REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS

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)

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

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

- requests for comment on current Opinions in the earliest phase of the project
- solicitation of comments through its online discussion forum beginning in January 2014
- Open Forum presentations on “Code modernization” at the 2013 Interim and 2014 Annual meetings
- informal open house discussions in November 2014 and June 2015
- testimony in reference committee at the 2014 and 2015 Interim Meetings and the 2015 Annual Meeting

Most recently, the Council removed security protections on the draft modernized Code and reposted all materials. The Council asked to receive comments by March 1, 2016 to allow adequate time to revise the draft as might be appropriate and post updated materials well in advance of the 2016 Annual Meeting.

CURRENT REVISIONS TO THE DRAFT MODERNIZED CODE

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

- suggestions to modify or eliminate proposed new guidance

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

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

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

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

A significant proportion of comments expressed concern or disagreement with existing guidance that the Opinions of the modernized Code preserve. The Council has noted previously that concerns of this nature fall outside the scope of the project to modernize the Code. The House of Delegates has and surely always will encompass a diversity of perspectives on matters of ethics. The House adopted the Opinions of the current Code through its usual processes and existing guidance thus reflects agreements reached through thoughtful deliberation over time. Respecting that history, the Council has intentionally been conservative in modernizing the Code, seeking to preserve the accumulated wisdom of the House and updating Opinions only when the Council
judged guidance to be significantly out of step with current best ethics, biomedical science, or the structures of contemporary health care. Where disagreement with the decision of the House to adopt a specific Opinion persists, those issues of substantive concern deserve the carefully focused attention and debate that is best achieved through a resolution from the House that asks the Council to revisit the particular guidance. The Council is prepared to address concerns about existing Opinions, some of which have been in the Code for decades, through the resolution process and believes this would best be accomplished following adoption of the modernized Code of Medical Ethics as presented in this report.

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

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

RECOMMENDATION

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

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

www.ama-assn.org/go/cejaforum

(Modify HOD/CEJA Policy)

Fiscal note: $2,500