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# Ethics in Medical Practice

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With Special  
Reference to  
Dermatology

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Physicians Dedicated to  
Excellence in Dermatology™

This booklet of information on medical ethics is prepared and sanctioned by the American Academy of Dermatology. Its focus is on the practical issues or problems that may influence the ethical behavior and professional conduct of dermatologists in clinical practice. An exposition of biomedical ethics, that segment of comparative ethics dealing with philosophic considerations in the practice of medicine, is not possible in this brief publication. Moreover, practices relating to medical etiquette or custom, which are not regarded as part of medical ethics, are not discussed. It is recognized that although the basic principles of medical ethics are not likely to change significantly over the years, societal influences, among others, may dictate modifications or additions to the guidelines presented herein. The Academy welcomes suggestions and comments from its members as future editions of this booklet are prepared.

## INTRODUCTION

While ethical principles governing the close relationship between physicians and their patients have been examined since early recorded history, interest in the rules of professional conduct has intensified dramatically in recent years. Physicians of this era must practice in a changing and troubled environment, characterized by a variety of dramatic and challenging influences, including:

- scientific advances, such as transplantation surgery and genetic engineering, which generate major ethical considerations,
- restriction on choice of physician and laboratory services,
- the spiraling increase in health care costs,
- the threat of rationing of medical services,
- increasing and varied examples of entrepreneurs in medicine,
- widespread advertising by physicians,
- direct-to-consumer advertising by pharmaceutical companies,
- "turf" battles among medical specialties,
- a burgeoning medical malpractice problem,
- an increased number of governmental regulations that influence medical practice and patient care,
- the emergence of prepaid plans altering the traditional fee for service system of compensation for health care providers,
- the abortion controversy,
- the graying of America, and
- the moral dilemma posed by euthanasia and patient assisted suicide.

Re-examination and reiteration of the principles of medical ethics are inevitable, indeed essential, in such a dynamic societal state.

Simply put, physicians should treat patients as they would want themselves and their families to be treated, with due regard for the patient's well-being, personal dignity, privacy and psychological and financial welfare. In addition, the relationship of physicians to their community, government and industry, especially the pharmaceutical industry, and to other physicians should withstand the careful scrutiny of fellow professionals and the laity.

If these simple maxims were routinely observed by physicians in their care of patients and in all else they do professionally, the enunciation of ethical principles in medicine would be little more than an academic exercise. However, given the wide range and complexity of medical practice issues, however we need to state in a more specific and complete fashion the ethical guidelines that apply to the practice of dermatology. In doing so, it was deemed wise to begin by restating the principles of medical ethics of the American Medical Association, which represent the basic rules of professional morality under which all physicians, regardless of specialty, should function. Originally promulgated as a code of ethics by the English physician Thomas Percival in 1803, these principles were adopted by the AMA in 1847. They have been revised several times over the years. They are intended to state standards of conduct which define the essentials of honorable conduct for the physician.

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## **ETHICS IN MEDICAL PRACTICE INDEX**

<b>I. AAD ADMINISTRATIVE REGULATIONS</b>	
A. Code of Medical Ethics for Dermatologists.....	3
B. Disclosure of Conflict of Interest.....	10
<b>II. AMA ETHICS STATEMENTS</b>	
A. AMA Principles of Medical Ethics .....	11
B. Select AMA Ethical Opinions	
1. Advertising and Publicity .....	11
2. Gifts to Physicians from Industry.....	12
<b>III. AAD POSITION STATEMENTS</b>	
A. Use of Non-Physician Office Personnel.....	14
B. Physician Financial Incentives.....	14
C. Dispensing.....	15
D. Photographic Enhancement.....	15

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### **I. AAD ADMINISTRATIVE REGULATIONS**

#### **A. AAD Code of Medical Ethics for Dermatologists**

##### **Preamble**

Concerns for the patient's welfare and the appropriate behavior of the physician are a part of the heritage of medicine originating with the Code of Hammurabi, a code of ethics dating from 2000 BC. Guidelines for ethical behavior must address the demands of a contemporary dermatologic practice. The American Academy of Dermatology (Academy) developed The Code of Medical Ethics for Dermatologists ("The Code") primarily for the benefit of our patients. The Code reminds members of

their ethical obligations, provides standards and guidelines for their adherence, and demonstrates to the broader community the commitment of the Academy and its members to high ethical standards. This document is, in part, derived from the Principles of Medical Ethics and Current Opinions of the Council on Ethical and Judicial Affairs of the American Medical Association (AMA). Since the AMA document is necessarily broad, the Academy Code is directed to concerns of specific interest to dermatologists. Dermatologists are encouraged to refer to the Current Opinions of the Council on Ethical and Judicial Affairs of the AMA for guidance if the particular ethical matter at issue is not addressed in the Academy's Code of Medical Ethics for Dermatologists.

