
Ethical/Judicial Issues

ABO - ABORTION

ABO-002

Partial Birth Abortion: The Wisconsin Medical Society

- Recognizes that the procedure intact-dilation and extraction, known to the public as partial birth abortion, should not be used when the physician has determined that there is a viable fetus (now about 24 weeks gestation or later) except in instances where the mother's life is in imminent physical danger or the fetus has an abnormality incompatible with life.
- Requests that the American Medical Association take similar action. (HOD, 0497)*

ABO - 004

Abortion as a Medical Procedure and Providing Abortion-Related Information: The Wisconsin Medical Society: 1) supports enactment of appropriate legislation that would acknowledge the right of a physician to perform and to practice this medical procedure as he/she might any other medical procedure or to refuse to perform an abortion according to the dictates of his/her training, experience and conscience; 2) supports the development of guidelines that ensure that abortions be performed only under proper medical circumstances with adequate provision for safeguarding the health of the patient; and 3) although abortion is a contentious issue, it is a legal medical procedure and physicians should be allowed to advise their patients of all available options. (BOD 1004)

ALT - ALTERNATIVE MEDICINE

ALT-001

Medical Marijuana:

1. The Wisconsin Medical Society (Society) recommends that adequate and well-controlled studies of smoked marijuana be conducted in patients who have serious conditions for which pre-clinical, anecdotal or controlled evidence suggests possible efficacy including AIDS wasting syndrome, severe acute or delayed emesis induced by chemotherapy, multiple sclerosis, spinal cord injury, dystonia and neuropathic pain, and that marijuana be retained in Schedule I of the Controlled Substances Act pending the outcome of such studies. Smoked marijuana should not be used for therapeutic reasons without scientific data regarding its safety and efficacy for specific indications.

* Policy currently under review.

2. The Society urges the National Institutes of Health (NIH) to implement administrative procedures to facilitate grant applications and the conduct of well-designed clinical research into the medical utility of marijuana. This effort should include
 - a. Disseminating specific information for researchers on the development of safeguards for marijuana clinical research protocols and the development of a model of informed consent on marijuana for institutional review board evaluation.
 - b. Sufficient funding to support such clinical research and access for qualified investigators to adequate supplies of marijuana for clinical research purposes.
 - c. Confirming that marijuana of various and consistent strengths and/or placebo will be supplied by the National Institute on Drug Abuse to investigators registered with the Drug Enforcement Agency who are conducting bona fide clinical research studies that receive Food and Drug Administration approval, regardless of whether or not the NIH is the primary source of grant support.
3. The Society believes that the NIH should use its resources and influence to support the development of a smoke-free inhaled delivery system for marijuana or delta-9-tetrahydrocannabinol (THC) to reduce the health hazards associated with the combustion and inhalation of marijuana.
4. The Society does not support reinstatement of the Single Patient Investigational New Drug program for smoked marijuana at this time, because the program would likely be unable to meet the needs of individual patients in a timely fashion due to procurement difficulties associated with regulatory oversight and because this approach will not provide the scientific data needed to guide the public debate on the utility of medical marijuana.
5. The Society believes that effective patient care requires the free and unfettered exchange of information on treatment alternatives and that discussion of these alternatives between physicians and patients should not subject either party to criminal sanctions. (HOD, 0405)

ALT-003

Non-conventional Medical Care: Authoritative medical practice standards and guidelines are to be respected and followed. Illness is often complex because of variability in and interaction among cultural, psychological, biologic and pathologic variables. High quality medical practice needs flexibility to customize diagnosis and treatment actions to meet the needs of individual patients.

The Society supports legal, ethical and professional practice standards that grant physicians that degree of flexibility that allows for, and indeed promotes the customizing of care for individuals aiming for optimal outcomes grounded in patient preference and scientific evidence.

The Society also supports vigorous local peer review of practice, and to that end advocates for the following principles:

- Any element of medical care must first be based upon accepted standards of safety.
- Any element of medical care must be based at least upon minimally acceptable evidence of effectiveness.
- Any element of medical care must be based upon prevailing standards of informed consent and refusal.

