

### ***10.7 Ethics Committees in Health Care Institutions***

In making decisions about health care, patients, families, and physicians and other health care professionals often face difficult, potentially life-changing situations. Such situations can raise ethically challenging questions about what would be the most appropriate or preferred course of action. Ethics committees, or similar institutional mechanisms, offer assistance in addressing ethical issues that arise in patient care and facilitate sound decision making that respects participants' values, concerns, and interests.

In addition to facilitating decision making in individual cases (as a committee or through the activities of individual members functioning as ethics consultants), many ethics committees assist ethics-related educational programming and policy development within their institutions.

To be effective in providing the intended support and guidance in any of these capacities, ethics committees should:

- (a) Serve as advisors and educators rather than decision makers. Patients, physicians and other health care professionals, health care administrators, and other stakeholders should not be required to accept committee recommendations. Physicians and other institutional stakeholders should explain their reasoning when they choose not to follow the committee's recommendations in an individual case.
- (b) Respect the rights and privacy of all participants and the privacy of committee deliberations and take appropriate steps to protect the confidentiality of information disclosed during the discussions.
- (c) Ensure that all stakeholders have timely access to the committee's services for facilitating decision making in nonemergent situations and as feasible for urgent consultations.
- (d) Be structured, staffed, and supported appropriately to meet the needs of the institution and its patient population. Committee membership should represent diverse perspectives, expertise, and experience, including one or more community representatives.
- (e) Adopt and adhere to policies and procedures governing the committee and, where appropriate, the activities of individual members as ethics consultants, in keeping with medical staff by-laws. This includes standards for resolving competing responsibilities and for documenting committee recommendations in the patient's medical record when facilitating decision making in individual cases.
- (f) Draw on the resources of appropriate professional organizations, including guidance from national specialty societies, to inform committee recommendations.

Ethics committees that serve faith-based or other mission-driven health care institutions have a dual responsibility to:

- (g) uphold the principles to which the institution is committed; and
- (h) to make clear to patients, physicians, and other stakeholders that the institution's defining principles will inform the committee's recommendations.

*AMA Principles of Medical Ethics: II,IV,VII*

*Background report(s):*

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

CEJA Report 6-A-98 Increasing the prevalence and utilization of ethics committees

Report of the Judicial Council E-I-84 Ethics committees in health care institutions

Report of the Judicial Council B-A-81 Hospital ethics committee

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In addition to facilitating decision making in individual cases (as a committee or through the activities of individual members functioning as ethics consultants), *many ethics committees assist ethics-related educational programming and policy development within their institutions. [new content sets out core functions of ethics committees explicitly]*

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*AMA Principles of Medical Ethics: II,IV,VII*

should virtually never be published or cited. In the extremely rare case when no other data exist and human lives would certainly be lost without the knowledge obtained from use of such data, publication or citation is permissible. In such a case the disclosure should cite the specific reasons and clearly justify the necessity for citation.

(References pertaining to this report are available from the Office of Ethics Standards.)

## 6. INCREASING THE PREVALENCE AND UTILIZATION OF ETHICS COMMITTEES (RESOLUTION 9, A-97)

### HOUSE ACTION: RECOMMENDATIONS ADOPTED AND REMAINDER OF REPORT FILED

#### INTRODUCTION

At the 1997 Annual Meeting, Resolution 9 was referred to the Board of Trustees and subsequently to the Council on Ethical and Judicial Affairs. The Resolution requests "the AMA to encourage collaboration among health care facilities without ethics committees to develop flexible, efficient mechanisms of ethics review that divide the burden of committee functioning among participating health care facilities."

#### MECHANISMS OF ETHICS REVIEW

Council on Ethical and Judicial Affairs' Report 3, "Ethics Consultation," was adopted by the House of Delegates at the 1997 Interim Meeting. This report states, in part, "Given the recent proliferation of ethics committees, the new changes in the delivery of health care, and the need for alternatives to judicial forums, the Council has revisited [the issue of ethics committees], focusing on ethics consultation. In the past year there has been a movement within academic bioethics organizations to establish criteria and mechanisms for ethics consultations. The Council strongly encourages such efforts." The report identifies three mechanisms of ethics review—committee, consultation service, or individual consultant. While the three are different in composition and structure, they serve the same purpose and work toward the same end.