The Academy's Code provides standards of conduct that define the essentials of honorable behavior for the Dermatologist. The Code, while taking into account the legal requirements of medical practice, calls for and espouses a standard of behavior that is, in some cases, higher than that required by the law.

Dermatologists should recognize that they are role models for dermatologists-in-training and other health care professionals and should by their deeds and actions comply with the Academy's Code of Medical Ethics for Dermatologists. Violations may be subject to disciplinary action pursuant to the procedures set forth in the Academy's Administrative Regulations.

## **I. The Physician-Patient Relationship**

- I. A. The dermatology profession exists for the primary purpose of caring for the patient. The physician-patient relationship is the central focus of all ethical concerns. Dermatologists should be dedicated to providing medically competent service with compassion and respect for human dignity. Abuse of the physician's dominant position to take advantage of a patient sexually is both unethical and reprehensible and may lead to loss of medical licensure. Exploitation of patients by physicians in financial or business matters is similarly offensive and unethical.
- I. B. The physician-patient relationship has a contractual basis and is based on confidentiality, trust, and honesty. Dermatologists should respect the rights of their patients and must safeguard patient privacy within the constraints of the law. Both the patient and the dermatologist are free to enter or discontinue the relationship within any existing constraints of a contract with a third party. A dermatologist has an obligation to render care only for those conditions that he or she is competent to treat. The dermatologist shall not decline to accept patients solely on the basis of race, color, gender, sexual orientation, religion, or national origin or on any basis that would constitute illegal discrimination. It is also unethical for a dermatologist to discriminate against a class or category of patients and to refuse the management of a patient because of medical risk, real or imagined. In relation to such patients, therefore, physicians and other health care personnel are expected to provide the same compassionate and competent management given to other patients.
- I. C. The dermatologist may choose whom he or she will serve. A dermatologist should render services to the best of his or her ability. Having undertaken the care of a patient, the dermatologist may not neglect or abandon that person. Unless discharged by the patient, the dermatologist may discontinue service only after giving adequate notice to the patient so that the patient can secure alternative care. In an emergency, however, dermatologists should render service to the best of their ability and provide or arrange for any necessary follow-up care. Managed care agreements may contain provisions which alter the method by which patients are discharged. If the enrollment of a dermatologist or patient is discontinued in a managed care plan, the dermatologist will have a responsibility to assist the patient in obtaining follow-up care. In this instance, the dermatologist will be responsible for providing medically necessary care for the patient until appropriate referrals can be arranged.

- I. D. Dermatologists should provide their patients a reasonable explanation of the etiology, treatment and prognosis of their disease. When obtaining informed consent for treatment, the dermatologist is obligated to present to the patient or to the person responsible for the patient, in understandable terms, pertinent medical facts and recommendations consistent with good medical practice. Such information should include alternative modes of treatment, the objectives, risk and possible complications of such treatment, and the complications and consequences of no treatment.

## II. Personal Conduct

- II. A. The dermatologist should maintain a reputation for truth and honesty. In all professional conduct, the dermatologist is expected to provide competent and compassionate patient care, exercise appropriate respect for other health care professionals, and maintain the patient's best interests as paramount.
- II. B. The dermatologist should conduct himself or herself morally and ethically, so as to merit the confidence of patients entrusted to the dermatologist's care, rendering to each a full measure of service and devotion.
- II. C. The dermatologist should obey all laws, uphold the dignity and honor of the profession, and accept the profession's self-imposed discipline. Academy members should also obey all Academy and American Academy of Dermatology Association Bylaws, Administrative Regulations, and Board-approved policies and may be subject to disciplinary action by the Academy and the Association for failing to do so. Within legal and other constraints, if the dermatologist has a reasonable basis for believing that a physician or other health care provider has been involved in any unethical or illegal activity, including but not limited to gross negligence or incompetence, the dermatologist is encouraged to prevent the continuation of this activity by communicating with that person and/or identifying that person to a duly-constituted peer review authority or the appropriate regulatory agency. In addition, the dermatologist should cooperate with peer review and other authorities in their professional and legal efforts to prevent the continuation of unethical or illegal conduct. Academy members are expected to report knowledge of violations of the Bylaws Code of Ethics, or other Administrative Regulations or Board-approved policies to the Academy. When a member is convinced that another member is violating the Bylaws, Code of Ethics, other Administrative Regulations, or Board-approved policies, the member should send a confidential written communication to the Academy's Secretary-Treasurer or Executive Director. The information so submitted will then be further investigated and processed according to the provisions of the Bylaws and Administrative Regulations.
- II. D. Because of the dermatologist's responsibility for the patient's life and future welfare, substance abuse is a special threat that must be recognized and stopped. The dermatologist must avoid substance abuse and, when necessary, seek rehabilitation. It is every physician's responsibility to safeguard patients from harm as a result of the action or decisions of a colleague impaired by illness, aging, or substance abuse. In addition, dermatologists have a collegial and a medical responsibility to encourage and assist the impaired colleague in obtaining care, even if the impaired colleague must be reported to the appropriate state authority to begin the steps toward receiving adequate care.

