10.1 Ethical Guidelines for Physicians in Nonclinical Roles

Physicians earn and maintain the trust of their patients and the public by upholding norms of fidelity to patients, on which the physician's professional identity rests.

Even when they fulfill roles that do not involve directly providing care for patients in clinical settings, physicians are seen by patients and the public, as well as their colleagues and coworkers as professionals who have committed themselves to the values and norms of medicine. Whatever roles they may play in the system of health care delivery, when physicians use the knowledge and values they gained through medical training and practice in roles that affect the care and well-being of individual patients or groups of patients, they are functioning within the sphere of their profession. [New content addresses gap in current guidance]

When physicians take on obligations that compete with their fiduciary obligations to patients, those fiduciary obligations may ethically be tempered by the following considerations:

(a) The impact of the nonclinical role on the health of individuals and communities.

(b) The degree to which they are perceived to be acting as representatives of the medical profession.

(c) The extent to which they rely on their medical training or expertise to fulfill the nonclinical role.

AMA Principles of Medical Ethics: I, VII

Background report(s):

CEJA Report 3-A-16 Modernized *Code of Medical Ethics*

CEJA Report 10-A-07 Physicians in administrative and other nonclinical roles

CEJA Report B – I-92 Ethical guidelines for medical consultants

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When physicians take on obligations that compete with their fiduciary obligations to patients, those fiduciary obligations may ethically be tempered by the following considerations: [*new language clarifies context of guidance*]

(a) The impact of the nonclinical role on the health of individuals and communities.

(b) *The degree to which they are perceived to be acting as representatives of the medical profession.* [*new guidance adapted from original CEJA report 10-A-0*]

(c) The extent to which they rely on their medical training or expertise to fulfill the nonclinical role.

AMA Principles of Medical Ethics: I, VII

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

CEJA Report 10-A-07

Subject: Physicians in Administrative or Other Non-clinical Roles

Presented by: Robert M. Sade, MD, Chair

Referred to: Reference Committee on Amendments to Constitution and Bylaws
(Richert E. Quinn, Jr., MD, Chair)

INTRODUCTION

Around the turn of the 20th Century, the focus of medicine expanded beyond the private doctor-patient encounter, and physicians began to assume "a more central role in the ordering of society."[1] The U.S. health care system has become increasingly complex, and many physicians now serve in administrative roles at hospitals, health care systems, and insurance companies, and as business and investment consultants.[2] This report examines the extent to which physicians may be bound by medical ethics, not just when they are directly providing patient care but also when acting in some other non-clinical roles.[3]

For the purposes of this report, "non-clinical roles" are defined as roles filled by physicians that are outside of direct patient service. Non-clinical roles vary in the degree to which they rely on medical expertise and training, and their impact on the health and well being of individuals and communities.

The AMA, along with many other health care organizations, has endorsed the Declaration of Professional Responsibility, which states, "[The] ideals and obligations [of physicians] transcend physician roles and specialties, professional associations, geographic boundaries, and political differences, uniting all physicians in the community service of humankind." [reference]

Determining the extent to which physicians may be bound to the professional ethical obligations of medicine when working outside clinical practice is challenging. However, some guidance can help maintain the integrity of the medical profession and public trust in medicine. While some specific roles may need additional attention, addressing the general issue of physicians in non-clinical roles is an essential and constructive starting point.

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* 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.

Ultimately, the degree to which a physician may be expected to adhere to professional ethical obligations is contingent upon many considerations, including (but not limited to): 1) the extent to which they rely upon their medical training and expertise to perform non-clinical functions; 2) the impact of their non-clinical role on the health of individuals and communities; and 3) the degree to which they are perceived as representatives of the medical profession.

