

**Opinions of the
Ethics Committee
on
The Principles of Medical Ethics**

*With Annotations Especially
Applicable to Psychiatry*

2019 Edition



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Foreword

The Ethics Committee of the American Psychiatric Association receives requests for opinions, generally regarding the ethicality of conduct in professional and other settings. Answers to these questions are drafted by “teams” composed of members and/or consultants of the APA Ethics Committee. The answers are then reviewed by the Chairperson of the Committee before being sent to the member from whom the request was received.

The questions and answers that follow in this booklet date back to 1973. Within each section, they are presented in the order of the year of response. Opinions in certain areas has evolved over time due to various factors, such as the increasingly complex medical landscape in which psychiatry is practiced. Some historical answers have been reviewed and revised; when changes are made a revision date has been noted after the original date of the opinion. No actual ethical complaints received by APA regarding identified psychiatrists have been used so that this volume does not comprise a casebook of unethical conduct.

The material is presented as responses to questions related to the seven *Principles of Medical Ethics of the American Medical Association* (section citations are followed by “AMA”). References are made to *The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry* by the American Psychiatric Association (section citations are followed by “APA”) and the American Medical Association’s *Current Opinions with Annotations of the Council on Ethical and Judicial Affairs* (2000–2001), herein referred to as “AMA Council Opinions.”

The published Opinions in this booklet are offered to assist APA’s members and district branches in understanding the *Principles*. Only those questions and answers that address specific issues with heuristic value have been included. Questions of a routine nature or those not clearly related to a *Principle* have been excluded. Of note, these opinions are those of the APA Ethics Committee only. They do not represent official positions of the American Psychiatric Association. In addition to these Opinions, the *APA Commentary on Ethics in Practice* (2015) is offered by APA as a tool to aid in understanding the complexity of psychiatric ethics and how they apply in different situations. That document is freely available on the webpage of the APA Ethics Committee.

The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry (2013 edition) has been officially adopted by the American Psychiatric Association and is binding upon all members.

Principles of Medical Ethics of the American Medical Association

Preamble

The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize responsibility to patients first and foremost, as well as to society, to other health professionals, and to self. The following Principles adopted by the American Medical Association are not laws, but standards of conduct which define the essentials of honorable behavior for the physician.

Section 1

A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.

Section 2

A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.

Section 3

A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.

Section 4

A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law.

Section 5

A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.

Section 6

A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.

Section 7

A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health.

Section 8

A physician shall, while caring for a patient, regard responsibility to the patient as paramount.

Section 9

A physician shall support access to medical care for all people.

A. BOUNDARY AND DUAL RELATIONSHIP ISSUES

A.1

Question: Is it proper for a psychiatrist to advise a patient to make an investment from which the psychiatrist receives a finder's fee?

Answer: Clearly, no. Section 2, Annotation 2 (APA) states:

The psychiatrist should diligently guard against exploiting information furnished by the patient and should not use the unique position of power afforded him/her by the psychotherapeutic situation to influence the patient in any way not directly relevant to the treatment goals.

(Section 2) (1978; Rev. 2017)

A.2

Question: A patient of mine is a social worker. Is it ethical for me to also supervise her therapeutic work while a patient? Or after termination of her therapy?

Answer: To the first question, no; it would constitute a potential exploitation as well as confusion of the therapeutic relationship. To the second, probably not. (Section 2) (1988; Rev. 2017)

A.3

Question: Is it ethical for a psychiatrist to buy property from, or sell property to, a patient or ex-patient?

Answer: Psychiatrists have the responsibility to be mindful and protective of boundaries with both current and former patients. Buying or selling property is not necessarily precluded. There are various factors to be considered, such as potential for exploitation of the patient or ex-patient in these kinds of transactions. (Section 2) (1989; Rev. 2017)

A.4

Question: I am publishing a book about a particular psychiatric disorder in hopes of reducing stigmatization. With proper informed consent (Section 4, Annotation 11, APA), I wish to present some of my patients who have benefited from treatment to the media in a book promotion tour. Their expenses will be covered by the publisher, and I will have no contact with the patients other than the public interview while on the tour. I hope to financially benefit from the publication. Any problems?

Answer: Yes, there are multiple problems with this arrangement. This is a clear deviation from the original treatment plan with which the patients were in agreement. Their consent, while "freely" given, is likely to be heavily influenced by their transference feelings, the need to please you. The "reward" in the form of free travel in your near presence is likely to create serious distortions in the relationship. But, most seriously, the entire project suggests an exploitation of your patients for your personal gain that outweighs the potential benefit of public education. (Section 2) (1989)

A.5

Question: May a psychiatrist hire a current or former patient?

Answer: It is not ethical to switch a doctor–patient relationship to an employer–employee one. For an ex-patient, the issue is exploitation of the former doctor–patient relationship, and, in most cases, such an arrangement would be unethical. (Section 2) (1990)

A.6

Question: This is complicated. I am being sued by a former patient, the relative of a current patient who is unaware of the suit. Can I use information about the former patient provided by the current patient that would support my defense? Can my lawyer depose the current patient?