## III. Conflicts of Interest

- III. A. The practice of medicine inherently presents potential conflicts of interest. When a conflict of interest arises, it must be resolved in the best interest of the patient. The dermatologist should exercise all reasonable alternatives to ensure that the most appropriate care is provided to the patient. If the conflict of interest cannot be resolved, the dermatologist should notify the patient of his or her intention to withdraw from the relationship.

- III. B. If the dermatologist has a financial or ownership interest in a durable medical goods provider, imaging center, surgery center or other health care facility where the dermatologist's financial interest is not immediately obvious, the dermatologist must disclose this interest to the patient. The dermatologist has an obligation to know the applicable laws regarding physician ownership, compensation and control of these services and facilities.
- III. C. When a dermatologist receives anything of significant value from industry, a potential conflict exists which should be disclosed to the patient. When a dermatologist receives inventor royalties from industry, the dermatologist should disclose this fact to the patient if such royalties relate to the patient's treatment. It is unethical for a dermatologist to receive compensation of any kind from industry for using a particular device or medication. Reimbursement for reasonable administrative costs in conducting or participating in a scientifically sound research clinical trial is acceptable. Dermatologists should comply with the Academy's policy on gifts to physicians as amended from time to time. The Academy endorses and expects its members to follow the American Medical Association's Policy on Gifts to Physicians from Industry. (AMA Code of Medical Ethics, E-8.061)
- III. D. A dermatologist reporting on clinical research or experience with a given procedure or device must disclose any financial interest in that procedure or device if the dermatologist or any institution with which that dermatologist is connected has received anything of value from its inventor or manufacturer.
- III. E. Except when inconsistent with applicable law, dermatologists have a right to dispense medication, assistive devices, dermatologic appliances, and similar related patient-care items, and to provide facilities and render services as long as their doing so is in the best interests of their patients and provides a convenience or an accommodation to the patient without taking financial advantage of the patient. Dermatologists should not promote, supply or dispense to their patients products which have no beneficial effect. Ultimately, the patient must have the choice of accepting the dispensed medication or patient-care items or obtaining them outside the dermatologist's office.

## IV. Maintenance of Competence

The dermatologist continually should strive to maintain, apply, and advance medical and scientific knowledge and skill; and should make available to patients, colleagues, and the public the benefits of his or her professional attainments. Each dermatologist should participate in continuing medical educational activities.

## V. Relationships with Dermatologists, Nurses, and Allied Health Personnel

- V. A. Dermatologists should uphold the honor of the profession by dealing honestly with their colleagues; dermatologists should recognize the responsibility and necessity for communication and mutual respect among dermatologists in the academic community and dermatologists in private practice.
- V. B. Good relationship among physicians, nurses, and other health care professionals are essential for good patient care. The dermatologist should promote the development of an expert health care team that will work together harmoniously to provide optimal patient care.
- V. C. Dermatologists should limit the source of their professional income to services actually rendered by them, or by allied health personnel acting in accordance with the AAD policy on the Use of Non-Physician Office Personnel (P-11.500).
- V. D. The professional conduct of the dermatologist will be scrutinized by local professional associations, hospital(s), managed care organization(s), peer review committees, and state medical and/or licensing boards. These groups deserve the participation and cooperation of dermatologists.

