregulated, unethical ads at that time.⁴ Increasing competition began to change many individual minds in each of these disciplines as is indicated by the following statements.

The AMA's current position on advertising by doctors is stated in their policy number E-5.02 on Advertising and Publicity:

There are no restrictions on advertising by physicians except those that can be specifically justified to protect the public from deceptive practices. A physician may publicize himself or herself as a physician through any commercial publicity or other form of public communication (including any newspaper, magazine, telephone directory, radio, television, direct mail, or other advertising) providing that the communication shall not be misleading because of the omission of necessary material information, shall not contain any false or misleading statement, or shall not otherwise operate to deceive.⁵

The American Bar Association's view on rules governing advertising and ethics is determined on a state-by-state basis. For purposes of this study, three geographically diverse states were selected for examination B California, Arkansas and New York B to gain perspective about each state's views on attorneys' ethical standards.

⁴ Edgar R. Jones, *Those Were the Good Old Days* (New York: Simon & Schuster, 1959), Preface.

⁵ <http://www.ama-assn.org> AMA Policyfinder – Council on Ethical & Judicial Affairs.

California (Rule 1-400) on Advertising and Solicitation:⁶

For purposes of this rule, “communication” means any message or offer made by, or on behalf of a member concerning the availability for professional employment of a member of a law firm directed to any former, present, or prospective client, including, but not limited, to the following:

- (1) Any use of firm name, trade name, fictitious name, or other professional designation of such member or law firm; or
- (2) Any stationery, letterhead, business card, sign, brochure, or other comparable written material describing such member, law firm or lawyers; or
- (3) Any advertisement (regardless of medium) of such member or law firm directed to the general public or any substantial portion thereof; or
- (4) Any unsolicited correspondence from a member or law firm directed to any person or entity, all of which should conform to the highest ethical and legal standards.

Arkansas (Rule 7.2) on Advertising:⁷

- (a) A lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television, or through written communication.
- (b) A copy or recording of an advertisement or communication shall be kept for five years after

⁶ <http://www.aba.net.org> ABA link to State Ethics Rules Governing Lawyers – CA, AR, NY

⁷ <http://www.aba.net.org>, *supra*.

its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services.

(d) Any communication made pursuant to this rule shall include the name of at least one lawyer who is licensed in Arkansas and who is responsible for its content.

New York (Rules EC 2-9 and EC 2-10) on Advertising:⁸

EC 2-9 B The attorney-client relationship is personal and unique and should not be established as a result of pressures and deceptions.

EC 2-10 B A lawyer should ensure that the information contained in any advertising which the lawyer publishes, broadcasts or causes to be published or broadcast is relevant, is disseminated in an objective and understandable fashion, and would facilitate the prospective client's ability to select a lawyer.

“The general prohibition against advertising is accepted today without much question. To be sure, there is nothing illegal or immoral about advertising as such, but it is almost universally regarded as unprofessional.”⁹ If Carey and Doherty are referring only to advertising by accountants, one wonders if a national, representative sample of accountants was taken to arrive at this conclusion.

⁸ <http://www.aba.net.org>, *supra*.

⁹ John L. Carey and William O. Doherty. *Ethical Standards of the Accounting Profession* (New York: American Institute of Certified Public Accountants, 1966) 47-48.

Advertising is, obviously, not now “universally regarded as unprofessional” by many attorneys and medical doctors. Advertising is also prevalent in the marketing programs of hospitals, HMOs, architects, dentists, optometrists, and other service providers in addition to businesses, financial institutions, non-profits, and most other types of organizations.

“Advertising,” like any other marketing tool is only as professional or unprofessional as its creator. Admittedly, there are ads that a certain percentage of the viewing/listening public find offensive, misleading, or, in poor taste, i.e., unprofessional.

The classic argument against advertising is an economic one, i.e., that it is wasteful; does not add any real value to the purchase. This is the “rational,” “economic man” argument, which presupposes that everyone has perfect knowledge of the marketplace. This is simply not true. If everyone had perfect knowledge, then, admittedly, there would be no need for advertising to inform the market about price, location, sale merchandise, new products, and other innovations.

Another rebuttal to this classic argument is that advertising, rather than being wasteful, can be extremely valuable, giving many consumers more of what they value most of the time. By “Media Shopping,” first, consumers can save their valuable time. With the advent of the Internet, consumers can compare advertisements containing information on products/services, price, and location, as well as pay for the order, all in the comfort of their own home, using their personal computer.