Answer: No, to both questions. The solution of your legal problem is not germane to your treatment responsibilities to your current patient. (Section 4) (1991)

A.7

Question: Can I ethically solicit the support of my patients to advocate for political or societal issues that affect their health care?

Answer: Implicit in your question is the recognition of the conflict between Section 2, Annotation 2 (APA), concerning protection of the unique relationship psychiatrists have with their patients from influence outside of the treatment goals, and Section 7 (APA), dealing with our responsibility to strive to improve our communities by interpreting social forces that affect mental illness treatment. It is laudable for physicians to lobby for important political and social causes, especially for those affecting the health care of our patients. However, when we seek to engage our patients in these efforts, we must exercise utmost sensitivity to the susceptibility of patients to our influence, and their desire for privacy. Conversations about political matters may be appropriate in the clinical setting with patients and their families, but vigilance must be exercised to avoid abusing the doctor–patient relationship. Blanket solicitations of support, waiting-room materials, or generalized mailings about social or political issues are usually insensitive to the unique circumstances of each patient. Optional referrals to lobbying or advocacy groups (such as NAMI) might be an effective means to avoid potential inappropriate use of the doctor–patient relationship and allow for the strengthening of the patient’s freedom to choose how best to act. Finally, it is important for the ethical psychiatrist to ensure that his or her own personal needs or biases are not influencing the request made of the patient. Indeed, our own passions about a particular cause are best directed through our own advocacy work, rather than enlisting a patient’s assistance. See *Opinion 9.012, AMA Council Opinions, 2000–2001*. (Section 2) (2000)

A.8

Question: I am a divorced child psychiatrist. A couple consulted me as to how to inform and support their children as they had decided to divorce. I successfully counseled them for a handful of sessions. Afterward, the then ex-wife reconsulted me for assistance in improving her relationship with one child in particular that had been polarized by the divorce. I saw her in this context for an additional series of sessions.

Months later, I learned that this former patient was interested in a personal relationship with me. She had been in long-term individual psychotherapy with another professional throughout my treatment of her. I consulted a colleague, and he said the usual prohibitions about dating a former patient would not necessarily apply given I never treated her as an individual. What is ethically appropriate in this situation? Can I date this woman now?

Answer: It would not be ethical for you to have a social relationship with this former patient. You have treated her and her family members. She has placed trust in you and disclosed matters of a highly personal nature. She may also have developed a positive transference toward you, which makes the relationship vulnerable to a psychological power differential. Establishing a dating relationship with her could be exploitative of this therapeutic relationship. A therapeutic relational dynamic persists even after therapy ends, holding open the possibility of return treatment, if necessary. See *Commentary* Topic 3.2.6. (Section 1) (2001; Rev. 2017)

A.9

Question: Is it ethical for a psychiatrist to have a platonic friendship with a sibling or a parent of a former patient?

Answer: The Ethics Committee advises caution regarding the establishment of a platonic friendship between a former patient and a psychiatrist. Both the APA and the AMA hold that significant third parties (e.g., relatives and caretakers) are afforded the same considerations as are patients. Thus the psychiatrist also must guard against boundary violations, third party exploitation, and breaches of patient confidentiality in interactions with third parties. For example, the psychiatrist may seek such a friendship based on information that was acquired in the context of a doctor-patient relationship. Would this ensuing friendship in any way exploit the third party? Another potential pitfall relates to confidentiality as a cornerstone of treatment. Could such a friendship exist without threatening patient confidentiality? In sum, it cannot be determined a priori that a social relationship of this type would be ethical or not. In most cases establishing a friendship of this sort would be ill-advised given these concerns. (Section 2) (2002)

A.10

Question: Is it ethical for a staff member in a psychiatric treatment facility to continue treating a patient that the staff member has brought criminal charges against? Similarly, is it ethical for a staff member to continue treating a patient when the staff member is or will be aiding in the criminal investigation and/or prosecution of that patient?

Answer: Either of these dual role situations would be fatal to the establishment or continuation of a mental health professional-patient relationship. The treatment relationship factors necessary

-- like trust, beneficence, empathy, and confidentiality -- cannot genuinely exist in these two examples. It would be necessary to assign other staff members to work therapeutically with this patient preferably assigning the patient to a separate unit with no contact with the staff member pressing criminal charges. While the need for a legal response to some patients' acts is at times necessary, the facility still has an ethical duty to provide reasonable and appropriate care for the patient. (Section 1) (2006)

A.11

Question: A clinic is partially supported by philanthropic donations. The psychiatrists would like to show videotaped testimonials of clinic patients to board members of their non-profit arm. Can psychiatrists approach specific patients to appear in this videotape, whether it is presented as a request or an opportunity? What about more widespread marketing of the clinic with such testimonials (using actual names and/or photographs)? Would it make any difference if someone other than the treating psychiatrist solicited the patient for this purpose?