RELEVANT AMA POLICY

Several current opinions in the Code address specific non-clinical roles and activities. Currently, Opinion E-8.02, "Ethical Guidelines for Physicians in Management Positions and Other Non-Clinical Roles," (AMA Policy Database) notes that physicians in administrative and other non-clinical roles that do not directly involve patient care should place patient welfare before all other considerations in order to preserve and promote trust.[4]

Opinion E-8.021, "Ethical Obligations of Medical Directors," specifically addresses the ethical obligations of medical directors, and may be relevant to physicians occupying other non-clinical roles. This opinion states:

> Assuming a title or position that removes the physician from direct patient-physician relationships does not override professional ethical obligations…. Whenever physicians employ professional knowledge and values gained through medical training and practice, and in so doing affect individual or group patient care, they are functioning within the professional sphere of physicians and must uphold ethical obligations, including those articulated by the AMA's Code of Medical Ethics.[5]

Opinion E-9.07, "Medical Testimony," addresses physicians who provide medical testimony. Because medical evidence is critical in various legal and administrative proceedings and physicians have specialized knowledge and experience, physicians are obligated to assist in the administration of justice. First and foremost, this involves delivering honest testimony. When physicians provide expert testimony, they should have recent and substantive experience and knowledge in the particular area; maintain objectivity; and reflect current scientific thought and standards of care.[6]

The professional ethos of healing excludes some roles for physicians, such as participant in a legally authorized execution (E-2.06, "Capital Punishment")[7] or torture (E-2.067, "Torture").[8]

Considered as a whole, these opinions suggest that a physician involved in an activity that is connected to health care or patient welfare remains to some degree bound to the profession's ethical obligations.

TYPES OF NON-CLINICAL ROLES

Physicians often serve in positions where medical training and expertise are necessary occupational qualifications even though job duties do not include patient care. For example, the surgeon general of the U.S. is required to be a licensed physician. In other instances, such as director of a local public health department, state epidemiologist, health lawyer, or health journalist, medical training and expertise may be preferable or may provide a unique advantage. In some activities and pursuits, medical expertise is simply irrelevant. For example, a physician has no particular advantage to being a physician in the role of landlord or restaurant owner.

Physicians also sometimes assume public roles that involve advocacy for and participation in improving the aspects of communities that affect the health of individuals.[9] Such roles are generally deemed to be consistent with the professional values of medicine; some have even argued that such advocacy is a professional responsibility.[9]

Physicians may also occupy dual roles that present complementary or competing ethical obligations. This category includes the physician-lawyer, the physician-journalist, the physician-researcher, and the physician-elected official.[10,11,12]

The challenges posed by situations in which physicians work outside of clinical practice have prompted the Council to consider the ethical values that should guide physicians serving in non-clinical roles and the degree to which these individuals are bound to the professional ethical obligations of medicine.

ETHICAL ANALYSIS

As professionals, physicians generally have been highly regarded. Government grants them certain privileges, giving rise to clear expectations and significant responsibilities.[13-16] As professionals, physicians publicly acknowledge adherence to certain standards of conduct, such as those summarized in the AMA *Principles of Medical Ethics*.[17] These standards of conduct, which define the essentials of honorable behavior for the physician, include paramount responsibility to the patient (Principle VIII), dedication to the provision of competent care (Principle I); respect for human dignity and rights (Principle I); and support for access to medical care for all people (Principle IX).

At the center of physicians' professional identity lie norms that should be adhered to without regard to context.[3] Indeed, it is hard to imagine that a physician who exhibits compassion toward patients in the clinic would be indifferent to the same afflictions merely because they are borne by strangers.

Those central characteristics lead to physicians' obligation to assist in finding solutions to social problems affecting communities and public health (Principle VII) with the understanding that they do not guide physician behavior exclusively in the clinic, but in non-clinical settings as well.

It is imperative to maintaining public trust in medicine that physicians meet this expectation regardless of the context in which they are functioning.

RECOMMENDATION

The Council on Ethical and Judicial Affairs recommends that the following be adopted and the remainder of the report be filed.