In this report, the Council notes that "with the shift in the locus of health care services from the hospital to the external settings, the institution may want to offer informational consults to community health care practitioners in the area." Health care facilities lacking adequate mechanisms of ethics review would benefit from drawing on the resources and expertise available at institutions that do have formally developed mechanisms of ethics review. The American Hospital Association in fact supports hospital ethics committees offering such support to the community.

Resolution 9 endorses the sharing of ethics consultation services among health care facilities that on their own may not have the benefit of a formal ethics committee. Through the reasoning noted above, the Council believes CEJA Report 3-I-97 expresses the importance of collaboration among health care communities with regard to ethics consultation.

#### CONCLUSION

The Council recommends that in lieu of Resolution 9-A-97 the following statement be adopted and substituted for recommendation (1) in CEJA Report 3-I-97:

1. All hospitals and other health care institutions should provide access to ethics consultation services. Health care facilities without ethics committees or consultation services should develop flexible, efficient mechanisms of ethics review that divide the burden of committee functioning among collaborating health care facilities.

(References pertaining to this report are available from the Office of Ethics Standards.)

## 7. POST-VIABILITY ABORTION IN NORMAL FETUSES

### HOUSE ACTION: REFERRED TO BOARD OF TRUSTEES

#### INTRODUCTION

Resolution 236-A-97 was adopted by the House of Delegates. It asks the AMA to determine under what circumstances, if ever, post-viability abortion is permissible by medical ethical standards, and in particular the question of whether or under what circumstances a particular form of dilatation and extraction procedure may be permissible. This procedure is named in the popular press 'partial birth abortion' and referred to by the AMA as 'intact dilatation and extraction' or 'intact D&X.' The resolution states:

Whereas, The intact dilation and extraction (partial birth abortion) procedure is a controversial matter currently undergoing widespread public debate; and

Whereas, The AMA has taken the position that early termination of pregnancy is a medical matter between the patient and the physician; and

Whereas, The American College of Obstetricians and Gynecologists states this is a later-term procedure not recognized as a standard medical procedure and no medical literature exists regarding the safety and efficacy of this procedure, and considerable concern exists within the medical community with regard to subsequent pregnancy loss and cervical incompetence; and

Whereas, Banning intact dilation and extraction would in no way remove or restrict other forms of abortion; and

Whereas, According to various medical authorities there is never a medical necessity for performing intact dilation and extraction, and proven studied alternatives exist for terminating late pregnancies when medical necessity exists; therefore be it

RESOLVED, That the AMA House of Delegates request the Council on Ethical and Judicial Affairs to consider the issue of post-viability pregnancy terminations in normal fetuses.

Previously, in Resolution 208-I-96, the House requested that the Board of Trustees consider these issues. In response, the Board convened a committee of members from pertinent AMA Councils and medical specialty societies that, with staff support from science, law and ethics, produced Report 26-A-97. That report, with respect to the intact D&X procedure, concluded that:

According to the scientific literature, there does not appear to be any identified situation in which intact D&X is the only appropriate procedure to induce abortion, and ethical concerns have been raised about intact D&X. The AMA recommends that the procedure not be used unless alternative procedures pose materially greater risk to the woman. The physician must, however, retain the discretion to make that judgment, acting within standards of good medical practice and in the best interest of the patient.

The Council reiterates its support for this conclusion. This report focuses on the broader issue of post-viability abortions in normal fetuses.

#### ABORTION: AN OVERVIEW

The Council has previously stated its position on abortion. Opinion E-2.01 states:

The Principles of Medical Ethics of the AMA do not prohibit a physician from performing an abortion in accordance with good medical practice and under circumstances that do not violate the law.

**E. ETHICS COMMITTEES IN HEALTH CARE INSTITUTIONS  
(RESOLUTIONS 1 AND 157, A-84)**

(Reference Committee on Amendments to Constitution and Bylaws, page 399)

**HOUSE ACTION: ADOPTED IN LIEU OF RESOLUTIONS 1 AND 157 (A-84)**

Resolutions 1 and 157 were referred at the 1984 Annual Meeting. Resolution 1 asks that the AMA (1) support the establishment in each hospital of a special committee to examine cases that are brought before it by joint appeal of the patient's family and attending physician, and to issue, where it deems proper, its agreement with the termination of life-support mechanical devices; and (2) develop model state legislation recognizing these hospital committees and granting any legal protection necessary for this action and urge all state medical associations to support enactment of this model state legislation. Resolution 157 asks that the AMA encourage the continued development of hospital-based multi-disciplinary review committees designed to address ethical concerns.

