

## 5. ETHICAL CONSIDERATIONS OF FEES FOR REFERRALS

### **HOUSE ACTION: RECOMMENDATION ADOPTED AND REMAINDER OF REPORT FILED**

#### INTRODUCTION

Resolution 201, adopted at the 1998 Annual Meeting, asked the Council on Ethical and Judicial Affairs (CEJA) to study:

“the ethical and legal implications of paying a fee in order to receive patient referrals”.

#### ETHICAL CONSIDERATIONS OF FEES FOR REFERRALS

CEJA has previously stated in Opinion 6.02, “Fee Splitting”:

Payment by or to a physician solely for the referral of a patient is fee splitting and is unethical.

A physician may not accept payment of any kind, in any form, from any source, such as a pharmaceutical company or pharmacist, an optical company or the manufacturer of medical appliances and devices, for prescribing or referring a patient to said source.

In each case, the payment violates the requirement to deal honestly with patients and colleagues. The patient relies upon the advice of the physician on matters of referral. All referrals and prescriptions must be based on the skill and quality of the physician to whom the patient has been referred or the quality and efficacy of the drug or product prescribed.

CEJA bases its reasoning on the concern that the quality of patient care is not compromised. In this manner, fee splitting payments violate the requirement “to deal honestly with patients and colleagues” since referral decisions should be made with the patient’s best interest in mind.

#### LEGAL CONSIDERATIONS OF FEES FOR REFERRALS

Under the federal Anti-Kickback statute, it is a felony to knowingly and willfully solicit or receive any remuneration for referring an individual to a person for the furnishing of any service for which payment may be made under a Federal health care program. The law also makes it a felony for anyone to “knowingly and willfully offer or pay any remuneration” for referrals. Remuneration is defined as anything of value, including another referral. The Health Insurance Portability and Accountability Act of 1996 further expanded the definition of “remuneration” to include “waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or services for free or for other than fair market value.” Paying a fee in order to receive patient referrals, where the patient had insurance coverage through Medicare, Medicaid or another federal health care program, would be a violation of the law.

#### CONCLUSION

For the foregoing ethical and legal reasons, CEJA reaffirms Opinion 6.02 in response to Resolution 201 (A-98).

(References pertaining to this report are available from the Ethics Standards Division)