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### AMA CODE SAYS: PEER-REVIEWED ARTICLE

#### Physician Engagement With Private Equity Firms

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##### Abstract

Private equity investments in health care raise several clinical and ethical questions about private equity's influence on clinicians' practices. This article canvasses how these questions are navigated in *AMA Code of Ethics* opinions.

##### Private Equity in Health Care

Private equity firms follow an investment model that seeks high-yield, short-term profits.<sup>1</sup> Although the premise of this investment model seemingly runs counter to ethical tenets of medicine, in recent years it has become increasingly common to apply this investment model to the provision of health care. Private equity firms purchase health care entities by leveraging the physician practice or hospital as security for a loan with the goal of yielding a 20% to 30% return within 3 to 7 years.<sup>2,3,4</sup> Proponents of private equity assert that this model reduces inefficiencies while also providing the much-needed capital infusions these firms bring to often struggling health care practices.<sup>5</sup> Critics assert that private equity firms' prioritization of profits turns health care into a commodity, jeopardizes patient care, overburdens health care entities with debt, and limits physician control over clinical decision-making.<sup>3,5,6</sup> Regardless of whether one supports or opposes incorporation of a private equity model in health care, the untenable misalignment of the competing values of profit and patient care invariably creates ethical dilemmas that impact clinical practice.

Private equity investments in health care raise several important questions related to clinical practice, including whether it is ethical to sell a medical practice to a private equity firm, whether physician employment in a private equity-owned medical practice can be in alignment with medical ethics, and what options physicians have if their hospital or practice has been acquired by a private equity firm and they believe it has negatively impacted patient care.

##### The *AMA Code of Medical Ethics* on Private Equity

When faced with conflicts of interest between financial incentives and the delivery of care, such as those raised when private equity invests in health care entities, the American Medical Association (AMA) *Code of Medical Ethics* calls on physicians to prioritize patient welfare. Specifically, the *AMA Code* states that the "primary objective of the medical profession is to render service to humanity; reward or financial gain is a

subordinate consideration” and “where the economic interests of the hospital, health care organization, or other entity are in conflict with patient welfare, patient welfare takes priority.”<sup>7</sup> Additionally, the AMA Code specifies that “under no circumstances may physicians place their own financial interests above the welfare of their patients.”<sup>7</sup> Given that the primary objective of a private equity firm is profit, physicians considering either **selling their practice** to a private equity firm or contracting with a private equity-owned hospital for employment should carefully reflect on their professional and ethical obligation to prioritize patient care and well-being and whether entering into a partnership or employment agreement with a private equity firm might jeopardize these commitments.<sup>8</sup>

### **Applying the AMA Code of Medical Ethics**

*Private equity-owned practices’ obligations to uphold medical ethics.* Morally, all entities with direct involvement in the provision of health care have an obligation to uphold the ethics of the medical profession. However, as outside investors, private equity firms are bound to uphold medical ethics standards only with respect to the law and the contractual obligations of the physicians they are in partnership with or employ. Therefore, the onus to ensure compliance with medical ethics standards is placed on the medical administrators and physicians who partner with or are employed by private equity-backed practices. Given the inherent ethical conflict in the private equity model between maximizing profit and ensuring the well-being of patients, physicians who partner with or are employed by a private equity-backed practice must ensure that they enter into agreements that allow them to uphold the ethical standards of the medical profession, including prioritizing the well-being of patients over profit.

*The ethics of selling a medical practice to a private equity firm.* While the private equity model is not in and of itself inherently unethical, applying this business structure to health care presents potential conflicts of interest arising from the business obligation to increase profit and medical ethical principles, which prohibit physicians from placing profit above patient welfare. While the incursion of private equity into health care does warrant concern, it is possible for private equity firms to align their financial interests with patient care, such as by shifting health care payment and delivery to value-based models. However, due to the possibility or even likelihood that private equity investment in health care entities will lead to a misalignment of values, physicians considering selling their practices to or seeking employment from private equity-owned health care entities should carefully assess whether they can do so while still upholding their professional and ethical obligations. Physicians who decide to enter into partnership with private equity firms should engage in contract negotiations to modify or remove any terms that unduly compromise their ability to uphold their ethical or professional obligations.