Answer: The vignette presents a scenario that evokes problems of confidentiality, respect for a patient's autonomy, potential exploitation, and conflict of interest. Section 2.2 suggests that a treating psychiatrist should not ask a patient to participate in being videotaped if that activity is not related to treatment. The use of names

and photographs of patients in marketing has the potential for exploitation and therefore requires careful attention. Institutions that want to solicit donations from patients should first create a clear policy about how to separate the fundraising activity from the clinical work. Clinicians should not be involved in requesting donations from their patients because that inserts the clinician's institution's needs into the patient-provider relationship, violating the fiduciary nature of that relationship. See *Commentary* Topic 3.2.7. (Section 2) (2009; Rev. 2017)

A.12

Question: I just have a question on boundaries and implications with regards to jeopardizing the confidentiality with a current situation. We have a fellow therapist with whom I share clients and she wants to see me as a patient. Also the therapist's case may be discussed (as a patient) in the team meetings we have weekly with other psychiatrists in the group. All other psychiatrists in the group also share patients with her. This is an awkward situation but the therapist wants to see me as a patient. Technically, since she is a postdoctoral student and we are a part of a university we cannot refuse care if the patient wants it. I am looking for APA guidelines in this type of situation.

Answer: The scenario you pose is a dual agency problem. You and the post doc student already have a psychiatrist/co-therapist relationship, it would not be right to add a doctor/patient relationship on top of that. Further, of course, you couldn't discuss her personal treatment in their team meetings with the other psychiatrists, but that would be just the beginning of potential conflicts. You must decline to treat her yourself because a supervisor-student relationship can be inferred within the university setting. What you can, and should do, is to offer to help her find a psychiatrist away from their university setting, someone whose work you respect, and thereby make a genuine effort to get her into the right hands. You shouldn't assume that because she is part of the university you are obliged to take her as a patient. (Section 1) (2010)

A.13

Question: We are a small agency with an adolescent residential treatment program and community mental health outpatient program. We are trying to hire a parent advocate. The only applicant is the father of an adolescent who was in our residential treatment program three years ago. Part of the psychiatric staff has raised the concern that if the agency hired this individual for that job, it would create the same ethical issues as a psychiatrist hiring a former patient in their office, and that the psychiatric staff should oppose the hire.

Answer: The process for peer advocacy is one that is developing across the country. In this particular case, hiring the father of a former patient would not be unethical. However, it raises confidentiality questions, but that concern should be minimized as peer advocates should not have access to any patient records. (Section 2) (2010)

A.14

Question: Can a psychiatrist use the legal services of a patient, who is an attorney, to assist in a difficult dissolution of the psychiatrist's practice from the psychiatrist's current partner?

Answer: No, to do so would be a boundary violation involving dual agency. A doctor cannot have both a doctor-patient relationship and an attorney-client relationship with the same individual. (Section 2) (2010)

A.15

Question: A former patient is requesting strongly that he continue to see me socially now that our therapy is complete, having transferred him to another provider three years ago. We have had one such meeting at a

restaurant to bring “closure” because he said it would be easier for him long-term if he knew I had related to him at least once as something other than a patient. Prior to this, he also researched the location of my new office, traveled there uninvited, and surprised me and my staff by presenting me with a “release” that he had drafted with a lawyer promising to forfeit his right to sue me for malpractice. He previously suffered much emotional turmoil after terminating with his previous psychiatrist. This termination included him filing a Board of Medicine complaint against the previous psychiatrist and only reaching some sense of closure through final contact(s) with his previous therapist.

I am concerned that it may not be helpful to my former patient for us to continue any association, despite his ardent belief in the benefit of such an association; nevertheless, he may in fact decompensate at least somewhat without contact with me. Given his past behavior concerning both me and his previous psychiatrist, I am also concerned about his reaction to my enforcement of a policy of no further contact, and sense that if I can point to this policy as an accepted APA policy or procedure for psychiatrists concerning former patients, that might help him to perceive it as less of a personal blow.

Answer: You describe a very complicated patient with challenging clinical management issues. As Section 6 states, “A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.” You terminated treatment with this patient three years earlier and have no ethical obligation to resume treatment or maintain contact with him. Your description of this patient brings up concerns of dependency issues, manipulative behavior, threats to the maintenance of clear boundaries, hostility, and perhaps even impaired reality testing. As his former treating psychiatrist, you appear to have exhausted all clinically reasonable options. Compliance with his demand to transition to a friendship is strongly discouraged. If you are concerned about medico-legal issues, it may be prudent to contact your medical malpractice carrier or personal attorney. Ongoing clinical supervision with a respected colleague for complex clinical situations and/or consultation with the Ethics Committee of your local district branch may prove to be fruitful when dealing with difficult cases such as this one. (Section 6) (2011)

A.16

Question: I am a psychiatrist providing services for seriously mentally ill indigent persons. The doctors have been asked to fill out a Social Security Administration form titled Medical Source Statement of Ability to do Work-Related Activities (mental). My concern is that I am placing myself in an unethical situation of dual agency and that completing this form places me in an evaluative as well as a treating role. Could you advise?

Answer: Psychiatrists commonly find themselves in dual roles. While there is nothing inherently unethical about dual roles, they may lead to outcomes that are not in the patient’s interest.

A treating psychiatrist is often in the most informed position to provide an understanding and psychiatric evaluation of a patient for purposes other than treatment. Thus, there is a potential to serve a significant advocacy function for a patient.