## VI. Relationship to the Public

- VI. A. Dermatologists should provide the general public information necessary or helpful to select a qualified physician. The dermatologist should not publicize himself or herself through any medium or form of public communication in an untruthful, fraudulent, misleading, or deceptive manner. Competition between and among dermatologists and other health care practitioners is ethical and acceptable. The Academy endorses and expects its members to follow the American Medical Association's policy on Advertising and Publicity. (AMA Code of Medical Ethics, E-5.02)
- VI. B. Professional fees should be commensurate with the services provided and dermatologists should neither pay nor receive commissions for the referral of patients. Dermatologists also should not engage in fraudulent billing or coding. For example, it is unethical for dermatologists to bill individually for services that are properly considered a part of the "global service" package where defined, i.e., services that are a necessary part of the surgical procedure. It is unethical for dermatologists to submit billing codes that reflect higher levels of service or complexity than those that were actually required. It is unethical for dermatologists to charge for services not provided.
- VI. C. Dermatologists are encouraged to devote some time and work to provide care for individuals who have no means of paying. Dermatologists also should work actively to eliminate discrimination in health care, whether based on race, gender, sexual preference, socioeconomic status, ethnicity, religion, or any other social category.
- VI. D. The dermatologist may enter into a contractual relationship with a group, managed care plan, prepaid practice plan, or hospital. The dermatologist has an obligation to serve as the patient's advocate and to ensure that the patient's welfare remains the paramount concern.

## VII. General Principles of Care

- VII. A. A dermatologist should practice only within the scope of his or her personal education, training, and experience. The patient should be referred to the appropriate individuals for problems which fall outside the training and expertise of the dermatologist. Likewise, dermatologists should seek consultation upon request, in doubtful or difficult cases, or whenever it appears that the quality of medical service may be enhanced thereby.
- VII. B. Dermatologists should provide only those services which are in the patient's best interest, are medically necessary, and/or appropriate for the patient's condition. It is unethical to prescribe, provide, or seek compensation for unnecessary services, athletic enhancements, to withhold services that are medically necessary, or, in the case of cosmetic or other discretionary procedures, to provide care not requested by the patient.
- VII. C. The dermatologist should not perform a surgical operation under circumstances in which the dermatologist is not in a position to provide appropriate post-surgical care or delegate responsibility for such care to another qualified physician.
- VII. D. Patient records include privileged information. When a patient submits a proper, written request for records, the dermatologist must release the records to the patient or the patient's designee. Charges should be commensurate with the services provided and expenses incurred to reproduce and transmit the medical records and should not be contingent upon satisfaction of patient indebtedness to the physician for services rendered. Certain correspondence from insurance carriers or attorneys may call for an opinion on the part of the dermatologist. As such, a reasonable fee for professional services is permissible.

## VIII. Research and Academic Responsibilities

- VIII. A. All research and academic activities must be conducted under conditions of full compliance with ethical, institutional, and government guidelines. Patients participating in research programs must have given full informed consent and retain the right to withdraw from the research protocol at any time.
- VIII. B. Dermatologists should not claim as their own intellectual property that which is not theirs. Plagiarism or the use of others' work without attribution is unethical.
- VIII. C. The principal investigator of a scientific research project or clinical research project is responsible for proposing, designing, and reporting the research. The principal investigator may delegate portions of the work to other individuals, but this does not relieve the principal investigator of the responsibility for work conducted by the other individuals.
- VIII. D. The principal investigator or senior author of a scientific report is responsible for ensuring that appropriate credit is given for contributions to the research described.

## IX. Community Responsibility

- IX. A. The honored ideals of the medical profession imply that the responsibility of the dermatologist extends not only to the individual but also to society as a whole. Activities that have the purpose of improving the health and well being of the patient and/or the community in a cost-effective way deserve the interest, support, and participation of the dermatologist. Appropriate publicity regarding dermatologists' participation in community and civic affairs enhances the stature of the profession. It is permissible to be quoted in the press, as long as physician/patient confidentiality is maintained and truth is respected. Self-aggrandizement under these circumstances is, however, considered an unprofessional act. In all dealings with the press, it is improper to use the name or corporate logo of the AAD, or to otherwise make reference to the Academy, in a manner that would lead the reader to believe the physician to be the official spokesperson of the Academy or to have been endorsed by the Academy unless the individual in fact is specifically authorized to speak on behalf of the Academy. This would be particularly true in the endorsement of a product. The unauthorized use of the Academy name or corporate logo is forbidden. Its placement in an advertisement would lead the reader to think the Academy endorses the physician or product.
- IX. B. Dermatologists are encouraged to participate in the education of the next generation of dermatologists.
- IX. C. Dermatologists are called upon to provide expert medical testimony in courts of law and administrative proceedings. Testimony in matters medical/legal is as much a part of the practice of medicine as is caring for patients. In providing testimony, the dermatologist should ensure that he or she is appropriately qualified and provide testimony that is unbiased, scientifically correct, clinically accurate, and otherwise truthful. The dermatologist should not testify concerning matters about which the dermatologist is not knowledgeable. It is unethical for a dermatologist to accept compensation that is contingent upon the outcome of litigation. Academy members must follow the Academy's Guidelines on Expert Witnesses (P-14.200), a copy of the Guidelines is attached to this Code of Ethics as Appendix A and incorporated herein by reference.