A second argument centers on the precept that advertising can be “persuasive,” not “informative;” and what is wrong with that? Can advertising not be persuasive and informative at the same time?

Thirdly, some argue that advertising can create very large firms that may come to dominate some markets as is indicated by the following statement:

Actually, the rule against advertising has many sound reasons to support it. In the first place,

advertising would not benefit the young (accounting) practitioner. If it were generally permitted, the larger, well-established firms could afford to advertise on a scale that would throw the young practitioner wholly in the shade.¹⁰

Did not many large firms come from humble beginnings, e.g., IBM and Apple Computer, just to name two of the large technology firms in the U.S. today? Each of these firms started small, and overcame great odds to become successful. IBM ushered-in the computer-generation and had to change individuals' and businesses' ideas about data storage, retrieval and manipulation, in order to do so. Apple had to overcome the dominance of IBM when it was creating its niche in the computer marketplace and it was successful in doing so, regardless of the discrepancy between its advertising budget and IBM's.

Another common argument is that many advertisements lack taste, or, are annoying or obscene. It is true that many people find various ads objectionable. It is also true, that if enough people complain about the specific campaign to the mediums on which it is being run and to the marketer, it will not be long until the campaign is dropped or changed. This is especially true if the editorial side of the media picks up on this and begins news reporting on the offending campaign.

Advertising, primarily on television, may also be criticized because of the times of day the commercials are aired. This criticism is most prevalent around the Saturday morning time slots when the viewing audience is mostly composed of young children. This is probably a just criticism.

A moral, or ethical, argument could be made against advertising of most products and services, in that they promote materialism -- the acquiring of many "worldly goods." This would be as opposed to concentrating on "other-worldly" or "higher-order" types of thinking. While some of the preceding "ills

¹⁰ Carey and Doherty (1966), *supra* at 47-48.

of advertising” may be legitimate, the “pros” of advertising far outweigh the “cons.” Following are the primary, positive benefits of advertising:¹¹

- Serves as a Buyers Guide.
- Informs buyers of new product innovations and improvements to existing products.
- Saves buyers shopping time.
- Reduces marketing costs by simplifying, or eliminating, the personal selling effort.
- Encourages, rather than discourages, competition.
- Promotes Brand / Name awareness and reinforcement.
- Adds “psychic” value. The psychological value of owning a particular product, service, or brand, may provide greater value than the physical value.
- The revenues received by television and radio stations, newspaper, magazines, “dot.com-companies,” and outdoor advertising companies allow them to maintain their independence as for-profit businesses, rather than depending upon government subsidies or outright government ownership, e.g., the British Broadcasting Company (the BBC).
- Works just as well for non-profit organizations, as for-profit organizations. Can increase membership, number of volunteers, and amount of money contributed to all of the worthwhile charitable, environmental, etc. organizations in existence today.
- And finally, the great economic argument, by increasing advertising expenditures, the advertiser can increase sales, or membership, or whatever the goal is. If it is sales, by increasing them, hopefully economies of scale will be realized, and these cost-savings could be passed on the

¹¹ John S. Wright, Daniel S. Warner, Willis L. Sinter & Sherilyn K. Zeigler, “Advertising and Society,” *Advertising*, 4th ed. (New York: McGraw-Hill, 1977) 40-75.

consumer in the form of lower prices, e.g., personal computers.

Dr. McGee, in quoting John Carey and William Doherty, further states that:

Advertising is commercial. Professional accounting service is not a tangible product to be sold like any commodity. Its value depends on the knowledge, skill and honesty of the CPA. Who would be impressed with a man's own statement that he is intelligent, skillful and honest?¹²

Marketers consider intangible services similarly to physical products when developing promotional strategy. Promotional strategy may involve Advertising, Public Relations, Personal Selling tactics, and various other Sales Promotion techniques such as coupons, sales, and special events. One only has to observe the many lucrative law practices which various attorneys developed, once the ABA ruled that they would no longer prohibit members from advertising their services. It is true, however, that some older, larger, more established law firms still frown on the smaller firms who are building-up their practices, using advertising as one of the various marketing tools available to them.

Whether one agrees or disagrees with attorneys' ads featuring headlines similar to the following, "Divorce Proceedings from \$275.00," or "If we don't win your case, you don't owe us anything," it cannot be argued that some attorneys are attracting large numbers of clients, and collecting large fees from the use of such advertising tactics.