When facing such a dilemma the clinician is well advised to think through, and perhaps discuss with a colleague, the pros and cons of conducting the evaluation. In some cases, doing the evaluation may be an act of beneficence. In certain cases, doing the evaluation would be of no service to the patient and could injure the patient’s interests. Similarly, not doing the evaluation could reflect the physician’s lack of commitment to the patient. But not doing it could also be a reasoned outcome, as the clinician recognized an inability to do the evaluation honestly and objectively. The point is that the decision should be clinically informed and not decided casually. The spirit of the ethics guideline in this context is to protect the patient’s interests. (Section 1) (2011; Rev. 2017)

A.17

Question: Is it ethical for psychiatrists to see members of the same family as individual patients?

Answer: Because of the complexity of factors to be considered, there is not a hard and fast rule; each case should be weighed separately. Seeing multiple members from the same family may blur boundaries of the doctor-patient relationship. Depending on the dynamics in the family, there is the possibility of causing complicated feelings of guilt, resentment, or shame if one family member responds well to treatment but the other does not.

Even if a psychiatrist avoids the accidental disclosure of information heard from one patient to another patient from the same family, a patient may have doubts about the confidentiality of their treatment if they know the psychiatrist sees a relative. These doubts may interfere with the doctor-patient relationship and could lead a patient to withhold important information.

On the other hand, there may be a number of considerations that mitigate the above concerns. For example, psychiatrists practicing in rural areas, those treating underserved populations, and those with specialized expertise required by more than one member of the same family may reasonably treat members of the same family. In these instances, the psychiatrist should explicitly discuss concerns about boundaries and confidentiality at the beginning of treatment, and should remain vigilant about all of the potential ethical complications throughout the treatments. (Section 1) (2013; Rev. 2017)

A.18

Question: Is it ethical for a psychiatrist to serve on the same non-profit board with his patient?

Answer: The Ethics Committee recognizes that certain interactions between doctors and patients in a social context are not necessarily harmful to the therapeutic relationship. Because of the diverse array of treatments and treatment settings, it is impossible to create unambiguous rules of conduct for all areas of clinical practice. However, psychiatrists must maintain awareness that their behavior should be directed toward the patient's therapeutic benefit, and behavior that is likely to conflict with that goal should be avoided. The burden is on the psychiatrist to be respectful, reticent and cautious about any verbal exchange that may compromise confidentiality. (Section 2) (2016)

A.19

Question: Dr. X practices in Sacramento with his wife, who is also a psychiatrist but not an APA member. Their incorporated practice is in an office building, which they own. They wish to sell the building and have been working with a real estate agent. The agent informed them that a potential buyer is interested and it turns out the buyer is the father of Dr. X's wife's current adult patient. Dr. X and his wife have not yet had direct contact with the patient or his father regarding this matter. How should they proceed?

Answer: The APA Ethics Committee had issued an opinion addressing property sales between psychiatrists and their current or former patients. It states, "Psychiatrists have responsibility to be mindful of boundaries with both current or former patients. Buying or selling property is not necessarily precluded. For instance, in small town where patient is the only real estate developer, it might be fine." Although the potential buyer in your situation is your wife's patient's father, the opinion is still applicable. It allows you to proceed, with thought and care. For instance, it might be wise to let your real estate agent and lawyer of handle interactions with the buyer and his agents and lawyers. (Section 2) (2016)

A.20

Question: Is it ethical to perform an internet search on your patient?

Answer: Performing targeted internet searches on a patient is not, in and of itself, unethical. First and foremost, such searching of a patient should only be done in the interests of promoting patient care and well-being and never to satisfy the curiosity or other needs of the psychiatrist. Also important to consider is how such information will influence treatment, and how the clinician will ultimately use this information. The psychiatrist should ask him or herself these questions before resorting to targeted internet searches.

Transparency in treatment relationships is an ethical virtue. Therefore, psychiatrists should make clear to the patient when information is obtained about them from the internet, and the specific source of that information. This also gives the patient an opportunity to potentially refute information obtained in this fashion. (Section 1) (2017)

A.21

Question: Dr. X is the attending psychiatrist at an adolescent residential community treatment facility. There is a 16-year-old transgender male patient (originally female) at the facility. Patient has two living family members—a grandmother and a great aunt—who both refuse to allow him to return home and live with them unless he reverts to identifying as female. Dr. X and his wife are interested in either fostering or adopting the patient and have not yet spoken to him nor his family about the idea. What ethical implications should they consider?

Answer:

You have asked for an answer to the one question that you put to the Committee, namely, is it inherently unethical for you (and your wife) to seek the placement of your teenage child patient in your home with you as foster or adoptive parents. The answer to your question is that yes, it is inherently unethical. Let us go on to explain further why that is so.

The ethical principle that applies is one of dual agency, that is, the tension that arises whenever physicians seek to involve themselves in the solution to a problem without seeing how they have also inserted themselves into the treatment plan. Ethically you cannot have a doctor/patient (or even a former patient) relationship and a parent/child relationship with the same individual. Section 1, Paragraph 1 of the *Principles of Medical Ethics Applicable to Psychiatry* states that “a psychiatrist shall not gratify his or her own needs by exploiting the patient. The psychiatrist should be ever vigilant about the impact that his or her conduct has upon the boundaries of the doctor/patient relationship, and thus upon the well-being of the patient.”