*Approved Board of Directors: 12/3/05; revised 7/29/06; revised 11/4/06*

## APPENDIX A

### Expert Witness Guidelines

The integrity of the judicial process depends, in part, on the honest, unbiased testimony of expert witnesses on both sides of courtroom controversies. Justice, humaneness, and professionalism demand that dermatologists bring to the courtroom the same competence, expertise, objectivity, and compassion that they bring to the care of their patients; testimony in matters medical/legal is as much a part of the practice of medicine as is caring for patients.

Witnesses are designated as “expert” if they have knowledge of specific topics thought to be beyond the ready understanding of the laity. Non-partisan, scientifically valid expert testimony assists soundly in the deliberation of particular cases and contributes to equitable outcomes based on generally accepted medical principles. The expert witness is expected to be impartial and should not assume the role of advocate except as a spokesperson for the field of special knowledge that he or she represents.

It is unethical to request or to accept a fee that in any way is contingent on the outcome of any judicial proceeding. Compensation of the expert witness should be reasonable and commensurate with the time and effort devoted to preparing for, and attending, depositions and court proceedings.

In order to warrant designation as an expert witness, a dermatologist serving as an expert witness should be licensed to practice medicine, certified by the American Board of Dermatology, should be engaged in the active practice of medicine and be able to demonstrate familiarity with current standards of practice in the arena pertinent to his or her testimony, as well as with standards of practice prevailing at the time of the matter at issue. A physician should never testify concerning matters about which he or she is not knowledgeable.

Prior to offering any testimony, a dermatologist serving as an expert witness should:

- Become familiar with all data relevant to the particular matter at issue, excluding no relevant information for the purpose of creating a view that favors either party to a dispute;
- Review previous and current concepts related to standards of dermatologic practice standards applicable to the matter at issue;
- Decide whether his or her opinions, if any, will contribute in a meaningful, positive, and unbiased way to adjudication of the case impartially.

The expert witness should:

- Testify honestly, fully, and impartially concerning his or her qualifications as an expert.
- Offer expert testimony that is objective, truthful and accurate, based solely on medical knowledge of the matter at issue and never on the litigation posture of plaintiff(s) or defendant(s).
- Offer an assessment of the matter at issue in the context of generally accepted standards of practice, neither condemning performance that clearly falls within generally accepted standards of practice nor endorsing or condoning performance that clearly falls outside accepted standards of practice.
- Honestly, and fully, describe where and how his or her opinions may differ from common practice, never representing his or her own views as the only correct ones if they differ from those held by other qualified dermatologists.

These principles apply equally to pretrial evaluation of medical/legal disputes, whether or not such opinion is given under oath. The expert witness should be aware that depositions and courtroom testimony are public statements. The physician expert should not offer testimony that he or she would not be willing to submit for independent peer review.

*Adopted by the AAD Board of Directors November 22, 2003*

## B. Disclosure of Conflict of Interest

In order for the Academy to operate most effectively to further the purposes for which it is organized, it is important that Academy decisions and actions not be unduly influenced by any special interests of individual members. Therefore, it has always been and continues to be important to identify actual or potential conflicts of interest which might improperly affect Academy activities. As the professional, business and personal settings and relationships in which Academy members play significant roles become increasingly varied and complex, informal means of identifying actual or potential conflicts of interest become increasingly inadequate. Therefore, a formal system for the disclosure and evaluation of possible conflicts of interest has been adopted by the Board of Directors of the Academy. Set forth below is a description of the principal features of that system.

