

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

CEJA Report 5 - I-04

Subject: Amendment to Opinion E-9.025, “Collective Action and Patient Advocacy”

Presented by: Michael S. Goldrich, MD, Chair

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

1 In light of recent physician actions advocating for change to medical liability laws, the Council
2 reviewed its current Opinion on collective action and determined that it should provide guidance
3 that addresses non-employment related matters as well as labor matters. The Council also proposes
4 language to emphasize that physician participation should be voluntary and free from undue
5 pressure from colleagues. Further guidance on the legal risks that may arise from certain forms of
6 collective actions can be obtained from the AMA’s General Counsel.

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8 Generally, edits of a current Opinion that simply provide clarification and do not change the
9 substance of guidelines are presented to the House of Delegates in the form of a CEJA Opinion,
10 which is then filed. Because the proposed amendments to current Opinion E-9.025 introduce
11 substantive changes, CEJA wishes to present the edited Opinion to the House of Delegates in the
12 form of a Report, to foster discussion of these changes before it issues the amended Opinion.

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14 RECOMMENDATIONS

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16 The Council recommends that Opinion E-9.025, “Collective Action and Patient Advocacy,” be
17 amended as follows and the remainder of the Report be filed.

18
19 E-9.025, “~~Collective Action and Patient Advocacy~~ for Change in Law and Policy”

20
21 Physicians may participate in individual acts, grass roots activities, or legally permissible
22 collective action to advocate for change, as provided for in the AMA’s *Principles of*
23 *Medical Ethics*. Whenever engaging in advocacy efforts, physicians must ensure that the
24 health of patients is not jeopardized and that patient care is not compromised.

25 ~~Collective action should not be conducted in a manner that jeopardizes the health and~~
26 ~~interests of patients. Formal unionization of physicians, and including physicians-in-~~
27 ~~training, may tie physicians’ interests obligations to the interests of workers who may not~~
28 ~~share physicians’ primary and overriding commitment to patients and the public health.~~

* 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 Physicians should not form workplace alliances with those who do not share these ethical
2 priorities.

3
4 Strikes and other collective action may reduce access to care, eliminate or delay necessary
5 care, and interfere with continuity of care. Each of these consequences raises ethical
6 concerns is contrary to the physician's ethic. Physicians should refrain from the use of the
7 strike as a bargaining tactic. In rare circumstances, individual or grassroots actions, such as
8 brief limitations of personal availability, may be appropriate as a means of calling attention
9 to needed changes in patient care. Physicians are cautioned that some actions may put
10 them or their organizations at risk of violating antitrust laws. Consultation with legal
11 counsel is advised.

12
13 ~~There are some measures of collective action that may not impinge on essential patient~~
14 ~~care. Collective activities aimed at ultimately improving patient care may be warranted in~~
15 ~~some circumstances, even if they create inconvenience for the management.~~

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17 ~~Physicians and physicians-in-training should take full advantage of the tools of collective~~
18 ~~action through which to press for needed reforms: through the use of informational~~
19 ~~campaigns, non-disruptive public demonstrations, lobbying and publicity campaigns, and~~
20 ~~collective negotiation are among the options available which do not limit services to~~
21 ~~patients or other options that do not jeopardize the health of patients or compromise patient~~
22 ~~care.~~

23
24 ~~Physicians' collective activities should be in conformance with the law. Physicians are free~~
25 ~~to decide whether participation in advocacy activities is in patients' best interests.~~
26 ~~Colleagues should not unduly influence or pressure them to participate nor should they~~
27 ~~punish them, overtly or covertly, for deciding whether or not to participate. (I, III, VI)~~

28
29 Issued December 1998 based on the report "Collective Action and Patient Advocacy,"
30 adopted June 1998. Updated December 2004 based on the report "Amendment to Opinion
31 E-9.025, 'Collective Action and Patient Advocacy.'"

(New HOD/CEJA Policy)

Fiscal Note: Less than \$500

APPENDIX

The amended Opinion would read as follows:

E-9.025, “Advocacy for Change in Law and Policy”

Physicians may participate in individual acts, grass roots activities, or legally permissible collective action to advocate for change, as provided for in the AMA’s *Principles of Medical Ethics*. Whenever engaging in advocacy efforts, physicians must ensure that the health of patients is not jeopardized and that patient care is not compromised.

Formal unionization of physicians, including physicians-in-training, may tie physicians’ obligations to the interests of workers who may not share physicians’ primary and overriding commitment to patients. Physicians should not form workplace alliances with those who do not share these ethical priorities.

Strikes and other collective action may reduce access to care, eliminate or delay necessary care, and interfere with continuity of care. Each of these consequences raises ethical concerns. Physicians should refrain from the use of the strike as a bargaining tactic. In rare circumstances, individual or grassroots actions, such as brief limitations of personal availability, may be appropriate as a means of calling attention to needed changes in patient care. Physicians are cautioned that some actions may put them or their organizations at risk of violating antitrust laws. Consultation with legal counsel is advised.

Physicians and physicians-in-training should press for needed reforms through the use of informational campaigns, non-disruptive public demonstrations, lobbying and publicity campaigns, and collective negotiation or other options that do not jeopardize the health of patients or compromise patient care.

Physicians are free to decide whether participation in advocacy activities is in patients’ best interests. Colleagues should not unduly influence or pressure them to participate nor should they punish them, overtly or covertly, for deciding whether or not to participate. (I, III, VI)

Issued December 1998 based on the report “Collective Action and Patient Advocacy,” adopted June 1998. Updated December 2004 based on the report “Amendment to Opinion E-9.025, ‘Collective Action and Patient Advocacy.’”