And, finally, regarding advertising, John Carey and William Doherty state "lastly, advertising does not pay. The accountants in the early days who tried it agreed for the most part that it did not

¹² Carey and Doherty (1966), *supra*, at 47-48.

attract clients”.¹³ “In the early days,” is a maxim that, many times, indicates a statement that may, or may not, be true in the present. If advertising is working for attorneys, who also deal in intangible services, why should it not work for accountants?

It may be true that accountants would not attract many large, knowledgeable clients, if they only gave themselves as a reference. However, quotes from credible, satisfied clients that prospective clients can identify with is a tried and true marketing technique. Mary Beth Armstrong mentioned in her *Ethics and Professionalism for CPAs* that “When Senator Metcalf’s Subcommittee issued its final report in 1977, one of its recommendations was that the accounting profession end its artificial restrictions against advertising and the solicitation of the clients and staff of other accounting firms.”¹⁴ “The revised AICPA Code only prohibits false, misleading or deceptive advertising or solicitation.”¹⁵ It is pleasing to see that the professional association of CPAs has removed this archaic prohibition against professional advertising in their field.

The American Advertising Federation (AAF), representing all types of advertisers, business, professional, and non-profits, and all types of advertising agencies, has its own code of ethics, which appears below:¹⁶

1. *Truth.* Advertising shall reveal the truth, and shall reveal significant facts, the omission of which would mislead the public.
2. *Substantiation.* Advertising claims shall be substantiated by evidence in possession of the advertiser and the advertising agency prior to making such claims.

¹³ Carey and Doherty (1966), *supra*, at 47-48.

¹⁴ Mary Beth Armstrong, *Ethics and Professionalism for CPAs* (Cincinnati: Southwestern, 1993), 140.

¹⁵ Rule 502, reprinted in Armstrong, *supra*, at 68.

¹⁶ William F. Arens, *The Economic, Social and Regulatory Aspects of Advertising*, *Contemporary Advertising*, 7th ed. (New York: Irwin, McGraw-Hill, 1999), 77.

3. *Comparisons.* Advertising shall refrain from making false, misleading, or unsubstantiated statements or claims about a competitor or his products or service.

4. *Bait advertising.* Advertising shall not offer products or services for sale unless such offer constitutes a bona fide effort to sell the advertised products or services and is not a device to switch consumers to other goods or services, usually higher priced.

5. *Guarantees and warranties.* Advertising of guarantees and warranties shall be explicit, with sufficient information to inform consumers of their principal terms and limitations. When space or time restrictions preclude such disclosures, the advertisement shall clearly reveal where the full text of the guarantee or warranty can be examined before purchase.

6. *Price Claims.* Advertising shall avoid price claims that are false or misleading, or savings claims that do not offer provable savings.

7. *Testimonials.* Advertising containing testimonials shall be limited to those of competent witnesses who are reflecting a real and honest opinion or experience.

8. *Taste and Decency.* Advertising shall be free of statements, illustrations, or implications that are offensive to good taste or public decency.

Public Relations:

Dr. McGee states that “the right to free speech and free press are among the most basic human rights. Whenever some code of ethics violates these basic rights, the purpose of the code itself is highly suspect.”¹⁷ We couldn’t agree more!

¹⁷ McGee (1998), *supra*, at 272.

The First Amendment to the U. S. Constitution states that “Congress shall make no law abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”.¹⁸ Any code of ethics, for any professional organization, that would encroach on any of the members’ rights as to being able to express their feelings (speech), or use of the media (press), or being able to gather together to discuss professional items of interest (peaceably to assemble) or being permitted to speak to the officers of the organization about items of concern (to petition the Government for a redress of grievances) should be redrawn to permit these basic rights.

Like the AAF, the professional advertisers’ association, there is a sister professional association, representing public relations professionals --The Public Relations Society of America (PRSA). The PRSA Code of Ethics is as follows:¹⁹

1. A member shall conduct his or her professional life in accord with the public interest.
2. A member shall exemplify high standards of honesty and integrity while carrying out dual obligations to a client or employer and to the democratic process.
3. A member shall deal fairly with the public, with past or present clients or employers, and with fellow practitioners, giving due respect to the ideal of free inquiry and to the opinions of others.
4. A member shall adhere to the highest standard of accuracy and truth, avoiding extravagant claims or

¹⁸ Scott M. Cutlip, Allen H. Center & Glen M. Broom, *Ethics and Professionalism, Effective Public Relations*, 8th ed., (Upper Saddle River, NJ: Prentice Hall, 2000) 166-67.