While the Committee has no doubt that your intention is well-meaning, and that you are acting out of beneficence, nevertheless there is no way to establish that your action is not also in some way an exploitation of your patient. You also add that you would not expect the Committee to make a determination of what is in the best interest of the child, and we will not. We will say, however, that nothing precludes you and the treatment team from doing everything else to assist your patient, other than your personally adopting him. This would include continued efforts at family therapy, still an appeal to local social service agencies despite your reticence, or perhaps even involvement of your state’s appropriate legal resource. (Section 1) (2018)

B. BUSINESS PRACTICES AND ANCILLARY PROFESSIONAL ACTIVITIES

B.1

Question: Is it ethical to market and offer a telephone referral and assessment service for adults who may be suffering from a mental disorder?

Answer: Yes, with the following cautions and provisos: (1) The use of such services calls into question the effectiveness of such modalities as a substitute for the clinical interview in a face-to-face setting. Research is incomplete in this area, and the ethical physician is obligated to support such interventions-by-telephone with clear scientific evidence of its clinical efficacy and limitations. (2) The confidentiality requirement must be met and the patient must be clearly informed of the efficacy and limitations of such telephone referral and assessment. (3) In addition, the billing for such services must be carefully approached to maintain the clearest contractual understanding with the patient. (Section 1; See also Section 2, Annotation 6, APA.) (1993)

B.2

Question: My patient has been asked to repay overpayment of VA funds which has led directly to the patient's vague threats of suicide. The VA agency is asking me if it is ok to proceed with asking for repayment. What is my ethical/legal responsibility?

Answer: The first issue is one of confidentiality. The VA cannot receive any information regarding your patient without the direct consent of the patient. In this instance, the patient would need to be informed about why the VA was requesting information, i.e., in order to have you weigh in on whether or not the patient could withstand a request for the return of funds.

The second issue is one of dual relationships. In this instance, your most important role is that of a treating psychiatrist to your patient. However, it appears that the VA wishes for you to offer a consultation regarding an administrative decision, while you are simultaneously providing clinical care. It would seem in the patient's best interest that the administrative request be satisfied through an independent assessment, made by an independent clinician, and not by you. (Section 4) (2002)

B.3

Question: I have a question about psychiatrists treating patients who are established patients in the care of another psychiatrist, or another healthcare professional. For example, Patient X, who is in treatment with Psychiatrist Y, becomes suicidal, does not inform his/her doctor but instead overdoses and is admitted to the hospital. During that inpatient stay, hospital staff does not communicate with Psychiatrist Y. Moreover, the hospital psychiatrist tells the patient that the patient should stop working with Psychiatrist Y, and instead see a psychiatrist on staff of the hospital. The hospital staff does not encourage the patient to discuss this recommendation with the current doctor, and an appointment is set up with a hospital psychiatrist immediately following the patient's discharge. Has any wrongdoing occurred?

Answer: When a community psychiatrist refers a patient for psychiatric hospitalization, even when the outpatient psychiatrist does not initiate the patient's admission, it is customary and good practice for the outpatient psychiatrist to be informed of the patient's hospitalization by the inpatient team. Such notification respects interprofessional relationships and often yields useful clinical information for inpatient treatment planning.

It is also customary that the patient is redirected to the outpatient psychiatrist for follow up care after discharge. It should be noted, however, that the preference of the patient is relevant. A patient who has been admitted under the care of an inpatient psychiatrist may choose not to consent to the release of medical information to his/her outpatient psychiatrist, and also may choose not to return to this psychiatrist's care. When making such a choice, the patient is entitled to confidentiality. (Section 2) (2005; Rev. 2017)

B.4

Question: I am the treasurer of my district branch and am trying to think of some ways to increase our revenue. My idea is to sell a monthly advertising program to research groups. The DB staff would send out information describing clinical studies for which participants are needed and psychiatrists would put the brochures in their waiting rooms. If patients are interested, they can contact the research company directly. The psychiatrist would merely provide a venue for advertising in his or her office. Do you see any ethical issues with this plan?

Answer: We commend you in asking for an opinion prior to embarking on this enterprise. For a psychiatrist to place material in the waiting room advertising the needs of a research group, even though it would seem to be an entirely voluntary participation on the part of the patient, may be interpreted as a recommendation to the patient to participate in research, and may imply an endorsement on the part of the psychiatrist. Displaying material in the waiting room which has been placed there to raise money for the DB (an issue of self-interest) goes against the ethical principle of not influencing the patient in any way not directly relevant to the treatment goals, and your DB would be ill-advised to undertake such a scheme. (Section 1) (2012)

B.5

Question: I am opening a new practice and want to put on my website my fees and that I will not be accepting insurances. I will print out claims forms for those people who want to submit claims themselves. Is it ethical to list the fees on the website -- in order to be straight-forward and clear?

