

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

CEJA Report 2 - I-04

Subject: Discipline of Impaired Physicians by CEJA
(Resolution 2, I-03)

Presented by: Michael S. Goldrich, MD, Chair

Referred to: Reference Committee F and Amendments to Constitution and Bylaws
(Carol S. Shapiro, MD, Chair)

1 This report responds to inquiries made to the Council on Ethical and Judicial Affairs (CEJA),
2 regarding its disciplinary policies and procedures affecting American Medical Association (AMA)
3 members and applicants with a history of impairment. Particularly, Resolution 2 (I-03), introduced
4 by the Oklahoma Delegation, called upon CEJA to give substantial weight to an impaired
5 physician's status with the applicable state medical association and participation in a state-
6 sponsored physicians health program (PHP). The resolution also called upon CEJA to adopt
7 certain procedures into its rules whereby a case would be held in abeyance if a recovering
8 physician was in good standing with the state medical association and was participating in such a
9 PHP. Absent other circumstances, a conclusion to the case would be provided that would not result
10 in a sanction reportable to the National Practitioner Data Bank (NPDB).

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12 Resolution 2 (I-03) was referred to the Board of Trustees and assigned to CEJA to respond directly.
13 This report describes CEJA's rules and practices regarding the discipline of impaired physicians.

14
15 **BACKGROUND**

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17 AMA Bylaws

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19 The following sections of the AMA Bylaws are most relevant to this report:

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21 B-1.111 Admission. A person eligible for active constituent membership in the American
22 Medical Association becomes a member of the AMA upon certification by the secretary of the
23 constituent association to the Executive Vice President of the AMA, provided there is no
24 disapproval by the Council on Ethical and Judicial Affairs. The Council may consider
25 information pertaining to the character, ethics, professional status and professional activities of
26 the applicant. The Council shall provide by rule for an appropriate hearing procedure to be
27 provided to the applicant.

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29 B-1.121 Admission. Active direct members are admitted to membership upon application
30 to the Executive Vice President of the American Medical Association, provided that there is no

* Reports of the Council on Ethical and Judicial Affairs are assigned to the reference committee on Constitution and Bylaws. They may be adopted, not adopted, or referred. A report may not be amended, except to clarify the meaning of the report and only with the concurrence of the Council.

1 disapproval by the Council on Ethical and Judicial Affairs. The Council may consider
2 information pertaining to the character, ethics, professional status and professional activities of
3 the applicant. The Council shall provide by rule for an appropriate hearing procedure to be
4 provided to the applicant.
5

6 B-1.20 Maintenance of Membership. A member may hold only one type of membership
7 in the American Medical Association at any one time. Membership may be retained only as
8 long as the member complies with the provisions of the Constitution and Bylaws and *Principles*
9 *of Medical Ethics* of the AMA.
10

11 B-1.611 Active Constituent Members. The Council on Ethical and Judicial Affairs, after
12 due notice and hearing may censure, suspend or expel an active constituent member from the
13 American Medical Association for an infraction of the Constitution or these Bylaws, for a
14 violation of the *Principles of Medical Ethics*, or for unethical or illegal conduct.
15

16 B-1.621 All Other Members. The Council on Ethical and Judicial Affairs, after due notice
17 and hearing, may censure, suspend or expel any active direct, affiliate, honorary or international
18 member of the AMA for an infraction of the Constitution or these Bylaws, for a violation of the
19 *Principles of Medical Ethics*, or for unethical or illegal conduct.
20

21 B-6.403 Original Jurisdiction. The Council on Ethical and Judicial Affairs shall have
22 original jurisdiction in:
23

24 B-6.4031. All questions involving membership as provided in B-1.111, B-1.121, B-1.131,
25 B-1.151, B-1.611 and B-1.62 of these Bylaws.
26

27 The Health Care Quality Improvement Act
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29 The Health Care Quality Improvement Act, 42 U.S.C. §§ 11101, *et seq.*, includes the following
30 provisions, also relevant to this report:
31

32 42 U.S.C. § 11133(a)(1)(C). Reporting of certain professional review actions taken by health
33 care entities
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35 Each health care entity which ... is a professional society [and which] takes a professional
36 review action which adversely affects the membership of a physician in the society, shall report
37 to the Board of Medical Examiners [disciplinary information, which shall be forwarded to the
38 National Practitioner Data Bank].
39

