

MEDICAL AND CHIRURGICAL FACULTY OF MARYLAND
ETHICAL OPINIONS SECTION 400

400. CORPORATE MEDICINE/BUSINESS VENTURES

401. TISSUE AND ORGAN BANKING

The practice of tissue and organ banking constitutes the practice of medicine and requires the full supervisory authority and responsibility of a physician.

Any physician who allows his or her name and professional status to be used by a tissue or organ banking agency, or receives remuneration from it should be sure that he or she has appropriate responsibility and oversight over the operations of that agency. The physician should further be sure that these operations are carried out in conformance with applicable professional standards. (Council; 11/21/87; PEC 1/25/05)

402. SALE OF HUMAN ORGANS

It is unethical for a physician to promote the sale of human organs. Therefore, a physician rendering any service in connection with the procurement (the brokerage) of a human organ for transplantation, may not receive, from either the donor or donee any compensation whatsoever, either directly or indirectly, for the actual procurement (the brokerage) of that human organ. This statement is not to be construed as prohibiting compensation for any valid medical procedure performed in the entire transplantation process (including, but not limited to, the removal of the organ from the organ donor, the implantation of the organ into the organ recipient, and the preservation and transportation of that organ). (PRC 4/3/84 PEC 6/18/02).

403. CORPORATE EMPLOYMENT

It is considered ethical for a non-physician to serve as an officer to a professional corporation as long as no medical decisions or judgments are made by such persons. (MC 6/5/72; 4/87)

404. PROFESSIONAL ASSOCIATION BETWEEN PHYSICIANS AND NON-PHYSICIANS

Physicians and non-physician licensed health professionals may ethically associate as partners, as stockholders of a professional corporation, or as members of a limited liability company, to practice the occupations for which they are respectively licensed, provided that their activities are so organized and conducted as to prohibit the unlicensed practice of medicine or other health profession by a non-licensee, and to prohibit misleading or fraudulent representations to patients and third party payers concerning the nature and extent of professional services that are rendered by each health professional. (Council; 9/24/88; PEC 2/20/96)

405. HEALTH CARE FACILITY OWNERSHIP BY PHYSICIANS

.01 It is not inherently unethical for a physician to own or own an interest in a hospital, clinic or other health care facility. However, the use the physician makes of this ownership or interest may be unethical. For example, sending a patient to such a facility solely for the physician's financial benefit would be unethical.

- .02 When a physician has an interest in or owns a hospital, clinic or other health care facility to which he or she sends patients, the physician has an affirmative ethical obligation to disclose this fact to the patient.
- .03 Under no circumstances may a physician place their own financial interest above the welfare of the patients.
- .04 physicians are advised to seek legal advice regarding applicable state and federal law to prevent any conflict with Stark laws. (PEC 8/27/2002)

Whatever develops between the physician's financial interest and the physician's allegiance to the patient, the conflict must be resolved to the patient's benefit. (MC 7/13/71; Council; 11/21/87)

406. RAFFLING OR AUCTIONING OF MEDICAL SERVICES

The donation of free medical services (including, but not limited to, office visits or surgical procedures) for use as an item to be raffled or auctioned off at a charity function should only be made in a manner which does not compromise the physician's medical judgment, and in a manner consistent with the AMA Guidelines and the Maryland Regulations dealing with physician advertising. In making such a offer, the physician must indicate at the time of donation that the offer is a conditional one and that any procedure or treatment will be undertaken only if medically indicated. Regulations on advertising are at COMAR 10.32.01.12. (PEC 11/1/83, 1/25/05)

407. FINANCIAL INCENTIVES

The primary obligation of every physician is to deliver high quality care to the patient. Physicians should always act with complete integrity and competence, devoted always to the interests of the individual patient when delivering this care. Reductions in medical care (for example, fewer tests or shorter stays) are not necessarily at odds with the administration of proper care. However, participation by physicians in incentive programs, especially those offering financial rewards, should not interfere with their independent, professional judgment. Accordingly, physicians should avoid incentive programs in which financial considerations determine the services to be performed to the extent that the quality of medical care is adversely affected. (PEC 9/4/84, PEC 8/27/2002)

408. PHYSICIAN DISPENSING

Physician dispensing of drugs and other medical devices can be in the patient's best interest. Physicians who dispense should dispense only to their patients and should make the following disclosures:

- A. That the item is dispensed as a convenience for the patient and that the patient is not obligated to purchase the item;
- B. That the item may be purchased from a pharmacy or medical supply store of the patient's choosing; and
- C. The physician's charge for the item.