### Possible Conflicts of Interest

1. Interests which may affect significant economic transactions to which the Academy is or may be a direct party. An example would be ownership by an Academy officer of a company from which the Academy makes major purchases of goods or services.
2. Interests which might cause a representative of the Academy to abuse an Academy position in order to achieve objectives which are inconsistent with the purposes of the Academy. An example of such abuse would be a council or committee chairman taking advantage of that position to damage unfairly the commercial standing of a company competing with a company in which the chairman had a personal financial interest.
3. Interests which do not relate directly to an interest of the Academy as an organization but bear significantly on issues of importance to the Academy membership and about which different components of the Academy membership might hold widely differing views. An example would be the interests associated with a member being employed by a government agency, which interests would very likely affect that member's position on a proposed assessment for a campaign on behalf of direct access.

In many cases, disclosure of the conflicting or potentially conflicting interest will itself suffice to protect the integrity of Academy operations. In other words, once such an interest is fully disclosed to the other participants in any related Academy activity, those other participants will generally be able to evaluate and adjust for the possible influence of the disclosed interest. However, it is important to bear in mind that in certain situations adequate protection of the interests of the Academy may require scrupulous avoidance of even the appearance of conflict of interest, abuse or impropriety. In those situations where mere disclosure does not appear adequate to deal with actual or potential problems, additional action may be necessary.

Members who do not submit a yearly conflict of interest disclosure, may lose the right to hold office and, except in unusual circumstances approved in advance by the Board of Directors, to participate in Academy programs as a faculty member, presenter, or scientific exhibit contributor, or participate on a council, committee or task force.

*Excerpt from the A/R Policy and Procedures Regarding Actual or Potential Conflicts of Interest*

## II. AMA ETHICS STATEMENTS

### A. AMA Principles of Medical Ethics

#### Preamble

The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize responsibility to patients first and foremost, as well as to society, to other health professionals, and to self. The following Principles adopted by the American Medical Association are not laws, but standards of conduct which define the essentials of honorable behavior for the physician.

1. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.
2. A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.
3. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.
4. A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law.
5. A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.
6. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.
7. A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health.
8. A physician shall, while caring for a patient, regard responsibility to the patient as paramount.
9. A physician shall support access to medical care for all people.

*Adopted June 1957; revised June 1980; revised June 2001*

### B. Select AMA Ethical Opinions

The American Academy of Dermatology endorses and expects its members to comply with the following AMA ethical opinions:

#### 1. Advertising and Publicity

There are no restrictions on advertising by physicians except those that can be specifically justified to protect the public from deceptive practices. A physician may publicize him or herself as a physician through any commercial publicity or other form of public communication (including any newspaper, magazine, telephone directory, radio, television, direct mail, or other advertising) provided that the communication shall not be misleading because of the omission of necessary material information, shall not contain any false or misleading statement, or shall not otherwise operate to deceive. Because the public can sometimes be deceived by the use of medical terms or illustrations that are difficult to understand, physicians should design the form of communication to com-

municate the information contained therein to the public in a readily comprehensible manner. Aggressive, high-pressure advertising and publicity should be avoided if they create unjustified medical expectations or are accompanied by deceptive claims. The key issue, however, is whether advertising or publicity, regardless of format or content, is true and not materially misleading. The communication may include (1) the educational background of the physician, (2) the basis on which fees are determined (including charges for specific services), (3) available credit or other methods of payment, and (4) any other non-deceptive information. Nothing in this opinion is intended to discourage or to limit advertising and representations which are not false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act. At the same time, however, physicians are advised that certain types of communications have a significant potential for deception and should therefore receive special attention. For example, testimonials of patients as to the physician's skill or the quality of the physician's professional services tend to be deceptive when they do not reflect the results that patients with conditions comparable to the testimoniant's condition generally receive. Objective claims regarding experience, competence, and the quality of physicians and the services they provide may be made only if they are factually supportable. Similarly, generalized statements of satisfaction with a physician's services may be made if they are representative of the experiences of that physician's patients. Because physicians have an ethical obligation to share medical advances, it is unlikely that a physician will have a truly exclusive or unique skill or remedy. Claims that imply such a skill or remedy therefore can be deceptive. Statements that a physician has an exclusive or unique skill or remedy in a particular geographic area, if true, however, are permissible. Similarly, a statement that a physician has cured or successfully treated a large number of cases involving a particular serious ailment is deceptive if it implies a certainty of result and creates unjustified and misleading expectations in prospective patients. Consistent with federal regulatory standards which apply to commercial advertising, a physician who is considering the placement of an advertisement or publicity release, whether in print, radio, or television, should determine in advance that the communication or message is explicitly and implicitly truthful and not misleading. These standards require the advertiser to have a reasonable basis for claims before they are used in advertising. The reasonable basis must be established by those facts known to the advertiser, and those which a reasonable, prudent advertiser should have discovered. Inclusion of the physician's name in advertising may help to assure that these guidelines are being met.

