Virtual Mentor
American Medical Association Journal of Ethics
October 2001, Volume 3, Number 10: 351-353.

AMA CODE SAYS
Commemorative Issue: The Code as Expert Witness
Karen Geraghty

In the last 2 decades, there has been a dramatic increase in the use of the American Medical Association's *Code of Medical Ethics*[1] in judicial rulings concerning the medical profession. Of the 225 legal citations of the *Code* since 1943, 181 occurred between the years 1980 and 1999. These statistics underscore 2 trends of significance for the medical profession--the societal trend of increased medical litigation and the judicial trend of relying on professional statements of conduct as standards of legal evaluation and judgment. In effect, the *Code* is evolving into an expert witness for professional conduct and as such is essential knowledge for practicing physicians.

When the American Medical Association was founded in 1847, the *Code of Ethics* was a brief pamphlet articulating the ideals of professional education and practice[1]. Over the last 100 years this small volume has developed into a 2-part code which distinguishes medical ethics from matters of etiquette.

The *Code* itself makes no claim to legal authority. Amid the reorganization of the American Medical Association in 1903, physicians, as a matter of professional duty, were encouraged to join a local or county medical society. The AMA was to function as a federation of state organizations and, as such, put forth "a suggestive and advisory document" in the form of the "Principles of Medical Ethics"[2]. It was explicitly left up to the state associations, and not to the AMA, to establish regulations and penalties for the practice of medicine in their local or specialty areas, based on the guiding principles set forth by the national association.

Throughout the 20th century, the AMA's *Code* underwent continuous refinement, expanding to address the innovations of scientific medicine and the institutional issues of health care delivery. Today, incorporating the concepts of the original *Code*, the contemporary *Code of Medical Ethics* now articulates 7 fundamental "Principles of Medical Ethics," which "are not laws, but standards of conduct which define the essentials of honorable behavior for the physician"[3]. In addition, there is a statement of 6 fundamental "Elements of the Patient-Physician Relationship," which define the rights that best contribute to the "collaborative effort between physician and patient" for the health and well-being of the patient[4]. Opinions of the Council on Ethical and Judicial Affairs, approved by the House of Delegates, accompany the *Code*, providing practical applications of the "Principles of Medical Ethics" to the numerous ethical issues in medicine. Annotations following the Opinions highlight the judicial rulings that have made use of the *Code*.

The Opinions, which are derived from the "Principles," have been significant in shaping judicial precedents in health care law. They have been cited in landmark judicial decisions such as *Cruzan, Bouvia, Tarasoff and Roe v Wade* to name but a few of the more publicly known cases.

In the *Bouvia* case[5], for example, a mentally competent, physically disabled woman requested cessation of forced feeding through a nasogastric tube. Quoting Opinion 2.18 (1986) [now Opinion 2.20], the court held that a competent adult patient has the legal right to refuse medical treatment, despite the fact that such a refusal will hasten the patient's death:

> The principle of patient autonomy requires that physicians respect the decision to forego life-sustaining treatment of a patient who possesses decision-making capacity. . . . Even if the patient is not terminally ill or permanently unconscious, it is not unethical to discontinue all means of life-sustaining medical treatment in accordance with a proper substituted judgment or best interests analysis[6].

In the *Tarasoff* case[7], the court, citing Opinion 5.05, noted that it is permissible for a physician to violate the confidential nature of the patient-physician communication when disclosure is necessary to protect an individual or community from harm:

> The obligation to safeguard patient confidences is subject to certain exceptions which are ethically and legally justified because of overriding social considerations. Where a patient threatens to inflict serious bodily harm to another person or to him or herself and there is a reasonable probability that the patient may carry out the threat, the physician should take reasonable precautions for the protection of the intended victim, including notification of law enforcement authorities[8].

In its brief 154-year history, the AMA's *Code of Medical Ethics* has developed from a handbook of professional guidelines to a comprehensive document that addresses all aspects of professional behavior in the medical setting. As the *Code* continues to evolve in the legal arena as an expression of the medical profession's standard of conduct in addressing new challenges in health care such as those listed in the *Bouvia* and *Tarasoff* cases, knowledge of the *Code* is, now more than ever, an urgent and necessary aspect of every physician's practice.

References

1. American Medical Association. April 6, 1901 Code of Medical Ethics. *JAMA*. 2001;285:1681.
2. American Medical Association. Principles of Medical Ethics. *JAMA*. 1903;40:1379-81.
3. American Medical Association. *Code of Medical Ethics*. Chicago, Ill: AMA Press; 2000:xiv.
4. Ibid:xv.
5. *Bouvia v Superior Court*, 179 Cal App3d 1127, 225 Cal Rptr 297, 303-04.
6. American Medical Association. Opinion 2.20: Withholding or Withdrawing Life-Sustaining Medical Treatment. *Code of Medical Ethics*. Chicago, Ill: AMA Press; 2000:35-36.

7. *Tarasoff v Regents of Univ. of Cal.*, 17 Cal3d 425, 551 p. 2d 334, 347, 131 Cal Rptr 14, 27.
8. American Medical Association. Opinion 5.05: Confidentiality. *Code of Medical Ethics*., Chicago, Ill: AMA Press; 2000:53.

Karen Geraghty is a research associate in the AMA Ethics Standards Group.

The viewpoints expressed on this site are those of the authors and do not necessarily reflect the views and policies of the AMA.

Copyright 2001 American Medical Association. All rights reserved.