Any judicial process regarding the appropriateness of any item of medical care, whether based on legal, ethical, or professional standards, must incorporate expert opinion from all relevant perspectives. (HOD, 0406)

ETH - ETHICS

ETH-001

Declaration of Professional Responsibility: Medicine's Social Contract with Humanity: The Wisconsin Medical Society adopts the American Medical Association's *Declaration of Professional Responsibility: Medicine's Social Contract with Humanity*. The *Declaration* affirms the ideals that, throughout history, have motivated individuals to enter the profession of medicine and the conduct that has given life to those ideals and earned society's trust in the healing profession. (HOD, 0302)*

ETH-002

Sales of Goods from Physicians' Offices: The Wisconsin Medical Society adopts current American Medical Association policy H-140.931, E8-063, E-8.062 *Sale of Health-Related Products from Physicians' Offices*. (HOD, 0302)*

ETH-003

Physicians Providing Insurers with Misleading Information: The Wisconsin Medical Society (Society) opposes physicians providing health insurers with misleading information. The Society will advocate for policies and laws that enable physicians to provide the care that is medically necessary for their patients, and when there is a conflict, the Society will act as a resource for physicians who need information on how to aggressively and ethically advocate for their patients. (HOD, 0301)

ETH-004

Physicians Accepting Gifts from the Pharmaceutical Industry: The Wisconsin Medical Society (Society) supports the following policy on accepting gifts from the pharmaceutical industry:

The acceptance of gifts from pharmaceutical representatives can create the appearance of unethical conduct on the part of physicians; and the demand of gifts from physicians to guarantee access to the physicians creates the need for the pharmaceutical industry to provide such gifts; therefore, the Society adopts the following from the American Medical Association code of Medical Ethics to avoid the acceptance of inappropriate gifts:

- 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 compassionate use of medical samples by physicians, when freely given by pharmaceutical sales representatives is ethical.
- Individual gifts of minimal value are permissible as long as the gifts are related to the physician's work (e.g., pens and notepads).
- 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

* Policy currently under review.

a company's sales 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 registration fee. Payments to defray the costs of a conference should not be accepted directly from the company by physicians who are attending the conference.

- Subsidies from industry should not be accepted directly or indirectly to pay the costs of travel, lodging, or other personal expenses of the physicians who are attending the conferences or meetings, nor should subsidies be accepted to compensate for the physician's time. Subsidies for hospitality should not be accepted outside of modest meals or social events that are held as 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.
- 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.
- 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.

Office Sign:

TO OUR PATIENTS

In keeping with high standards in the practice of medicine, and to foster an ethical working relationship with the pharmaceutical manufacturers and marketers, our office complies with the guidelines of the American Medical Association and the Wisconsin Medical Society limiting gifts *to physicians from the pharmaceutical industry*. (HOD, 0301)

ETH-005

Financial Incentives for Withholding Care: The Wisconsin Medical Society believes a physician's duty is to provide medically indicated evaluation and treatment. It is unethical to deny a medical service solely on the basis of cost containment, if such services are deemed good medical practice. (HOD, 0405)

ETH-006

Anatomical Gifts by a Health Care Agent: The Wisconsin Medical Society supports allowing a health care agent to have the ability to make or refuse to make an anatomical gift. A health care agent is included in the list of persons who may make an anatomical gift of all or part of a decedent's body in accordance with the wishes of the decedent if known. (HOD, 0405)

ETH-007

Ethics of Clinical Management Guidelines: Clinical management guidelines (CMG) are clinical guidelines created to aid the physician in the diagnosis and treatment of patients' health conditions. The Wisconsin Medical Society believes that CMGs should be based on clinical research that includes but is not limited to clinical trials and medical outcomes. Development of CMGs should be a cooperative effort of physicians (as represented by the AMA, state and local medical associations and appropriate specialty groups) as well as third party payers and concerned government agencies. A formal entity/organization should take responsibility for developing, comparing and evaluating CMGs. Information gathered by the group should be readily accessible to practitioners and to the public and input should be encouraged. With respect to professional liability, the use of CMGs must be carefully tested and monitored by physicians for both hazards and benefits. CMGs should:

- Be in the best interest of the patient;
- Reflect the unique character of the providers and the patients they serve;
- Reflect physician's autonomy and their right to depart or deviate from CMGs with the stipulation that physician's document supporting reasons behind their treatment choices;
- Not be static, but instead reflect real medical practice over time and include improvement based on scientific clinical research;
- Reflect societal concerns and the need for appropriate allocation of resources; and,
- Not be used against physicians who document scientific reasons for departing from the guidelines. (HOD, 0405)

ETH-009

Patient-Physician Covenant: The Wisconsin Medical Society endorses the Patient-Physician Covenant:

PATIENT-PHYSICIAN COVENANT

Medicine is, at its center, a moral enterprise grounded in a covenant of trust. This covenant obliges physicians to be competent and to use their competence in the patient's best interest. Physicians, therefore, are both intellectually and morally obliged to act as advocates for the sick wherever their welfare is threatened and for their health at all times.