40 42 U.S.C. § 11151. Definitions
41

42 (1) The term "adversely affecting" includes reducing, restricting, suspending, revoking, denying,
43 or failing to renew ... membership in a health care entity.
44

45 * * * *

46 (9) The term "professional review action" means an action or recommendation of a professional
47 review body which is taken or made in the conduct of professional review activity, which is
48 based on the competence or professional conduct of an individual physician (which conduct
49 affects or could affect adversely the health or welfare of a patient or patients), and which affects

1 (or may affect) adversely the ... membership in a professional society, of the physician. Such
2 term includes a formal decision of a professional review body not to take an action or make a
3 recommendation described in the previous sentence and also includes professional review
4 activities relating to a professional review action.
5

6 Relevant AMA Policies
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8 Most persons suffering from alcoholism or other chemical dependencies, if treated under medical
9 supervision and with continuous monitoring, can undertake normal professional responsibilities (H-
10 30.974, AMA Policy Database). Accordingly, AMA policy encourages state medical societies to
11 establish treatment programs for physicians suffering from alcoholism or substance abuse, and also
12 encourages medical licensing boards to utilize the services of state medical society treatment
13 programs to treat and monitor physicians in those programs (H-95.955 and H-275.964; see also
14 AMA Model Impaired Physician Treatment Act).
15

16 More recently, the Council developed ethical guidance on physician health and wellness that
17 emphasizes intervention and rehabilitation over sanctions (E-9.0305). Concurrently, the Council
18 amended Opinion E-9.031, "Reporting Impaired, Incompetent, or Unethical Colleagues," to clarify
19 the instances when an impaired physician should be reported (See also E-8.121(2)(d), H-275.952,
20 and H-275.998). Notwithstanding these Opinions, it remains unethical for a physician to practice
21 medicine while under the influence of alcohol or other chemical agents that impair the ability to
22 practice medicine (E-8.15).
23

24 Moreover, medical societies have a civic and professional obligation to report to the appropriate
25 governmental body or state board of medical examiners credible evidence that may come to their
26 attention involving the alleged criminal conduct of any physician relating to the practice of
27 medicine (E-9.04).
28

29 **CEJA DISCIPLINARY PROCEDURES REGARDING IMPAIRED PHYSICIANS**
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31 CEJA Disciplinary Function
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33 As previously reported in the CEJA Report 5 – A-03, "Professional Self-Regulation and the
34 Judicial Function of the Council on Ethical and Judicial Affairs," the Council generally considers
35 disciplinary cases in which a physician previously has been found liable or has been sanctioned by
36 a criminal court, a licensing board, a governmental agency such as the Federal Drug Enforcement
37 Agency, or other investigative body.
38

39 Such information comes to the attention of the AMA through two principal channels. Specifically,
40 a review by CEJA can be triggered by statements made in the membership application form,* or by
41 a report to the AMA of a disciplinary action taken by a state licensing board, a medical society, or
42 hospital. In particular, state licensing authorities have communicated licensure information to the

* Membership Qualifications Questions are as follows: 1. Have you been convicted of fraud or a felony within the last five years? 2. Has any action, in any jurisdiction, been taken regarding your license to practice medicine within the last five years or extending to within the last five years? This includes... [any] sanctions or conditions imposed upon a license. 3. Have you been the subject of any disciplinary action by any medical society or hospital staff within the last five years?

1 AMA for many years supporting the AMA's overall credentialing activities for U.S. physicians,
2 irrespective of AMA membership.
3 Except in the rarest of circumstances, CEJA does not reexamine the sanction or penalty; rather, it
4 confines its inquiry to evidence bearing on whether to impose sanctions against the existing
5 member or to reject an application for membership.

6
7 Scope of CEJA's Disciplinary Function

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9 The Council primarily imposes disciplinary sanctions on physicians who fall into one of the
10 following categories established by a Board of Trustees Report on "AMA Initiative on Quality of
11 Medical Care and Professional Self-Regulation – Review of Membership Rolls:" (1) Conviction of
12 fraud or a felony involving professional misconduct or moral turpitude; (2) Licensure revocation or
13 forced surrender for reasons related to incompetence or unprofessional conduct; (3) Discharge from
14 the armed forces or from government employ, based on incompetence or unprofessional conduct
15 (BOT Report II, A-87). These infractions mandate systematic exclusion from the AMA, subject to
16 proper notice to the physician and a right to a hearing.