Answer: Clearly stating one's fee and position regarding insurance assignment is consistent with Section 2, Paragraph 5, which advises the explicit establishment of the provisions of the contractual arrangement between patients and psychiatrist. In addition to posting this information on a website, it should also be a part of the contact with each patient. (Section 2) (2012)

C. CHILD AND ADOLESCENT PSYCHIATRY (Including Child Custody and School Issues)

C.1

Question: A couple I am seeing eventually divorces, and a bitter child custody dispute ensues. What do I do if one spouse asks me to testify and the other asks me not to? What do I do if I am subpoenaed?

Answer: For the first question, you cannot testify without consent from both parties because you are obligated to protect the confidences of both equally. If ordered to testify, you should raise the issue of confidentiality and explain why it would not be in the parties' best interest to testify; however, you may have no choice but to respond to proper legal compulsion. (Section 4) (1986, rev 2017)

C.2

Question: I am leaving a hospital where I am the only child psychiatrist. Is it ethical for me to turn over my child patients to psychiatrists whose competency is not known to me?

Answer: You owe it to your patients that they be transferred to competent replacements. If you believe they are not, to avoid possible abandonment, the hospital should be advised to seek competent replacements. (Section 6) (1990)

C.3

Question: Is it proper for a school to refer children to a psychiatrist who is also the school's paid consultant, especially when there may be an adversarial issue between the school and the family?

Answer: As a general rule, paid consultants to a system should not receive referrals from that system because the potential conflicts of interest are legion. There may be rare exceptions, such as an underserved area with shortage of child psychiatrists. (Section 2) (1991; Rev. 2017)

C.4

Question: Is it ethical for a psychiatrist to treat one of his or her own children with psychotropic medication?

Answer: Section 6, Annotation 1 (APA) covers such situations. It states that "preservation of optimal conditions for development of a sound working relationship between a doctor and his/her patient should take precedence over all other considerations." Treating one's own child does not preserve the optimal conditions for a sound working relationship, and some states prohibit prescribing for one's family members. Exceptions would have to be compelling to overrule the general rule. (Section 6) (1993, Rev. 2017)

C.5

Question: In a child custody case, a report was submitted to the court based solely on review of the hospital records of a child, and an interview with the ex-husband, regarding the mother's mental status and continuing custody. I am wondering if it was appropriate to render an opinion without having examined the child or the mother.

Answer No; the standard of practice in doing child custody evaluations is for all parties to be examined. In situations where all parties cannot be examined after reasonable efforts are made, a psychiatrist may render an

opinion, but must clearly identify limitations in the sources of information, and should refrain from making an opinion if the available sources of information are inadequate to form an opinion. (Section 1) (2003; Rev. 2017)

C.6

Question: A member called about a 12-year-old patient who said things like “I wish I were dead,” “If I never woke up again, that would be fine,” and “I wish I were not here.” The child denies having a plan to kill herself or the intent to do it. The member is wondering what the ethical balance is regarding whether to tell the parents. He is consulting his malpractice carrier on the legal part.

Answer: I am a child psychiatrist and am not aware that children of age 12-13 can be treated without parental/guardian consent. Statements alluding to self-harm as those described must always be taken seriously, and parents should be informed and involved in the treatment accordingly. This question appears to be one of clinical judgement rather than ethics. (Section 4) (2017)

C.7

Question:

Question: First scenario: teenage patient reveals drug usage to the psychiatrist and tells psychiatrist not to tell his mother. Mother is also a patient of the psychiatrist. The father who is not a patient, does know about the drug use and while the parents are separated they are both guardians. What is the ethical thing for the psychiatrist to do? And second scenario: Patient under the age of 18 reveals drug usage to psychiatrist and does not want parents to know. Can psychiatrist tell patient that he can only treat him if there is transparency on this issue between patient and parents so they can help? Or, is psychiatrist required to keep the information confidential if the patient requests

Answer: The ethical response to both situations is analogous regardless of whether certain family members are also patients of the psychiatrist or the status of the parents’ marriage. The psychiatrist must first assess whether the patient has the capacity and is sufficiently mature to make such decisions independently despite being a legal minor. If the patient does not, then the psychiatrist needs to seek a surrogate decision maker (likely a parent/guardian). Assuming the patient does have sufficient capacity, then the psychiatrist has an ethical obligation to keep the information provided to him/her private and confidential *unless* in the psychiatrist’s estimation the drug use places the patient or others at risk of harm, in which case he/she has an obligation to disclose the information to protect the patient/others. And the psychiatrist needs to explain this to the patient when he/she makes the request for the information to be kept secret from the parent. (See, e.g., APA Annotations to Sections 4, #7 and #8). Whenever a patient prefaces disclosure with the request that it be held in confidence, it is advisable to clarify at that precise point in treatment that the psychiatrist cannot honor such a request if it involves dangerousness to self or others, or if state law compels the psychiatrist to report to authorities or parents/guardians in the case of the minor. Some states may have specific public health laws that touch upon the issue of minors divulging substance use and under what circumstances the information can be held in confidence for example. (Section 4) (2018)

D. CONFIDENTIALITY AND INFORMED CONSENT

D.1

Question: May I release treatment information to an insurance company about an adolescent patient? The father gave written permission.

