Poor Hippocrates

To the Editor—An unprecedented, unexpected, and worrisome editor's note accompanied an article that appeared in a recent issue of Anesthesiology:

The use of nalmefene for rapid narcotic detoxification as described in the preceding article may be covered entirely or in part by US Patents 5,783,583 (April 12, 1996) and 5,922,705 (April 13, 1998) assigned to David Simon and Intensive Narcotic Detoxification Centers of America, LLC (Toland, CT).

This disclaimer, printed as a warning to readers who might make use of the information conveyed by the article, was made necessary by the attempts of a few physicians to patent and license medical procedures. The eventual goal of their seeking legal exclusivity has often (but not always) been to impose a substantial fee on practitioners for using or even teaching these techniques.

In this letter to the editor, I neither refer to nor oppose the patenting of specific medications and devices; indeed, such patents have played an important role in medical progress. I am only addressing attempts to patent new uses, techniques, and procedures that use these medications and devices.

Anesthesiology has prospered through our freedom to practice and teach new therapies developed through the novel use of already patented medications or devices without being required to pay a license fee to the patent holder. The evidence of history amply documents this claim: intentional use of halothane to produce hypotension; administration of neuraxial opioids for pain relief; pretreatment with nondepolarizing neuromuscular blockers before using succinylcholine; infusion of lidocaine to treat certain ventricular arrhythmias; altering arterial carbon dioxide tension (\(P_{\text{ACO}}\)) to change total or regional cerebral blood flow; and talking with patients to assess the adequacy of cerebral circulation during carotid endarterectomy—the evolution of these procedures would have been substantially influenced had medical practice, teaching, and writing been restricted by the granting of patents with the imposition of licensing and fee requirements.

These policy considerations are among the factors responsible for the invalidation of such patents by the federal courts and Congress. In Pallin v Singer, a United States District Court judge entered a consent order invalidating all claims made by the plaintiff, who had sought to license any teaching, writing, or practice that described or used the specific shape and location of a sutureless incision widely used in cataract surgery. The next year, as a direct result of this case, Congress enacted a statute making patents of medical or surgical procedures unenforceable. Nonetheless, a few members of the medical community have persisted in attempting to restrict the ability of their colleagues to teach and use these important modalities of therapy.

I am writing to strongly support the principles of free exchange of knowledge among all medical practitioners who wish "to teach . . . without fee or stipulation" and to condemn all attempts to restrict the teaching, investigation, and introduction into clinical practice of medical and surgical techniques.

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References

4. The Hippocratic Oath.

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