17
18 Moreover, the BOT Report identified other intermediate sanctions such as probation, which are
19 imposed for a wide range of misconducts that vary from one jurisdiction to another. Of particular
20 importance for this CEJA Report are sanctions against physicians for misconduct that was
21 compounded by a finding of impairment that resulted in referral to a PHP. Examples include
22 physicians who steal drugs from a hospital dispensary, perform surgical operations while
23 inebriated, self-prescribe in violation of accepted medical or legal procedures, or traffic narcotics.

24
25 Importantly, a physician does not come to the Council's attention merely for being enrolled in a
26 PHP. If a physician has enrolled in such a program prior to any disciplinary sanction by a licensing
27 board, or if the licensing board simply has referred the physician to a PHP without imposing a
28 reportable disciplinary sanction, the AMA does not receive any information related to the conduct
29 of the physician.

30
31 When there is information that an ethical or legal violation occurred that merits CEJA's attention,
32 the member or applicant is contacted to ascertain whether he or she wishes to present any
33 additional information for CEJA's consideration. Based on all information that is presented to it,
34 CEJA determines whether the physician's conduct may be excused or whether it warrants a plenary
35 hearing. A plenary hearing affords the member or applicant the right to present further arguments
36 or other information, including oral or written testimony by individuals familiar with the
37 circumstances of the physician, such as an officer of a PHP. The Council never imposes a sanction
38 without offering a hearing to the physician. If CEJA does take a disciplinary action, the decision
39 is, to the extent required under the procedures of the Health Care Quality Improvement Act,
40 reported to the National Practitioner Data Bank and to the respective state medical or national
41 specialty societies.

42
43 *Orders of Probation*

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45 As explained in CEJA Report 5 – A-03, the Council can place members on probation when they have
46 committed intermediate offenses that do not warrant rejection of an application or revocation of
47 membership. Generally, probation is imposed upon physicians who retain their medical licenses
48 (possibly under an order of probation from their licensing board) and are able to demonstrate progress
49 toward remediation or rehabilitation, which may include participation in a PHP. While on probation,

1 AMA members are required to submit to the Council semi-annual written reports attesting to their
2 conduct.
3 The AMA reports orders of probation, as well as their completion, to the National Practitioner Data
4 Bank and to the applicable state licensing board. Physicians often perceive such reports to the
5 NPDB as injurious or detrimental.

6
7 *Monitoring Status*

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9 Following recent dialogue with the Tennessee Medical Foundation, CEJA initiated a policy of
10 “monitoring” certain physicians. Monitoring allows CEJA more flexibility when applicants or
11 AMA members have committed less serious violations and they are well along the road to
12 rehabilitation. In such instances, the physicians are required to submit semi-annual written reports
13 on their participation in the PHP but the review does not adversely affect membership and is not
14 reported to the NPDB or to a medical licensing board.

15
16 The Council employed monitoring for the first time in late 2003. The long-term utility and
17 appropriateness of monitoring physicians remain to be determined. Much will depend upon the
18 frequency of its use and administrative issues that might evolve.

19
20 **CONCLUSION**

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22 Resolution 2 (I-03) called upon CEJA to give substantial weight to an impaired physician's status
23 with the applicable state medical association and participation in a state-sponsored physicians
24 health program (PHP). The resolution also called upon CEJA to modify its rules such that, absent
25 other circumstances, the case of a physician in good standing with the state medical association and
26 participating in such a PHP would be held in abeyance and would not result in a sanction reportable
27 to the National Practitioner Data Bank (NPDB).

28
29 The Council is mandated to review the membership status of any member or applicant who has
30 been found to have violated the *Principles of Medical Ethics* or other ethical and legal obligations.
31 Violations that result in licensing actions are often the cause for CEJA’s review. A physician does
32 not come to the Council’s attention merely for being enrolled in a physician health program.

33
34 In recognition that some impaired physicians who come to CEJA’s attention have committed less
35 serious violations and may be well along the road to rehabilitation as demonstrated by their
36 participation in a PHP, the Council already had implemented a "monitoring" status. This status
37 does not affect membership, and is not reported to the NPDB. This specific practice and CEJA’s
38 overall procedures fulfill all of the requests made in Resolution 2 (I-03). The Council remains
39 committed to supporting the recovery of physicians with substance abuse problems.

40
41 **RECOMMENDATION**

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43 The Council on Ethical and Judicial Affairs recommends the following and that the remainder of
44 this report be filed:

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46 That Resolution 2 (I-03) not be adopted.

Fiscal note: less than \$500.