¹⁹ Cutlip (2000), *supra*, at 182.

unfair comparisons and giving credit for ideas and words borrowed from others.

5. A member shall not knowingly disseminate false or misleading information and shall act promptly to correct erroneous communications for which he or she is responsible.

6. A member shall not engage in any practice that has the purpose of corrupting the integrity of channels of communications or the processes of government.

7. A member shall be prepared to identify publicly the name of the client or employer on whose behalf any public communication is made.

8. A member shall not use any individual or organization professing to serve or represent an announced cause, or professing to be independent or unbiased, but actually serving another or undisclosed interest.

9. A member shall not guarantee the achievement of specified results beyond the member=s direct control.

10. A member shall not represent conflicting or competing interests without the express consent of those concerned, given after a full disclosure of the facts.

11. A member shall not place himself or herself in a position where the member=s personal interest is or may be in conflict with an obligation to an

employer or client, or others, without full disclosure of such interests to all involved.

12. A member shall not accept fees, commissions, gifts or any other consideration from anyone except clients or employers for whom services are performed without their express consent, given after full disclosure of the facts.

13. A member shall scrupulously safeguard the confidences and privacy rights of present, former and prospective clients or employers.

14. A member shall not intentionally damage the professional reputation or practice of another practitioner.

15. If a member has evidence that another member has been guilty of unethical, illegal, or unfair practices, including those in violation of this Code, the member is obligated to present the information promptly to the proper authorities of the Society for action in accordance with procedures.

16. A member called as a witness in a proceeding for enforcement of this Code is obligated to appear, unless excused for sufficient reason by the judicial panel.

17. A member shall as soon as possible sever relations with any organization or individual if such relationship requires conduct contrary to the articles of this Code.

THE ISSUE OF LICENSING

Licensing of practitioners in the accounting field should be required. This is an important profession. Financial institutions depend upon this profession in making loan decisions.

Investors depend upon it in order to make informed choices. Potential employees depend upon it in deciding whether to accept a position with a certain organization, and, of course, the organizations themselves depend upon accountants to furnish them with accurate records of their assets, liabilities, net worth, sales, profits, and many other numbers necessary to run an efficient operation. CPAs like medical doctors and attorneys need governing boards that make as certain as they can that the person is competent to perform the service in which they are claiming to be proficient.

Dr. McGee mentions that “various accounting groups over the years have tried to restrain trade by making it illegal for non-CPAs to practice in certain areas.”²⁰ If the practitioners were only doing rudimentary bookkeeping, posting to receivables and payables accounts, etc., then non-CPAs could probably handle the work efficiently, and the “restraint of trade” argument could be valid. If there are any more complicated matters to be handled, e.g., Balance Sheets, Income Statements, or Statements of Retained Earnings, then a CPA is needed.

Attorneys and medical doctors certainly need licensing requirements. Each practicing attorney and medical doctor must pass the respective state=s exam where they wish to practice. It is obvious that when dealing with legal matters concerning an individual or organization, only an expert will do. Similarly, for anything dealing with a person=s health, only the best will do.

Regarding advertising and public relations, only the better firms are admitted to the American Advertising Federation (AAF), and the Public Relations Society of America (PRSA). However, there are no state licensing requirements for advertising and public relations professionals, as there are for accountants, medical

²⁰ McGee (1998), *supra*, at 273.

doctors and attorneys. This can present problems for start-up firms in any for-profit or not-for-profit endeavor that are not well versed in promotional and marketing strategies. They should be prudent in selecting an advertising/public relations firm that is qualified to handle their account.

There is nothing illegal about someone offering their services to perform advertising or public relations functions, whether or not they are skilled practitioners. So, even though there are problems on the “too restrictive” side of professional codes of ethics, so to are there problems on the “too lenient” side.

CONCLUSION

Who benefits more from promotion by accountants, medical doctors and lawyers, the professionals themselves, their clients, or, both of them? We believe honest, ethical, and compelling professional advertising and public relations campaigns benefit both the professional and the client. This study has mentioned that competition creates healthy environments, in which the consumer will have more informative advertising and public relations campaigns presented to him/her, which will assist in their decision-making processes regarding which professional to choose. This is a win-win situation for all parties involved. Secondly, is it ethical for these professionals to advertise their services? The answer is an unequivocal “yes,” if the promotion is done in accordance with the rules of the appropriate professional association.