

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

CEJA Report 2-A-16

Subject: Modernized *Code of Medical Ethics*

Presented by: Stephen L. Brotherton, MD, Chair

Referred to: Reference Committee on Code Modernization
(Larry E. Reaves, MD, Chair)

1 As previously reported to the House of Delegates, in 2008 the Council on Ethical and Judicial
2 Affairs undertook a project to critically review the Opinions that interpret AMA *Principles of*
3 *Medical Ethics* and to update Opinions as needed. The Council’s goal was threefold: to ensure that
4 the *Code*’s ethical guidance keeps pace with the demands of a changing world of medical practice
5 and at the same time, to re-organize chapters and format Opinions uniformly to make guidance
6 easy to find and easy to read, and at the same time, to preserve and clarify the accumulated wisdom
7 of the House reflected in the Opinions of the *Code of Medical Ethics*. With this report, the Council
8 presents the draft modernized Opinions of the *Code* to the House for the fourth time.

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10 Over the course of the project, the Council has sought input from stakeholders through:

- 11 • requests for comment on current Opinions in the earliest phase of the project
- 12 • solicitation of comments through its online discussion forum beginning in January 2014
- 13 • Open Forum presentations on “*Code* modernization” at the 2013 Interim and 2014 Annual
- 14 meetings
- 15 • informal open house discussions in November 2014 and June 2015
- 16 • testimony in reference committee at the 2014 and 2015 Interim Meetings and the 2015
- 17 Annual Meeting
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20 Most recently, the Council removed security protections on the draft modernized *Code* and
21 reposted all materials. The Council asked to receive comments by March 1, 2016 to allow adequate
22 time to revise the draft as might be appropriate and post updated materials well in advance of the
23 2016 Annual Meeting.

24 CURRENT REVISIONS TO THE DRAFT MODERNIZED CODE

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27 The Council thanks the individuals, delegations, and work groups who provided feedback on the
28 draft modernized *Code* in testimony at the 2015 Interim Meeting as well as in comments to its
29 online forum and direct letters and emails after the meeting. The Council received several types of
30 feedback:

- 31 • suggestions to modify or eliminate proposed new guidance
- 32

* Reports of the Council on Ethical and Judicial Affairs are assigned to the Reference Committee on Amendments to 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 • requests that CEJA define or otherwise clarify new terminology
- 2 • suggested copyedits for specific passages in the draft
- 3 • substantive concerns about guidance preserved from current Opinions
- 4 • general comments about the process of modernizing the *Code*

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6 At its March 2016 meeting, the Council formally reviewed all feedback and discussed how best to
7 address each comment received. In some instances, the Council adopted proposed copyedits as
8 submitted (e.g., 2A.1.2, 11.3.4), including recommendations to restore the language of the current
9 Opinion in passages that otherwise preserve current guidance (e.g., 2A.1.1). In other instances,
10 especially if there was more than one suggested edit for a particular passage, the Council settled on
11 other language to achieve what it understood to be the intended goal of proposed edits (e.g.,
12 2A.1.4). However, where proposed copyedits would have changed language carried over from the
13 current Opinion, the Council generally took no action (e.g., 2A.2.2).

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15 The Council made modest editorial changes in response to requests to define terminology or clarify
16 meaning. For example, it replaced the ethics term of art “right to an open future” with a sentence
17 that briefly defines the concept in a way that is tailored to the topic of the Opinion in which the
18 term is used (2B.2.4, 2B.2.5). (A glossary is also being developed for the modernized *Code*.) It
19 similarly introduced new language in some passages to make key values or ethical considerations
20 explicit in response to feedback (2A.1.3).

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22 The Council spent considerable time discussing comments that suggested eliminating or
23 significantly modifying proposed new guidance. In some cases, the Council came to concur that the
24 proposed guidance was problematic in ways it had not fully appreciated. In such cases, the Council
25 deleted the problematic guidance point from the modernized *Code* at this time, with the thought
26 that it may ultimately revisit the matter in the future (e.g., 2A.1.5).

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28 In some instances, comments indicated that the rationale for specific proposed revisions is not
29 transparent. In these instances, the Council revised the updated Opinion in an effort to make the
30 underlying reasoning clearer. For example, updated Opinion 2A.2.4 recommends that physicians
31 routinely have a chaperone present, even when the patient is accompanied by someone he or she
32 trusts. Feedback expressed concern that this sets an unreasonable expectation for physician conduct
33 and is likely to be especially burdensome for smaller practices. In updating this guidance, the
34 Council intended to protect both patients *and* physicians, not only from possible conduct that is
35 unambiguously inappropriate, but also from the kinds of misunderstandings and misinterpretations
36 that the Council has seen reflected in disciplinary matters that come before it in its judicial
37 function. The Council has proposed revisions in the draft Opinion to clarify the nature and scope of
38 concerns it believes 2A.2.4 should address. Likewise, the Council updated guidance on treating
39 oneself or a family member (Opinion 2A.2.1), including prescribing controlled substances, in part
40 because the fact that it regularly sees cases in which state boards have disciplined AMA members
41 on this matter indicates clearer guidance is needed.

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43 A significant proportion of comments expressed concern or disagreement with existing guidance
44 that the Opinions of the modernized *Code* preserve. The Council has noted previously that
45 concerns of this nature fall outside the scope of the project to modernize the *Code*. The House of
46 Delegates has and surely always will encompass a diversity of perspectives on matters of ethics.
47 The House adopted the Opinions of the current *Code* through its usual processes and existing
48 guidance thus reflects agreements reached through thoughtful deliberation over time. Respecting
49 that history, the Council has intentionally been conservative in modernizing the *Code*, seeking to
50 preserve the accumulated wisdom of the House and updating Opinions only when the Council

1 judged guidance to be significantly out of step with current best ethics, biomedical science, or the
2 structures of contemporary health care. Where disagreement with the decision of the House to
3 adopt a specific Opinion persists, those issues of substantive concern deserve the carefully focused
4 attention and debate that is best achieved through a resolution from the House that asks the Council
5 to revisit the particular guidance. The Council is prepared to address concerns about existing
6 Opinions, some of which have been in the *Code* for decades, through the resolution process and
7 believes this would best be accomplished following adoption of the modernized *Code of Medical*
8 *Ethics* as presented in this report.

9
10 At the 2015 Annual Meeting and again at the 2015 Interim Meeting the Council heard concerns
11 that the process has not allowed adequate time for the House to review the draft modernized *Code*.
12 The Council recognizes that this is a complex undertaking and respectfully reminds the House that
13 the draft has been posted online continuously for more than two years. As comments have been
14 received and revisions made, documents have been reposted to ensure that AMA delegates and
15 members had ongoing access to the most current iteration of the work. The Council has previously
16 set out its rationale for presenting the work as a single, unitary whole, which it continues to believe
17 is the most appropriate path.

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19 The Council wishes to express its appreciation for all the feedback received since the work was
20 first posted online in January 2014 and to thank particularly those delegations that have combined
21 their efforts to jointly review these materials and share their input.

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23 RECOMMENDATION

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25 The Council on Ethical and Judicial Affairs recommends that the individual Opinions of the AMA
26 *Code of Medical Ethics* be amended by substitution as follows and that the remainder of this report
27 be filed:

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29 The full text of the modernized Opinions of the *Code of Medical Ethics* is posted online at

30
31 www.ama-assn.org/go/cejaforum

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33 (Modify HOD/CEJA Policy)

Fiscal note: \$2,500