

Whose Side Are They On?
By: Steven I. Kern, Esq.*

Is the AMA working for physicians? A recent “ethical guideline” passed by the AMA at its interim meeting may leave some wondering.

The new guideline requires physicians who refer patients for services at facilities in which they have a financial interest to disclose the “conflict” to patients. According to the AMA’s new guideline, regular reviews should be done to monitor referral patterns, and doctors should base referrals on "objective, medically relevant criteria" and enter financial arrangements primarily to improve patients' access to high-quality care. The AMA policy goes beyond restrictions in federal anti-kickback laws and regulations by requiring physicians to assure patients that their ongoing care is not in jeopardy if they decide to refuse recommended referrals.

While the goals of the AMA may be laudable, are physicians’ interests best served by having their own professional organization announce to the world that physicians are so dishonest that they cannot be trusted to put their patients’ interests ahead of their own financial interests? However, that is the message that many may take from the AMA’s new guidelines.

Rather than issue blanket policies that adversely affect the financial interests of many, would society not be better served by increasing scrutiny to weed out those few who abuse ancillary services for their own financial gain? If you believe, as I do, that the vast majority of physicians are highly ethical practitioners who routinely place their patients first, blanket restrictions on physician referrals to entities in which they have a financial interest are not only unnecessary, they reduce needed access to quality healthcare. Physician investment has been proven to increase competition, reduce the need for higher priced hospital based services, and offer patients a true choice of resources.

Moreover, it cannot be in the profession’s best interest to limit physicians’ ability to earn income from ancillary sources when primary income continues to decline due to lower reimbursements by third party payors. As our population continues to age, we need to encourage our youth to chose medicine as a profession. They need to know that their hard work, sacrifice, and tuition payments will yield a fair return on investment as a well as an enjoyable and rewarding lifestyle.

Of course, there is nothing inherently wrong with physicians earning additional income from ancillary sources. Physicians in larger group practices rely upon ancillary services to provide substantial income, and the AMA’s edict will do nothing to alter that fact. Physicians working as employees in hospital based practices are similarly unaffected by the new guidelines. It is only physicians in smaller practices, who do not have the resources to offer ancillary services within their own practices, who fall prey to these new guidelines.

Let’s stop restricting physicians’ ability to fully participate in the healthcare system. By restricting physician investment we leave vast segments of the healthcare system to hospital administrators, investment bankers, and insurance company executives. Their recent track record has been less than reassuring. Until someone can prove that they do a better job of

efficiently delivering quality healthcare services, there is no reason to limit physician involvement.

**Steven I. Kern is a principal in the healthcare law firm of Kern Augustine Conroy & Schoppmann, P.C., with offices in New Jersey, New York, Pennsylvania and affiliates in Florida and Illinois. He is a nationally recognized expert on Healthcare law, an Editorial Consultant to Medical Economics Magazine and ModernMedicine.Com, a Member of the Editorial Board of New Jersey Lawyer, and former New Jersey Deputy Attorney General assigned to the State Board of Medical Examiners. A version of this article first appeared as a blog on Modernmedicine.com.