*Physician employment by a private equity-owned health care entity.* Because the private equity business model in health care creates the risk of conflicts of interest by prioritizing profit over patient welfare, physicians employed by private equity-backed practices may find themselves in an untenable position of dual loyalty. Their fundamental ethical obligation to promote patient welfare requires physicians to ensure that any employment contract they enter into does not create untenable conflicts of interest. Therefore, physicians should negotiate or remove any contractual terms that unduly compromise their ability to uphold their ethical obligations.<sup>8</sup> However, as acknowledged by the AMA Council on Ethical and Judicial Affairs, “physicians have little

leverage in changing entire payment structures or reimbursement mechanisms when negotiating employment contracts.”<sup>9</sup>

*Physician professionalism and private equity.* Despite physicians’ best intentions to promote and prioritize patient care, the discordance between the private equity business model of maximizing profit and physicians’ foremost ethical obligation to ensure patient well-being inherently creates ethical dilemmas. In the event that a physician in partnership with or employed by a private equity-backed practice fails to uphold the legal or ethical obligations of the profession of medicine, their physician colleagues must report behavior that is not in alignment with ethics guidance to the appropriate governing or oversight body.<sup>10,11</sup> For example, physicians who become aware that a colleague is regularly upcoding should report it to their practice compliance officer or internal compliance department, or, if there is no internal mechanism, they should report it to the relevant regulatory body, such as the Centers for Medicare and Medicaid Services (CMS) Office of Inspector General or the Department of Justice (DOJ), depending on the severity and circumstances. It is imperative that physicians hold one another accountable to ensure the safety of patients and the public’s confidence in the medical profession.<sup>11,12</sup> In the event that a physician in partnership with or employed by a private equity-backed practice feels that administrative decisions driven by private equity’s focus on profit have created systemic problems that negatively impact patient care, the physician has an ethical obligation to report these issues as well. Physicians seeking to address administrative or systemic problems should contact the applicable clinical authorities, including the peer review body, human resources department, or ethics committee of a hospital if employed by one, the local or state medical society, or the state medical license board, as well as the Federal Trade Commission (FTC) or the DOJ in instances of suspected fraud or abuse.

### **Recommendations**

All physicians should oppose the corporate practice of medicine to protect the patient-physician relationship and prevent corporate interference in medical decision-making. Due to the current incursion by private equity firms into the medical profession, the following recommendations are offered to physicians employed by or contracting with private equity-backed practices to uphold the ethical principles of medicine.

- Physicians should be aware of the ethical conflicts associated with private equity involvement in health care,<sup>13</sup> which often prioritizes profit over the medical profession’s core ethical duty to provide quality patient care above all other concerns. Physicians who partner with or are employed by a private equity-backed practice must ensure that they enter into agreements that allow them to uphold the ethical standards of the medical profession.
- Physicians should view partnership agreements and employment contracts with private equity-backed practices in light of their ethical obligations to ensure that the arrangement is transparent and minimizes ethical conflicts of interest, does not compromise physicians’ well-being or their ability to provide quality care, and does not reduce physician autonomy and oversight. Ideally, formal agreements would be entered into with the assistance of legal and ethics counsel.
- When entering into an employment contract with a private equity-backed practice, physicians should be aware of the ways that this business model may jeopardize their professional and ethical obligations. Physicians should negotiate their contracts to ensure that the terms align with ethical and professional obligations.

- Physicians should only enter into contracts that do not require them “to practice beyond their professional capacity and provide contractual avenues for addressing concerns related to good practice, including burnout”<sup>9</sup> or **quality care delivery**.
- Physicians have an ethical duty to report any conduct, practice, or policy they become aware of that violates, or that they strongly suspect of violating, ethical or legal standards or that poses a threat to patient welfare.<sup>12</sup> Physicians should report known or suspected ethics violations to the applicable clinical authorities, including, if relevant, the peer review body of the hospital or the local or state medical society. The state medical licensing board should be notified if there is an immediate threat to patient health or safety.<sup>12</sup> Entities responsible for enforcing fraud and abuse laws, such as the DOJ, the FTC, the Department of Health and Human Services Office of Inspector General, and CMS, as well as offices of state attorneys general, should also be contacted whenever applicable.

## Conclusion

Because private equity business models focus on maximizing profit, they create ethical conflict when applied to health care due to physicians’ duty to **prioritize the well-being of patients** over profit. Private equity investments in health care raise several important ethical questions related to clinical practice, including whether private equity-owned practices are bound by medical ethics, if selling a medical practice to a private equity firm is ethical, and how to respond when a private equity practice is negatively impacting patient care. This article responds to these questions and stresses the importance of physicians’ ethical and professional obligations to prioritize the welfare of their patients over the pursuit of profit.

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