Today, this covenant of trust is significantly threatened. From within, there is growing legitimization of the physician's materialistic self-interest; from without, for-profit forces press the physician into the role of commercial agent to enhance the profitability of health care organizations. Such distortions of the physician's responsibility degrade the physician-patient relationship that is the central element and structure of clinical care.

To capitulate to these alterations of the trust relationship is to significantly alter the physician's role as healer, caregiver, helper and advocate for the sick and for the health of all. By its tradition and very nature, medicine is a special kind of human activity--one that cannot be pursued effectively without the virtues of humility,

honesty, intellectual integrity, compassion, and effacement of excessive self-interest. These traits mark physicians as members of a moral community dedicated to something other than its own self-interest.

Our first obligation must be to serve the good of those persons who seek our help and trust us to provide it. Physicians, as physicians, are not and must never be commercial entrepreneurs, gate closers or agents of fiscal policy that run counter to our trust. Any defection from the primacy of the patient's well being places the patient at risk by treatment that may compromise quality of or access to medical care. We believe the medical profession must reaffirm the primacy of its obligation to the patient through national, state and local professional societies; our academic, research and hospital organization, and especially through personal behavior. As advocates for the promotion of health and support of the sick, we are called upon to discuss, defend and promulgate medical care by every ethical means available. Only by caring and advocating for the patient can the integrity of our profession be affirmed. Thus we honor our covenant of trust with patients. (HOD, 0406)

ETH-010

Pain Management: The Wisconsin Medical Society recognizes the important benefits of effective pain management and strongly encourages Wisconsin physicians to make pain assessment and management of pain an integral part of the care of all patients. In regards to pain management The Wisconsin Medical Society believes:

- That while opioids are the drugs of choice for the management of severe acute pain and cancer pain, they may also play a role in the management of certain chronic non-cancer pain problems;
- In legislation that removes barriers to effective pain control; in education programs that dispel the myths which account for the inadequate treatment of pain;

In efforts to assure proper reimbursement for pain management; in working with the Medical Examining Board to ensure uniform standards of practice for responsible pain management. (HOD, 0406)

ETH-011

Advance Directives: The Wisconsin Medical Society encourages physicians to educate their patients about advance directives and to provide their patients with living will and durable power of attorney for health care forms. (HOD, 0406)

ETH-013

Physician-Assisted Suicide: The Wisconsin Medical Society reaffirms its opposition to any legislation that legalizes physician-assisted suicide in Wisconsin. (HOD, 0404)

ETH-014

Death Penalty: An individual's opinion on capital punishment is the personal, moral decision of that individual. The Wisconsin Medical Society opposes any legislation or policy that requires a physician to assist in, witness or attend an execution. (HOD, 0406)

ETH-015

Surrogate Decision Act: The Wisconsin Medical Society supports the following concepts to

legalize health care decision making by family members in certain situations, thus decreasing the necessity for court intervention when a decision of continuing life-sustaining treatment is required for a patient; and, to keep this difficult decision within the health care setting and made by the family or close friends whenever possible.

