2012-2013 Wisconsin Medical Society Policy Compendium
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Ethical/Judicial Issues

ABO - ABORTION

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 expected to advise their patients of all available options. (HOD, 0408)

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.

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, 0411)

**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 Wisconsin Medical 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, 0412)
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 (07/25/05). 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, 0408)

ETH-002
Sales of Goods from Physicians’ Offices: The Wisconsin Medical Society adopts current American Medical Association policy E8-063, E-8.062 Sale of Health-Related Products from Physicians’ Offices. (HOD, 0409)

ETH-003
Physicians Providing Insurers with Misleading Information: The Wisconsin Medical Society opposes physicians providing health insurers with misleading information, even if the physician’s intentions are to support the patient. 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, 0408)

ETH-004
The Relationship of the Profession to the Health Product Industry: The Wisconsin Medical Society supports the following policy on accepting gifts from those who provide health products prescribed by physicians, including the pharmaceutical and device industries.

Physicians shall accept no gifts from any provider of products that they prescribe to their patients such as personal items, office supplies, food, travel and time costs, or payment for participation in online CME. A complete ban eases the burdens of compliance, biased decision making, and patient distrust.

Medical philosophers from ancient to modern affirm the priority of patient interest as the cornerstone of medical professionalism and the first principle in resolving conflict of interest (COI) questions. High quality patient care and health outcomes depend on patient trust in physician advice. COI is ubiquitous in human relationships, including the patient-physician relationship, therefore, the profession and each physician every day must strive to acknowledge and manage COI in order to prevent avoidable bias in medical decision making. A physician’s prescribing decision should be based on the best evidence available.

The reciprocal giving of gifts is an ancient human practice and likely has survival value by reinforcing social bonds. Health product companies have long offered gifts to physicians and the profession has long denied being influenced by these gifts. By distinguishing among possible gifts according to monetary value or value to patient care, ethicists have attempted to estimate the risk that specific gifts could bias medical decision making—no doubt these distinctions have reduced the frequency of outrageous gifts, however, it is becoming apparent that any gift from a product provider to a product prescriber risks biased decision making, and at least, risks loss of patient trust in physician advice. Some conflicts can’t be avoided, but avoidance of unnecessary conflicts is the cornerstone strategy of professional conflict management.
An article found in *JAMA* 2006;295:429-433 has renewed the western world’s conversation about the commercial relationship between health product industries and the profession of medicine. Following their recommendations, the Society affirms the following examples of ethical professional behavior.

- The direct provision of drug samples to patients should be limited and, when possible, should be replaced by a system of vouchers for evidence-based drug choices.
- Physicians serving on formulary committees who have any kind of commercial relationship with a health product company shall disclose any such relationship and recuse themselves from the formulary process, as necessary to avoid bias.
- The Accredited Council for Continuing Medical Education’s (ACCME) Standards for Commercial Support, as adopted by the Wisconsin Medical Society, will be complied with by all accredited Wisconsin CME providers.
- Physicians should not serve as members of speaker bureaus for health product companies or their contractees.
- Physicians should not allow their names to be listed as authors for articles written by health product company employees, a practice called “ghostwriting.”
- Since ethical collaboration between the profession and the health product industry is essential for the continued development of health products, high-integrity consulting and research relationships shall be strongly encouraged. However, to avoid such relationships being tantamount to a gift, such relationships shall be based in contracts for specific “deliverables” in return for just compensation.

The following office sign is available for members of the Wisconsin Medical Society:

**Office Sign:**

**TO OUR PATIENTS**

To uphold the highest standards of our Profession,  
To ensure our advice is based solely on what’s best for you, and  
To enable your highest level of trust in our advice,  
We follow the recommendations of the Wisconsin Medical Society,  
And accept no gifts from any provider of a product  
that we prescribe or recommend to you.

