

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

CEJA Report 2-I-07

Subject: Modification of Ethics Policy to Ensure Inclusion for Transgender Physicians,
Medical Students, and Patients

Presented by: Mark A. Levine, MD, Chair

Referred to: Reference Committee on Amendments to Constitution and Bylaws
(Jane C.K. Fitch, MD, Chair)

1 INTRODUCTION

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3 At the 2007 Annual Meeting of the AMA House of Delegates, Board of Trustees Report 11,
4 “Recommendations to Modify AMA Policy to Ensure Inclusion for Transgender Physicians,
5 Medical Students, and Patients,” was adopted. The report asks the Council on Ethical and Judicial
6 Affairs (CEJA) to consider revising certain ethics policies to ensure protection and equality relating
7 to gender identity issues.

8 9 DISCUSSION

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11 The three ethics Opinions identified in BOT Report 11, E-9.03, “Civil Rights and Professional
12 Responsibility,” E-10.05, “Potential Patients,” and E-9.12, “Patient-Physician Relationship:
13 Respect for Law and Human Rights,” all advocate for the broad protection of civil liberties among
14 patients and physicians. This ideal stems primarily from Principles I, IV, and IX of the Principles
15 of Medical Ethics: physicians must “be dedicated to providing competent medical care, with
16 compassion and respect for human dignity and rights” (Principle I), “respect the rights of patients,
17 colleagues, and other health professionals” (Principle IV), and “support access to medical care for
18 all people” (Principle IX). Taken collectively, these Principles illuminate physicians’ duty to
19 promote human well-being without discrimination.

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21 In its report, the Board of Trustees recognized challenges faced by transgender individuals that are
22 unique to this group. Transgender individuals often view themselves and/or are perceived by
23 others as the most marginalized sector of the gay, lesbian, bisexual, and transgender (GLBT)
24 community. As a result, transgender individuals are at risk for adverse health outcomes, as well as
25 discrimination in medical education and employment.

* 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 However, the BOT Report noted that transgender individuals could not refer to AMA policy when
2 dealing with discrimination because there was no explicit protection for this group. Although other
3 members of the GLBT community can claim protection through the “sexual orientation” category of
4 AMA policy, transgender individuals cannot. The BOT Report remedied this deficiency by
5 amending appropriate HOD policies, but could only recommend amendment to ethics Opinions.

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7 CONCLUSION

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9 The Council agrees with the Board of Trustees that respecting the rights of our patients and
10 colleagues is extremely important. The fact that any group still experiences discrimination
11 indicates that our current policies do not perfectly meet this goal. Therefore, it is appropriate to
12 amend our ethics policy to ensure that all individuals’ rights are protected.

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14 RECOMMENDATIONS

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16 The Council on Ethical and Judicial Affairs recommends:

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18 (1) That Opinion E-9.03, “Civil Rights and Professional Responsibility,” be amended as follows.

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20 E-9.03 Civil Rights and Professional Responsibility

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22 Opportunities in medical society activities or membership, medical education and training,
23 employment, and all other aspects of professional endeavors should not be denied to any
24 duly licensed physician because of race, color, religion, creed, ethnic affiliation, national
25 origin, sex, sexual orientation, gender identity, age, or handicap. (IV)

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27 Issued prior to April 1977; Updated June 1994.

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29 (Modify HOD/CEJA Policy)

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31 (2) That Opinion E-10.05, “Potential Patients,” be amended as follows.

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33 E-10.05 Potential Patients

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35 (1) Physicians must keep their professional obligations to provide care to patients in accord
36 with their prerogative to choose whether to enter into a patient-physician relationship. (2)
37 The following instances identify the limits on physicians' prerogative: (a) Physicians
38 should respond to the best of their ability in cases of medical emergency (Opinion 8.11,
39 "Neglect of Patient"). (b) Physicians cannot refuse to care for patients based on race,
40 gender, sexual orientation, gender identity, or any other criteria that would constitute
41 invidious discrimination (Opinion 9.12, "Patient-Physician Relationship: Respect for Law
42 and Human Rights"), nor can they discriminate against patients with infectious diseases
43 (Opinion 2.23, "HIV Testing"). . . . Greater medical necessity of a service engenders a
44 stronger obligation to treat. (I, VI, VIII, IX)

1 Issued December 2000 based on the report "Potential Patients, Ethical Considerations," adopted
2 June 2000. Updated December 2003. * Considerations in determining an adequate level of health
3 care are outlined in Opinion 2.095, "The Provision of Adequate Health Care."

4
5 (Modify HOD/CEJA Policy)

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7 (3) That Opinion E-9.12, "Patient-Physician Relationship: Respect for Law and Human Rights," be
8 amended as follows.

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10 E-9.12 Patient-Physician Relationship: Respect for Law and Human Rights

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12 The creation of the patient-physician relationship is contractual in nature. Generally, both
13 the physician and the patient are free to enter into or decline the relationship. A physician
14 may decline to undertake the care of a patient whose medical condition is not within the
15 physician's current competence. However, physicians who offer their services to the
16 public may not decline to accept patients because of race, color, religion, national origin,
17 sexual orientation, gender identity, or any other basis that would constitute invidious
18 discrimination. Furthermore, physicians who are obligated under pre-existing contractual
19 arrangements may not decline to accept patients as provided by those arrangements. (I, III,
20 V, VI)

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22 Issued July 1986; Updated June 1994.

23
24 (Modify HOD/CEJA Policy)

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26 (4) That the remainder of the report be filed.

Fiscal Note: Staff cost estimated at less than \$500 to implement.