1. A surrogate decision maker shall make health care decisions including whether to forgo life-sustaining treatment on behalf of an incapacitated patient in consultation with the attending physician. The patient must have incapacity and a “qualifying condition” defined as:
 - a. A terminal condition (an illness or injury for which there is no reasonable prospect of cure or recovery and the application of life-sustaining treatment would only prolong the dying process);
 - b. A state of permanent unconsciousness (there is medical certainty that it will last permanently without any reasonable chance of reversal); or,
 - c. An incurable or irreversible condition, with no reasonable prospect for recovery.
2. Where available, either an authorized health care agent acting under the Power of Attorney or a living will must be followed if a patient has a qualifying condition and is incapacitated. When no health care agent or living will is authorized and available, the health care provider must make reasonable inquiry as to the availability of possible surrogate decision makers. The surrogate decision-maker is then authorized to make decisions whether to forgo life-sustaining treatment on behalf of the patient without court order or judicial involvement. The following is the priority list of the individuals who can act as the surrogate decision maker:
 - The patient’s guardian;
 - The patient’s spouse or life partner;
 - Any adult son or daughter of the patient;
 - Either parent of the patient;
 - Any adult brother or sister of the patient;
 - Any grandparent;
 - Any adult grandchild of the patient; or,
 - A close friend of the patient.
3. A surrogate decision maker shall make decisions for the patient conforming as closely as possible to what the patient would have done or intended under the circumstances, taking into account the patient’s personal philosophical, religious and moral beliefs, ethical values, sickness, medical procedures, and suffering. The patient’s best interests, weighing the burdens and benefits of initiating or continuing life-sustaining treatment, should be considered. If a health care provider believes that the decision made by the surrogate is not in the patient’s best interest, the provider may ask for a review by an ethics committee.
4. If the ethics committee agrees with the surrogate, the health care provider shall follow through on the health care decision or transfer the care of the patient to another health care provider. If the ethics committee agrees with the provider, the surrogate can seek judicial review or file for guardianship under the law, but must do so within two weeks or the provider may follow the recommendations of the ethics committee.

The intentions of this Act are not to impair any existing rights or responsibilities that a health care provider, patient, or patient's family have in regard to withholding or withdrawing life-sustaining treatment. (HOD, 0406)

ETH-016

AIDS/HIV Case Management and Physician Duty to Warn: The Wisconsin Medical Society supports notification of individuals at known risk of exposure to HIV infection, and include notification to educate individuals on the method, of exposure and safer behaviors. (HOD, 0406)

ETH-017

Treatment of a Child Through Prayer: The Wisconsin Medical Society opposes legislation that would deny the state the ability to prosecute persons who rely on treatment of a child through prayer alone for criminal negligence or criminal recklessness. (HOD, 0405)

ETH-019

Withdrawal/Withholding of Treatment: The Wisconsin Medical Society believes that

- The withholding or withdrawal of life sustaining treatment is the decision of the patient or his/her immediate family or his/her lawful representative acting in the patient's best interest, if the patient does not have decision-making capacity.
- The advice and judgment of the physician or physicians involved should be readily available to the patient or his/her lawful representative, if the patient does not have decision making capacity in all such situations.
- No physician, other licensed health care professional or hospital should be civilly or criminally liable for taking any action pursuant to these guidelines, nor should there be any criminal or civil penalties of any sort imposed for conduct pursuant to these guidelines.
- Except as stated above, all matters not in the public domain relating to a patient's illness are the private right of the patient and are protected from public scrutiny by the privacy and confidentiality of the doctor-patient relationship. (HOD, 0406)

ETH-020

Euthanasia: The Wisconsin Medical Society believes that the intentional termination of the life of one human being by another—mercy killing or euthanasia—is contrary to public policy, medical tradition, and the most fundamental measures of human value and worth. (HOD, 0404)

ETH-022

Child Support Initiative Relating to Denial of Licenses and Credentials by the Department of Regulation and Licensing: The Wisconsin Medical Society opposes legislation that would deny license or credential to anyone not signing a statement attesting that he/she either has not been ordered by a court to pay support, or has been ordered to pay support and is either current on that support, is party to a pending court action related to the obligation, or is in arrears in excess of 60 days but is in compliance with an approved repayment plan. (HOD, 0404)

ETH-023

Comity Amongst States Regarding Advanced Directives: The Society supports the con-

cept of comity for advance directive documents (i.e. the living will and power of attorney for health care) to ensure that a document that is lawful in the state of origin be considered lawful in every other state. (HOD, 0404)

ETH-024

Physician Sensitivity to Patients' Religious and Cultural Beliefs in Medical Practice: The Wisconsin Medical Society (Society) believes that physicians should maintain respect for their patients' beliefs. Therefore, the Society:

- Encourages clinicians to inquire about the religious or cultural orientation and beliefs of the patients so they may consider these in the treatment of their patients.
- Urges that all interactions with patients should be handled with recognition of the patient's vulnerability to the attitudes of the physician and respect for the patient's autonomy.
- Supports the position that medical recommendations that concern a patient's beliefs should be made in a context of empathic respect for the value and meaning of those beliefs.