(HOD, 0409)

**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 physicians 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.
- Not be used against physicians who document scientific reasons for departing from the guidelines. (HOD, 0411)

**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, 0412)

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, 0412)

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 one of the following:
   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).
   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:
   a. The patient’s guardian.
   b. The patient’s spouse or life partner
   c. Any adult son or daughter of the patient
   d. Either parent of the patient
   e. Any adult brother or sister of the patient
f. Any grandparent
g. Any adult grandchild of the patient
h. 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, 0412)

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, 0412)

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, 0411)

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, 0410)

ETH-023
Comity Amongst States Regarding Advanced Directives: The Wisconsin Medical Society supports the concept 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, 0410)
ETH-024
Physician Sensitivity to Patients’ Religious and Cultural Beliefs in Medical Practice: The Wisconsin Medical 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, 0409)

ETH-025
Commercialized Medical Screening: The Wisconsin Medical Society believes 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 encourage that individuals discuss with a physician 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, 0408)

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 life-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:
   - 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.” (The Child Abuse Prevention and Treatment Act, Sec. 111. Definitions, June 25, 2003). (HOD, 0408)
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 must provide patients with information on where these orders or prescriptions can be filled. (HOD, 0410)

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 one of the following:
      i. another physician.
      ii. an alternative care setting within that facility.
      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, 0411)

**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. (BOD, 0612)

**ETH-031**

**Stem Cell Advances:** The Wisconsin Medical Society publicly commends Drs. James Thomson and Jungying Yu for their meritorious work in the field of induced Pluripotent Stem Cell research. The Wisconsin Medical Society supports further research and use of iPS cells (induced pluripotent stem cells). (HOD, 0408)

**ETH-033**

**Medical Personnel Involvement in Torture:** The Wisconsin Medical Society unequivocally condemns the involvement of medical personnel in monitoring and/or participating in torture of any one, at any time, under any circumstances. (HOD, 0410)

**ETH-034**

**End of Life Choices by Patients:** The Wisconsin Medical Society believes that:

1. The principle of patient autonomy requires that physicians must respect the decision to forgo life-sustaining treatment of a patient who possesses decision-making capacity. Life sustaining treatment is any medical treatment that serves to prolong life without reversing the underlying medical condition. Life-sustaining treatment includes, but is not limited to, mechanical ventilation, renal dialysis, chemotherapy, antibiotics, and artificial nutrition and hydration.

2. There is no ethical distinction between withdrawing and withholding life-sustaining treatment.

3. Physicians have an obligation to relieve pain and suffering and to promote the dignity and autonomy of dying patients in their care. This includes providing effective palliative treatment even though it may foreseeably hasten death. More research must be pursued, examining the degree to which palliative care reduces the requests for euthanasia or assisted suicide.

4. Physicians must not perform euthanasia or participate in assisted suicide. A more careful examination of the issue is necessary. Support, comfort, respect for patient autonomy, good communication and adequate pain control may decrease dramatically the public demand for euthanasia and assisted suicide. In certain carefully defined circumstances, it would be humane to recognize that death is certain and suffering is great. However, the societal risks of involving physicians in medical interventions to cause patients’ deaths is too great to condone euthanasia or physician-assisted suicide at this time.
5. The Wisconsin Medical Society supports continued research into and education concerning pain management. (HOD, 0410)

**ETH-035**
Advance Care Planning and End-of-Life Choices by Patients: The Wisconsin Medical Society supports the education of physicians in the development and implementation, in conjunction with patients and families, of well-informed advance care planning and end-of-life care choices by patients. (HOD, 0412)

**ETH-036**
Statewide Effort to Improve Advance Care Planning: Advance care planning is an important part of every patient’s health care and despite the existence of advance directives, there is a continuing need for improved advance care planning in Wisconsin.

The Wisconsin Medical Society will work to initiate a statewide effort to improve advance care planning through education, community outreach, and pilot programs among physicians and the public. (HOD, 0412)

**ETH-037**
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 or decision-maker, 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.

- It is unethical to deny a medical service solely on the basis of cost containment, if such services are deemed good medical practice. (HOD, 0412)