*AMA Code of Medical Ethics, E-5.02. (II) Issued prior to April 1977; Updated June 1996.*

## **2. Gifts to Physicians from Industry**

Many gifts given to physicians by companies in the pharmaceutical, device, and medical equipment industries serve an important and socially beneficial function. For example, companies have long provided funds for educational seminars and conferences. However, there has been growing concern about certain gifts from industry to physicians. Some gifts that reflect customary practices of industry may not be consistent with the Principles of Medical Ethics. To avoid the acceptance of inappropriate gifts, physicians should observe the following guidelines:

- (1) Any gifts accepted by physicians individually should primarily entail a benefit to patients and should not be of substantial value. Accordingly, textbooks, modest meals, and other gifts are appropriate if they serve a genuine educational function. Cash payments should not be accepted. The use of drug samples for personal or family use is permissible as long as these practices do not interfere with patient access to drug samples. It would not be acceptable for non-retired physicians to request free pharmaceuticals for personal use or use by family members.
- (2) Individual gifts of minimal value are permissible as long as the gifts are related to the physician's work (e.g., pens and notepads).

- (3) The Council on Ethical and Judicial Affairs defines a legitimate "conference" or "meeting" as any activity, held at an appropriate location, where
  - (a) the gathering is primarily dedicated, in both time and effort, to promoting objective scientific and educational activities and discourse (one or more educational presentation(s) should be the highlight of the gathering), and
  - (b) the main incentive for bringing attendees together is to further their knowledge on the topic(s) being presented. An appropriate disclosure of financial support or conflict of interest should be made.
- (4) Subsidies to underwrite the costs of continuing medical education conferences or professional meetings can contribute to the improvement of patient care and therefore are permissible. Since the giving of a subsidy directly to a physician by a company's representative may create a relationship that could influence the use of the company's products, any subsidy should be accepted by the conference's sponsor who in turn can use the money to reduce the conference's registration fee. Payments to defray the costs of a conference should not be accepted directly from the company by the physicians attending the conference.
- (5) Subsidies from industry should not be accepted directly or indirectly to pay for the costs of travel, lodging, or other personal expenses of physicians attending conferences or meetings, nor should subsidies be accepted to compensate for the physicians' time. Subsidies for hospitality should not be accepted outside of modest meals or social events held as a part of a conference or meeting. It is appropriate for faculty at conferences or meetings to accept reasonable honoraria and to accept reimbursement for reasonable travel, lodging, and meal expenses. It is also appropriate for consultants who provide genuine services to receive reasonable compensation and to accept reimbursement for reasonable travel, lodging, and meal expenses. Token consulting or advisory arrangements cannot be used to justify the compensation of physicians for their time or their travel, lodging, and other out-of-pocket expenses.
- (6) Scholarship or other special funds to permit medical students, residents, and fellows to attend carefully selected educational conferences may be permissible as long as the selection of students, residents, or fellows who will receive the funds is made by the academic or training institution. Carefully selected educational conferences are generally defined as the major educational, scientific or policy-making meetings of national, regional, or specialty medical associations.
- (7) No gifts should be accepted if there are strings attached. For example, physicians should not accept gifts if they are given in relation to the physician's prescribing practices. In addition, when companies underwrite medical conferences or lectures other than their own, responsibility for and control over the selection of content, faculty, educational methods, and materials should belong to the organizers of the conferences or lectures. (II)

*AMA Code of Medical Ethics, E-8.061. Issued June 1992 based on the report "Gifts to Physicians from Industry," adopted December 1990 (JAMA. 1991; 265: 501); Updated June 1996 and June 1998.*

### III. AAD POSITION STATEMENTS

The following are position statements of the American Academy Dermatology on certain practice-related issues. The first of these statements sets forth voluntary guidelines; the others position statements are elaborations of concepts and principles set forth in the Academy Code of Ethics.