> E- 8.02 Ethical Guidelines for Physicians in Administrative or Other Non-clinical Roles
>
> The practice of medicine focuses primarily on diagnosis and treatment of disease and injury, but its concerns extend broadly to include human experiences related to health and illness. Throughout their formal education and their practice of medicine, physicians profess and are therefore held to standards of medical ethics and professionalism, such as those expressed in the AMA Code of Medical Ethics. Complying with these standards

enables physicians to earn the trust of their patients and the general public. Trust is essential to successful healing relationships and, therefore, to the practice of medicine.

The ethical obligations of physicians are not suspended when a physician assumes a position that does not directly involve patient care. Rather, these obligations are binding on physicians in non-clinical roles to the extent that they rely on medical training, experience, or perspective. When physicians make decisions in non-clinical roles, they should strive to protect the health of individuals and communities.

(New HOD/CEJA Policy)

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

References are available from the AMA Ethics Group on request.

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CEJA Report B – I-92
Ethical Guidelines for Medical Consultants

Resolution 2, which was adopted at the 1991 Interim Meeting, calls for the American Medical Association to "develop ethical guidelines for physicians serving as administrators, consultants, witnesses and in other business or judicial capacities which do not involve direct patient care."

Over the years, in its Opinions, the Council on Ethical and Judicial Affairs has developed a number of ethical guidelines for physicians who serve in capacities that do not involve direct patient care. For example, Opinion 2.03 provides principles for the allocation of health care resources, and Opinion 4.07 provides guidance on decisions about hospital staff privileges. Opinion 9.01 discusses the ethical obligations of physicians who engage in accreditation activities, Opinion 9.07 addresses the ethical obligations of physicians who serve as witnesses in legal proceedings, and Opinion 9.10 provides guidance for physicians involved in peer review proceedings.

In its reports the Council has also developed ethical guidelines for physicians in non-patient care roles. In Report A (A-88), (Policy 225.983, *AMA Policy Compendium*), the Council analyzed the ethical considerations for physicians who serve on hospital governing boards; in Report B (A-90), (Policy 140.978, *AMA Policy Compendium*), the Council provided guidance to physician-administrators of health maintenance organizations and independent practice associations on the ethics of financial incentives to limit care. Report E (A-91) provided guidance for physicians advising industry about genetic testing of employees, and the Council is currently developing a report for physicians advising health insurance companies on the use of genetic testing in the underwriting process.

While these opinions and reports focus on ethical concerns that are specific to the issues being considered, they all reflect an important general principle: physicians in administrative roles must still put the needs of patients first. At least since the time of Hippocrates, physicians have cultivated the trust of their patients by placing patient welfare before all other concerns. The ethical obligations of physicians are not suspended when a physician assumes a position that does not directly involve patient care.

The Council does not believe it is necessary to develop a separate ethics code for physicians who serve as administrators, consultants or witnesses; who serve on quality assurance, utilization review, professional review or other peer review boards; or who serve in other business or judicial capacities that do not involve direct patient care. Instead, it would be more useful for the Council to continue developing ethical guidelines on issues of concern to these physicians as part of the Association's existing ethics code.

Many of these issues also are germane to physicians involved in direct patient care. In addition, the Association's positions on ethical issues will be more accessible to physicians and others if they are contained in a single source.

The Council encourages the House of Delegates to bring to its attention any particular ethical issues that pertain to physicians who are not involved in direct patient care and that the House wishes the Council to address.

RECOMMENDATION

The Council on Ethical and Judicial Affairs recommends that the following statement be adopted and that the remainder of this report be filed:

Physicians in administrative and other non-clinical roles must put the needs of patients first. At least since the time of Hippocrates, physicians have cultivated the trust of their patients by placing patient welfare before all other concerns. The ethical obligations of physicians are not suspended when a physician assumes a position that does not directly involve patient care.

As it addresses ethical issues of concern to the profession, the Council on Ethical and Judicial Affairs will continue to develop ethical guidelines on issues of concern to physicians who serve in capacities that do not involve direct patient care. The House of Delegates should inform the Council of specific issues that it feels need to be addressed.