

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS[□]

CEJA Report 2 - I-03

Subject: Professionalism and Contractual Relations

Presented by: Michael S. Goldrich, MD, Chair

Referred to: Reference Committee on Amendments to
Constitution and Bylaws
Susan L. Polk, MD, Chair

1 Resolution 11 – A-02, “AMA’s *Principles of Medical Ethics*,” called for Principle VI to be amended to add the
2 notion of freedom to contract. However, the Council found that the current language of Principle VI, by
3 referring to free choice of association, implied free choice of contract as did many Opinions of the AMA’s
4 Code of Medical Ethics, notably Opinions E-6.11, “Competition,” E-9.06, “Free Choice,” and E-8.05,
5 “Contractual Relations.” These Opinions make clear that physicians could exercise their freedom to choose the
6 conditions within which to practice. This choice generally is expressed by entering into contracts with selected
7 entities including health plans or health care facilities, or directly with patients. Therefore, CEJA Report 11-A-
8 03, “AMA’s *Principles of Medical Ethics* (Resolution 11, A-02),” concluded that the proposed amendment did
9 not need to be made, but the Council agreed to continue to address ethical issues that physicians face when
10 entering into various contractual relationships.

11 CONTRACTUAL RELATIONS – CLINICAL AND BEYOND

12
13
14 Currently, Opinion E-8.05 addresses the various contractual relationships that physicians enter into with group
15 practices or with insurance plans to provide services to patients. The opinion addresses income arrangements
16 and other benefits. More importantly, the opinion states that “physicians should not be subjected to lay
17 interference in professional medical matters and their primary responsibility should be to the patients they
18 serve.”

19
20 This statement derives from two complementary notions: first, physicians as professionals hold unique
21 obligations to attain expertise in the art and science of medicine and to use their knowledge and skills to
22 provide medical care, a service that is highly valued by society. As professionals, they also are entrusted to
23 self-regulate, in part because others do not hold the necessary knowledge to evaluate their activities.
24 Professional integrity is achieved by fulfilling this mandate and preventing undue interference by government
25 or market force. At the level of individual physicians, lay interference may undermine physicians’
26 professionalism.

27
28 The other important notion expressed in the concluding sentence of Opinion E-8.05 echoes Principle VIII,
29 which states that “A physician shall, while caring for a patient, regard responsibility to the patient as

[□] 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 paramount.” Together, these two notions establish a patient-physician dyad that ought to be protected from
2 extraneous interests.

3
4 Apart from their clinical interactions with patients, it is important to recognize that physicians serve many
5 other ancillary functions. Indeed, the AMA’s Code of Medical Ethics identifies many other roles that
6 physicians fulfill, which may or may not overlap with their clinical responsibilities, such as educators, research
7 investigators, inventors, administrators, investors in health care facilities, expert witnesses, and peer reviewers.
8 In many instances, fulfilling these functions will require physicians to enter into contractual agreements with
9 non-healthcare professionals, including corporate entities. Despite the possibility of some common interests
10 with physicians and/or patients, these third parties may not be bound by the same ethical norms, nor be
11 motivated by the same goals.

12
13 *Conflict of Interests and Contracts*

14
15 When patient interests are not clearly aligned with those of the entity with which a physician enters into a
16 contract, the physician may have a conflict of interest. That is to say that the physician’s professional judgment
17 about patient welfare stands to be unduly influenced by the interests of the other contracting party, whether
18 financial or otherwise. Many concerns that arise from specific instances of conflicts of interest are addressed
19 by the Code of Medical Ethics.

20
21 Concerns regarding conflicts of interest have been particularly intense in the context of managed care, where
22 physicians have complained that reimbursement arrangements and various practice restrictions (such as
23 referrals, prescriptions, hospitalizations etc.) have prevented them from providing due care to some patients.
24 Therefore, physicians have been cautioned to review these contractual agreements carefully to measure their
25 potential impact on patient care. The medical profession as a whole has sought to modify some managed care
26 arrangements that were found to be detrimental to patient care, and these efforts continue. However, similar
27 caution is warranted whenever physicians enter into contracts to perform functions that are ancillary to patient
28 care, as enumerated above.

29
30 CONCLUSION

31
32 Before entering into contracts with third parties, physicians should attempt to ascertain the goals or
33 motivations of the other contracting party and determine the possible impact on professionalism, independent
34 clinical judgment, or patient care. Even if a shared goal can be identified, motivations or means to achieve a
35 common goal may present an untenable conflict of interest. If negotiations to address these concerns fail,
36 physicians should reject the contract.

37
38 RECOMMENDATION

39
40 The Council recommends that the following be adopted and the remainder of the report be filed:

41
42 Physicians are free to enter into a wide range of contractual arrangements. However, physicians
43 should not sign contracts containing provisions that tend to undermine their ethical obligation to
44 advocate for patient welfare. Therefore, before entering into contractual agreements to provide
45 services that directly or indirectly impact patient care, physicians should negotiate the removal of any
46 terms, such as financial incentives or administrative conditions, that are known to compromise
47 professional judgment or integrity. Particularly, when contractual compensation varies according to
48 performance (see Opinion E-8.054, “Financial Incentive and the Practice of Medicine”), physicians
49 should beware of incentives that may adversely impact patient care. (New HOD/CEJA Policy)

Fiscal Note: less than \$500.00