Answer: It is ethical for a psychiatrist to release treatment information to an insurance company about an adolescent patient. Psychiatrists, in doing so, should provide the minimum necessary information required to justify the claim to the insurance company. When treating adolescents, psychiatrists should assume that the policy holder/ parent will have access to diagnostic information shared with the insurer and, therefore, at the onset of treatment should inform the adolescent patient of his or her practices regarding the limits on confidentiality of the treatment relationship. (Section 4) (1977; Rev. 2016)

D.2

Question: When preparing a training videotape on psychotherapy, must the identity of persons other than the patient who may have private matters revealed be protected?

Answer: Section 4, Annotation 3 (APA) applies to anyone about whom private matters may be revealed. For example, in the taped psychotherapy session, a family member of the patient may be discussed. Information about third parties should not be revealed. (Section 4) (1980; Rev. 2017)

D.3

Question: Does a psychiatrist have to inform a patient that the therapy session is being taped, or may the psychiatrist surreptitiously tape a session without the patient's knowledge and/or consent?

Answer: The psychiatrist, ethically, should inform the patient and allow the patient to refuse to have the session taped. Reference is made to Section 2 (AMA) which states, in part, "a physician shall deal honestly with patients and colleagues..." In addition, it may be illegal in some states to tape a session without the patient's knowledge and/or consent. One additional point is that the psychiatrist should give very careful consideration to how the tapes are stored and protected. (Section 2) (1981, Rev. 2017)

D.4

Question: Can I give confidential information about a recently deceased mother to her grieving daughter?

Answer: No, unless she is a legally authorized representative. Ethically, the mother's confidences survive her death, but this is not a bar to being compassionate and caring, consistent with the values of the profession, without releasing information. (Section 4) (1983; Rev. 2017)

D.5

Question: As a condition of referring patients to our hospital, Employee Assistance Program (EAP) staff requires we keep them informed about treatment progress and even sit in on treatment planning conferences. Is it ethical to agree to such a condition?

Answer: EAPs are very much a part of the current referral process and it is acceptable, in fact advisable, to develop working relationships with them. However, patient confidences cannot be compromised. To avoid this, information provided to an EAP, or attendance at a treatment planning conference, requires informed and uncoerced consent from the patient. (Section 4) (1986; Rev. 2017)

D.6

Question: Do I have an ethical responsibility to complete insurance forms for a former patient for services I rendered? For a current patient I am treating?

Answer: Yes to both questions. See *AMA Council Opinion 6.07*, which states:

The attending physician should complete without charge the appropriate "simplified" insurance claim form as a part of service to the patient to enable the patient to receive his or her benefits. A charge for more complex or multiple forms may be made in conformity with local custom. (Section 4) (1987)

D.7

Question: May I use a videotape segment of a therapy session at a workshop for professionals?

Answer: Yes, under the following conditions:

1. The patient gives fully informed, uncoerced consent that is not obtained by an exploitation related to the treatment.
2. The proposed uses and potential audience are known to the patient.
3. No identifying information about the patient or others mentioned will be included.
4. The audience is advised of the editing that makes this less than a complete portrayal of the therapeutic encounter.
5. The patient must also be told that the confidentiality will be permanently altered. (Section 4) (1990; Rev. 2017)

D.8

Question: The abusing father of a former patient who committed suicide is demanding the medical records of his dead son and claims, as the executor of the son's estate, the legal right to these records. I am certain the patient would never have entered treatment if he thought his father would get his records. What do I do?

Answer: Your ethical obligation is to withhold the records in order to honor the wishes of your deceased patient. You should maintain the confidentiality of the records if federal and state privacy laws permit you to withhold the records in this type of circumstance. (Section 4) (1990; Rev. 2017)

D.9

Question: What are the obligations and responsibilities of the executors of the estate of a deceased psychiatrist with respect to the records of former patients? Specifically, should the executor notify all persons about whom there is a medical record?

Answer: Executors of a deceased psychiatrist's estate should ensure that patients are informed about the death and resources to establish continuity of care. (Section 4) (1993; Rev. 2017)

D.10

Question: Is it ethical to send a questionnaire to members of managed care plans and healthcare systems who have received psychiatric and/or substance abuse services as part of quality assurance protocols?

Answer: Yes, with the appropriate assurance to patients that the material will be anonymous and confidential, and if the mailing material (envelope) does not contain information identifying the nature of the services provided to the member-patients. (Section 4) (1993; Rev. 2017)

D.11

Question: What are the ethical considerations of my using videotaped excerpts of actual therapy sessions of my patients for workshops for mental health professionals, or sharing these excerpts through social media?

Answer: Informed consent from the patient, including clear descriptions of where and how the material will be used and whether it is for single use or ongoing, is required to share any excerpts of therapy sessions due to the confidential nature of this information. Psychiatrists should be aware that posting this information on social media raises the stakes considerably. (Section 2) (1993, rev. 2017)

D.12

Question: Is it ethical for a physician to have his or her name listed as a creditor on a debtor's report?