The Society also believes that physicians should not impose their own religious, anti-religious or ideological systems of beliefs on their patients, nor substitute such beliefs or ritual for accepted diagnostic concepts or therapeutic practice. (HOD, 0403)

ETH-025

Commercialized Medical Screening: The Wisconsin Medical Society (Society) will establish as policy that it is inappropriate for physicians to be involved in promoting commercialized screening procedures to the public, unless supported by evidence-based guidelines supporting such screenings. The Society will undertake a public educational campaign using existing publications including the Web site explaining the criteria for effective screening. The Society will encourage the public to seek appropriate health screening. The Wisconsin delegation to the American Medical Association (AMA) should forward this resolution to the AMA House of Delegates for action. (HOD, 0302)*

ETH-026

Medical Neglect and Child Abuse (Baby Doe): The Wisconsin Medical Society opposes any change to the Wisconsin Child Abuse Law that would include the Federal definition of "withholding medically indicated treatment," which is defined as:

"The failure to respond to the infant's live-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment -

- a. The infant is chronically and irreversibly comatose;
- b. The provision of such treatment would-
 - Merely prolong dying:

* Policy currently under review.

- Not be effective in ameliorating or correcting all of the infant’s life-threatening conditions; or
 - Otherwise be futile in terms of the survival of the infant; or
- c. The provision of such treatment would be virtually futile in terms of survival of the infant and the treatment itself under such circumstances would be inhumane.”(HOD, 0406)

ETH-027

Futility of Care: The Wisconsin Medical Society supports a legally sanctioned extra-judicial process for resolving disputes regarding futile care. (HOD, 0404)

ETH-028

Legitimate Medical Orders or Valid Prescriptions: The Wisconsin Medical Society believes that non-physician clinicians/pharmacists not be able to ignore legitimate medical orders or valid prescriptions written by physicians. Non-physician clinicians/pharmacists who find this morally objectionable should provide patients with information on where these orders or prescriptions can be filled. (HOD, 0404)

ETH-029

Process for Resolving Disputes about Treatment Decisions: The Wisconsin Medical Society supports the following provisions in regard to disputes about treatment decisions:

1. If an attending physician and his patient are in disagreement about the use of a particular test or treatment, the physician should take the initiative to resolve this matter through the use of patient education and discussions, involving any family, medical, social service or chaplainry personnel needed to resolve the issue.
2. If the issue cannot be resolved, then an ethics committee consult should be called. The consult may be called by anyone on the treatment team or by the patient or family. The attending physician may attend the meeting to give information but will not be a voting member of the committee. All life sustaining treatments (ventilators, IV fluids, antibiotics etc.) would be continued throughout the process defined below.
3. The patient shall be informed of the committee review process not less than 48 hours before the meeting, unless the time period is waived by mutual agreement. The patient and anyone he chooses may attend the meeting and he/they will receive a written explanation of the decision reached during the review process.
4. The written explanation will be included in the medical record.
5. Often, the ethics committee will bring the parties together and resolve the issues that were in disagreement. If, however, the doctor or the patient does not agree with the ethics committee opinion, then the following will occur:
 - a. The physician shall make a reasonable effort to transfer the patient to a physician who is willing to comply with the patient’s wishes. If the patient is in a health care facility, the facility personnel shall assist the physician in arranging the patient’s transfer to:
 - i. another physician
 - ii. an alternative care setting within that facility; or
 - iii. another facility.

6. If the patient is requesting life-sustaining treatment that the attending physician and the review process have decided is inappropriate, the patient shall be given available life-sustaining treatment pending transfer. The patient is responsible for any costs incurred in transferring to another facility.
 - a. The physician and the health care facility are not obligated to provide life-sustaining treatment after the 10th calendar day after the written decision of the ethics committee is provided to the patient. (Exception to this: See #8.) All palliative and supportive care would continue to be provided to the patient and family.
7. Life-sustaining treatment under this section may not be entered in the record as medically unnecessary until the time period has elapsed.
8. At the request of the patient, the appropriate district or county court may extend the time period only if the court finds, by a preponderance of the evidence, that such an extension will help locate another physician or health care facility willing to accept the patient in transfer. (HOD, 0405)

ETH-030

Criminalization of Medicine: The Wisconsin Medical Society believes that negligent conduct by healthcare professionals during the performance of their duties should not be prosecuted as a crime, but rather should be addressed as appropriate by the institution, by a professional disciplinary body, or by the civil justice system. (HOD, 0407)