#### A. Use of Non-Physician Office Personnel

The guiding principle for all dermatologists is to practice ethical medicine with the highest possible standards. Physicians should be properly trained in all procedures and services performed to ensure the highest level of patient care and safety. A physician should be fully qualified by residency training and preceptorship or appropriate course work. Training should include an extensive understanding of cutaneous medicine and surgery. It is the position of the AADA that only active and properly licensed doctors of medicine and osteopathy shall engage in the practice of medicine.

Under appropriate circumstances, a physician may delegate certain procedures and services to appropriately trained non-physician office personnel. Specifically, the physician must directly supervise the non-physician office personnel to protect the best interests and welfare of each patient. Except in exceptional circumstances, the supervising physician shall be present on-site, immediately available, and able to respond promptly to any question or problem that may occur while the procedure or service is being performed. It is the physicians obligation to ensure and document that, with respect to each procedure and service performed, the non-physician office personnel have received the proper training. All new patients and significant new problems in established patients should be seen by dermatologists in a face to face manner.

This Position Statement is intended to offer physicians guidelines regarding the delegation of performance of medical procedures and services, but is not intended to establish a legal standard of care. Physicians should use their personal and professional judgment in interpreting these guidelines and applying them to the particular circumstances of their individual practice arrangements.

*Adopted: Feb-22-2002; Amended: Jul-23-2005, Jul-31-2004, Nov-23-2002*

#### B. Physician Financial Incentives

Financial incentives are now common features in physician employment agreements with managed care organizations. These incentives generally take the form of bonuses or holdbacks. In the health care marketplace, particularly in managed care settings, financial incentives raise concerns of conflict of interest. Because financial conflicts of interest can adversely affect patient care, the American Academy of Dermatology is opposed to any financial incentive that directly or indirectly reduces or limits medically necessary services to patients.

In evaluating a financial incentive, the relationship between the physician's primary duty and the financial incentive is the main consideration. A physician's principal responsibility is providing quality patient care. We must ensure that patient care and medical judgment are not compromised or do not appear to be compromised by any financial incentive. Physicians must not deny their patients access to appropriate services based upon the promise of personal financial gain or the avoidance of financial penalties. Financial incentives must not interfere with medical judgment and patient care.

A health insurance plans failure to disclose any financial conflicts of interest at the time of enrollment is inappropriate and fraudulent. Patients must have the necessary information to make informed decisions about their health care. Health insurance plans have an ethical obligation to disclose to patients any restrictions on referrals or treatment options.

Above all, the physician must have the patient's best interests at heart when treating the patient or discussing treatment options. Our contract has always been, and should forever remain, one between the patient and physician.

*Adopted: Mar-21-1997; Amended: Jul-29-2006*

## C. Dispensing

Dermatologists should not dispense or supply drugs, remedies or appliances unless it is manifestly in the best interest of their patients.

Dermatologists who dispense in office should do so in a manner with the best interest of their patient as their highest priority, as it is in all other aspects of dermatologic practice.

It is ethical to dispense, by sale, prescription or non-prescription drugs, to patients in a dermatologist's office except in the following circumstances:

1. When the dermatologist places his/her own financial interests above the welfare of his/her patients.
2. When creating an atmosphere which is coercive to patients such that they feel compelled to purchase drugs from the dermatologist.
3. When dispensing drugs under a dermatologist's private label without clearly listing the ingredients, including generic names of the drugs.
4. When dispensing to patients drugs which are easily available at proprietary pharmacies without advising patients of this availability.
5. When representing drugs as being a special formula not elsewhere available, when that is not the case.
6. When selling health-related products whose claims of benefit lack validity.
7. When refusing to give refills of drugs except that they be purchased from the dermatologist.
8. When charging patients at an excessive mark-up rate.

*Approved by the Board of Directors October 12, 1998;*

*Amended by the Board of Directors September 26, 1999*

## D. Photographic Enhancement

Photographic documentation of skin diseases and their response to therapy is an established tradition in dermatology. In scientific reports, representational images are synonymous with data and subject to the same rules of ethical scientific conduct. They should be acquired and presented in an objective, accurate and unbiased manner. As in collecting any data, the technology used can influence the results obtained. This is true for traditional photographic techniques and processing, and more recently for digital manipulation of electronically captured, processed, or rendered images. Use of these technologies to misrepresent or alter the scientific content of an image for purposes of promoting one result or interpretation over another is unethical.

*Excerpt from the AADA Photographic Enhancement Position Statement which was adopted by the Board of Directors 8-2-97.*

## 2006 Ethics Committee

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