The medications dispensed should be labeled in accordance with current laws [See Law and Regulations Section], unless they are properly-designated samples. (COMAR 10.13.01)

The physician should keep the manufacturer's lot number on record. (Council 1/23/88, PEC 8/28/2002)

409. RESPONSIBILITY OF PHYSICIAN TO PATIENT AS AFFECTED BY CONTRACTUAL AGREEMENTS

A physician who has a contractual agreement to treat patients continues to have the patient as his or her primary concern, regardless of the physician's source of compensation. If a conflict occurs between the patient's well being and that of the contracting agent, the physician must decide in favor of the patient. (Council 3/15/90)

410. RESTRICTIVE COVENANTS

Covenants not to compete restrict competition, disrupt continuity of care and potentially deprive the public of medical services. MedChi discourages any agreement which restricts the right of a physician to practice medicine for a specified period of time or in a specified area upon termination of an employment, partnership or corporate agreement. Restrictive covenants are unethical if they are excessive in geographic scope or duration in the circumstances presented, or if they fail to make reasonable accommodation of patients' choice of physician. Restrictive covenants which prevent a physician from treating patients in a hospital or freestanding ambulatory care facility violates the public interest. (PEC 04/99)

411. SALE OF HEALTH-RELATED NON-PRESCRIPTION GOODS FROM PHYSICIANS' OFFICES

MedChi has adopted the American Medical Association Council on Ethical and Judicial Affairs Report 1-A-99, which states as follows:

"Health-related products" are any products that, according to the manufacturer or distributor, benefit health. "Selling" refers to the activity of dispensing items that are provided from the physician's office in exchange for money and also includes the activity of endorsing a product that the patient may order or purchase elsewhere that results in direct remuneration for the physician.

Physicians who engage in in-office sales practices should be aware of the related guidelines presented in [AMA] Opinion 8.062, "Sale of Non-Health-Related Goods from Physicians' Offices;" [AMA] Opinion 8.03, "Conflicts of Interest Guidelines;" [AMA] Opinion 8.032, "Conflict of Interest: Physician Ownership of Medical Facilities;" [AMA] Opinion 3.01, "Nonscientific Practitioners;" [AMA] Opinion 8.20, "Invalid Medical Treatments;" as well as the Reports from which these Opinions are extracted. The following guidelines stem from those Opinions.

In-office sale of health-related products by physicians presents a financial conflict of interest, risks placing undue pressure on the patient, and threatens to erode patient trust and the primary obligation of physicians to serve the interests of their patients before their own. When these items offer some health-related benefits, the physician's influence

over the sale is amplified and makes it even more necessary to place limits on such activities.

1. Physicians who do sell health-related products from their offices should not sell any health-related good whose claims of benefit lack scientific validity. Physicians should rely on peer-reviewed literature and other unbiased scientific sources that review evidence in a sound, systematic fashion when judging the efficaciousness of the product.
2. Physicians who sell health-related products from their offices should follow these guidelines to limit their conflicts of interest, minimize the risk of brand endorsement, and ensure a focus on benefits to patients.
 - a) Physicians may distribute health-related products to their patients free of charge or at cost, in order to make useful products readily available to their patients. When health-related products are offered free or at cost, it removes the elements of personal gain and financial conflicts of interest that may interfere, or appear to interfere, with the physician's independent medical judgement.
 - b) Except under certain circumstances, such as those described in [AMA] Opinion 8.032, "Conflict of Interest: Physician Ownership of Medical Facilities," physicians should not sell a health-related good when patients can obtain a product that offers the same medical benefit at a local pharmacy or health-products store.
 - c) Physicians must disclose fully the nature of their financial arrangement with a manufacturer or supplier to sell health-related products. Disclosure includes informing patients of financial interests as well as about the availability of the product or other equivalent products elsewhere. Disclosure can be accomplished through face-to-face communication or by posting an easily understood written notification in a prominent location that is accessible by all patients in the office. In addition, physicians should, upon request, provide patients with understandable literature that relies on scientific standards in addressing the validity of the health-related good.
3. Physicians should not participate in exclusive distributorships of health-related products, in which the products are available only through physicians' offices and for which product there is no comparable alternative available at a local pharmacy or health-products store. Physicians should encourage manufacturers to make their products more widely accessible to patients. (HOD 1/15/2000)