At its 1984 Annual Meeting, the AMA House of Delegates adopted Substitute Resolution 70 which called upon the AMA to adopt the policy that (1) each hospital should form a bioethics committee with locally determined guidelines regarding composition, definition of roles, responsibility and authority; and (2) such committees be available for consultation in those medical illnesses presenting clinical problems complicated by bioethical issues, and that the committees be voluntary, educational and advisory in nature so as not to interfere with the primary responsibility of the physician to his or her patient.

The Council on Legislation was asked to comment on Resolution 1 (A-84), and it agreed that hospital ethics committees should be voluntary and not mandated by law. The Council on Legislation also stated that where such committees exist, the committee and its members should be provided immunity from civil and criminal liability and that it will review the need for additional legislation to accomplish this objective.

The Judicial Council also received the comments of the Hospital Medical Staff Section Governing Council on Resolutions 1 and 157 (A-84) and concurs with the HMSS Governing Council's belief that Substitute Resolution 70 (A-84) adequately addresses the concerns of Resolutions 1 and 157. The Judicial Council will continue to monitor the development of ethics committees in health care institutions.

Recognizing that the composition, functioning and utilization of ethics committees in health care institutions should be determined locally and, in hospitals, by the medical staff and governing board, the Judicial Council presents the following guidelines to provide assistance to health care institutions.

**GUIDELINES FOR ETHICS COMMITTEES  
IN HEALTH CARE INSTITUTIONS**

These guidelines have been developed to aid in the establishment and functioning of ethics committees in hospitals and other health care institutions that may choose to form such committees, recognizing that the functions may vary depending upon the type of institution.

Ethics committees in health care institutions should be voluntary, educational and advisory in purpose so as not to interfere with the primary responsibility and relationship between physicians and their patients. Generally, the function of the ethics committee is to consider and assist in resolving unusual, complicated ethical problems involving issues that affect the care and treatment of patients within the

(Judicial Council - E)

health care institution and are of concern to those persons who are responsible for their care and treatment. Typical are issues involving quality of life, terminal illness and utilization of scarce, limited health resources.

The size of the ethics committee should be consistent with the needs of the institution but not so large in number as to be unwieldy. Members of the committee should be selected on the basis of their concern for the welfare of the sick and infirm, their interest in ethical matters and their reputation in the community and among their peers for integrity and mature judgment. Preferably, a majority of the committee should consist of physicians, nurses and other health care providers.

Persons considered for the ethics committee should be temperamentally suited to providing advice affecting the welfare of patients and professional considerations relating to their care and treatment. Experience as a member of hospital or medical society committees concerned with ethical conduct or quality assurance should be given weight in selecting members of the committee. It is important that persons selected as committee members should not have other responsibilities that are likely to prove incompatible with their duties as members of the ethics committee.

The functions of the ethics committee should be confined exclusively to ethical matters. In hospitals, the medical staff bylaws should delineate the functions of the ethics committee, general qualifications for membership, manner of selection and the parameters of the committee's activities. The "Principles of Medical Ethics" and "Current Opinions of the Judicial Council of the American Medical Association" are recommended for the guidance of ethics committees in their activities.

The matters to be considered by the ethics committee should consist of ethical subjects which a majority of its members may choose to discuss on its own initiative, matters referred to it by the executive committee of the organized medical staff or by the governing board of the institution, or appropriate requests from patients, families of patients or physicians. The ethics committee may also choose to consider requests from other health professionals who are employed by the institution and who pursue the matter through designated appropriate administrative channels.

Although the advice which the ethics committee may give may involve the application of moral standards which exceed those imposed by law, such advice should not contravene or violate applicable laws of the jurisdiction or call upon others to do so. In denominational health care institutions or those operated by religious orders, the advice of the ethics committee may be anticipated to be consistent with published religious tenets and principles. Where particular religious beliefs are to be taken into consideration in the committee's deliberations, this fact should be publicized to those persons affected by the committee's activities.

The educational and advisory purposes of the ethics committee may be achieved in a variety of ways. If the ethics committee chooses to make a recommendation on a matter properly under consideration by it, the recommendation should be in writing and reported to the executive committee of the organized medical staff for consideration by those persons who may have a direct interest in the committee's recommendation. In the absence of an organized medical staff, the committee's recommendation should be reported to the administrator of the institution or the latter's designee. The procedures followed by the ethics committee should comply with institutional policies for preserving the confidentiality of information regarding patients.

The recommendations of the ethics committee should be offered precisely as advice imposing no obligation for acceptance on the part of the institution, its governing board, medical staff, attending physician or other persons. On the other hand, it is expected that the ethics committee will give patient consideration

and sympathetic understanding to matters which it is called upon to study, and that the institution will provide the committee with necessary staff assistance. Typically, it should be expected that the efforts of a dedicated committee will receive serious consideration by those whose responsibility it is to function as decision-makers.

Those who are selected as members of the ethics committee should be prepared to meet upon short notice and to act in a timely and prompt fashion in accordance with the demands of the situation and the issues involved.

#### CONCLUSION

The Judicial Council recommends that this report be adopted in lieu of Resolutions 1 and 157 (A-84).

#### F. AFFILIATE MEMBERS

##### HOUSE ACTION: ADOPTED

The Judicial Council recommends the following individuals for Affiliate Membership in the American Medical Association:

##### NATIONAL MEDICAL SOCIETIES

Khaled H. El Hoshy, M. D., Egypt

Christopher A. Jyu, M. D., Canada

##### U. S. PHYSICIANS IN FOREIGN COUNTRIES

John O. Gibson, M. D., India

Mohammad R. Taher, M. D., Saudi Arabia

Kenneth H. McGill, M. D., Zaire

##### PHARMACISTS

Maurice Q. Bectel, Michigan

##### INDIVIDUALS WHO HAVE ATTAINED DISTINCTION IN THEIR FIELDS OF ENDEAVOR

Paul R. M. Donelan, Virginia

Eugene H. Johnson, Florida

Margaret M. Heckler, District  
of Columbia

Chris N. Theodore, Illinois

Jack L. Werner, Ph. D., Illinois

## REPORTS OF JUDICIAL COUNCIL

The following Reports, A-D, were presented by Samuel R. Sherman, M. D., Chairman:

### **A. CURRENT OPINIONS OF THE JUDICIAL COUNCIL** (Reference Committee on Amendments to Constitution and Bylaws, page 260)

#### **HOUSE ACTION: ADOPTED**

The Judicial Council has completed a review of its opinions following the adoption by this House of Delegates of a revision of the AMA Principles of Medical Ethics. In the course of this review, the Judicial Council eliminated some opinions on the basis that they were no longer appropriate, or had to be completely rewritten. Many opinions were modified or amended by the Council, and several new opinions were adopted.

After adoption of the revised AMA Principles of Medical Ethics, the Council suspended further distribution of the publication "Opinions and Reports." After completing the review and revision of its opinions, the Council directed that they be published under the title "Current Opinions of the Judicial Council of the American Medical Association." This new publication has been distributed to state and county medical societies and medical specialty societies, including all members of the House of Delegates. This publication contains all of the current opinions of the Judicial Council, and is presently available for distribution.

Review and possible revision of its opinions is an ongoing concern of the Judicial Council and, of course, the Council may adopt new opinions after appropriate study. Future editions of "Current Opinions" will include opinions adopted since the last publication date, as well as revisions of existing opinions made during the interval.

The Council encourages comments and suggestions to improve the usefulness of "Current Opinions of the Judicial Council" to the profession.

### **B. HOSPITAL ETHICS COMMITTEE** (RESOLUTION 51, I-80) (Reference Committee on Amendments to Constitution and Bylaws, page 261)

#### **HOUSE ACTION: ADOPTED IN LIEU OF RESOLUTION 51 (I-80)**

Resolution 51 (I-80) was referred to the Judicial Council for study and report at this meeting. This resolution requests the Council's advice on the desirability of establishing a committee in each hospital to review the care and treatment of comatose patients.

All physicians and all other hospital personnel have a special ethical and legal responsibility in dealing with comatose patients and other patients not able to act on their own behalf.

Although some hospitals have already established such committees, it is the opinion of the Judicial Council that there is no ethical requirement that a hospital establish a special committee whose sole function is to deal with comatose patients. The decision on establishing such a committee and the guidelines for its utilization should rest with the medical staff and governing board of each hospital.