Answer: The ethical issue is the enduring loss of confidentiality for a psychiatric patient versus the physician's right to collect his or her fees. We believe that it is best to decline to be listed as the creditor. Federal law does prohibit the physician's name from appearing on the debtor's credit record in cases of treatment for chemical dependency. See Opinion 6.08, *AMA Council Opinions*, 2000–2001. (Section 4) (1994)

D.13

Question: I work in a small college mental health clinic setting. On occasion we see patients who have had a recent relationship breakup with a partner that we also see or have seen in psychotherapy. Often the patient tells his/her story and forms a treatment relationship with the psychiatrist before the connection to the clinician's other patient is revealed. By revealing the conflict of interest to the new patient and referring him/her to a colleague, we risk breaching the first patient's confidentiality. We have generally proceeded with the new treatment relationship unless:

1. We find we cannot provide reasonably impartial or effective care, or
2. One of the two in therapy reveals that they know the other is/was also in treatment, in which case we are able to more openly address the conflict and make an appropriate referral if indicated.

What are your recommendations?

Answer: Working in a small college setting is like working in a small town, or an underserved area where there are a limited number of mental health clinicians available to serve the population. In such settings, conflicts of this nature are inevitable. The solutions you describe seem reasonable as they acknowledge the need to make decisions on a case by case basis. In some cases, where the treatment is limited to psychopharmacology it may not present a conflict to treat both patients.

As you suggest, sometimes it is impossible to find a plan that will satisfy every ethical value. You are not required to do the impossible. Rather, your responsibility is to weigh the risks and benefits of the various treatment options, keeping the competing values in mind. Then, using clinical judgment, you make whatever reasonable recommendations you can to your patients. (Section 1) (2005)

D.14

Question: The psychiatrist has a patient who is an attorney. This patient has told him that she is a daily marijuana smoker, but has asked him not to note this fact in the medical records. Does this physician have an ethical obligation to record information that is medically/psychiatrically significant even when the patient requests otherwise?

Answer: The ethical tension in this case, and others in which patients request that information not be put in the record, is between obligations of truthfulness and competence on the one hand and beneficence, autonomy, and harm reduction on the other. In this situation, if the psychiatrist documents the substance use, there is a risk that the therapeutic alliance will be damaged and that the patient will not receive treatment. A psychiatrist may address this tension in this case by noting that the patient has requested privacy regarding questions about substance use, while continuing to work with the patient towards treatment goals. The psychiatrist should not place false information in the chart. In the case of clinically relevant information, the information should not be omitted without comment.

That being said, excessive details may not be helpful to patients generally, and specifically in this case. In situations in which not including the information in the record would pose a serious risk of harm or omitting information significant to present condition and current treatment that could compromise the patient's safety or effective treatment, the psychiatrist should inform the patient that he or she cannot continue treatment without documentation due to safety concerns. (Section 2) (2017)

D.15

Question: I found out that someone is forging my name to get controlled medications. Multiple names are being used, but all with the same last name. This last name is the same as a former patient's, who I learned a couple of

years ago had forged at least one prescription using my name in another town. This former patient is at the same address as all the supposed people who are getting the medication with the forged prescriptions. Can I breach confidentiality and use the former patient's name when I report the forgeries?

Answer: You should report a stolen prescription pad but not volunteer speculation about who could have stolen it. (Section 4) (2016)

D.16

Question: Is it ethical to text information to other members of a treating team about a patient? What if de-identified? If so, would age and diagnosis be acceptable?

Answer: The use of public, unsecured wireless networks to transmit information with or about a patient is not permissible. The potential for patient information to be compromised, and therefore, violate patient confidentiality, is simply too great. The Ethics Committee is aware, however, that certain protective advances do exist, but the Ethics Committee lacks the technical knowledge to make assurances about how or when the medium of transmission would be safe. Further, our understanding is that significant concern continues to exist in medicine that current technology does not yet allow for sufficient security with text messaging.

Regarding "de-identification", one must be careful because providing too little information about the patient may actually cause a misidentification of the patient among members of the treatment team. (Section 4) (2017)

E. DUTY TO REPORT AND PROFESSIONAL COMPETENCY ISSUES

E.1

Question: Have I behaved ethically in not disclosing to state authorities that my patient had sexually abused his children? The state requires that all child abuse be reported to the authorities, and I may be subjected to a malpractice suit. In my defense, the abuse as reported by my patient had not been as extreme as reported by the wife. Furthermore, the patient and I had been therapeutically working on the problem, and I anticipated an early resolution.

Answer: All states have statutes mandating health care and mental health providers report suspected child abuse. (Section 4) (1981; Rev. 2017)

E.2

Question A: An ex-patient calls a psychiatrist's wife to inform her that she and the psychiatrist are having an affair. Can the spouse bring an ethics complaint?

Answer: Yes. (Section 2) (1989)

Question B: Do colleagues who are aware of this situation have an obligation to report this alleged behavior?

Answer: Yes. The commentary topic 3.3.4 states that all psychiatrists have an "obligation to recognize and address the unethical behavior of colleagues." The commentary, as opposed to mandating an ethics complaint, instead offers options for addressing the behavior including but not limited to seeking supervision, discussing conduct with the individual, and/or reporting to appropriate authorities, including DB ethics committees. The colleague must do something. (Section 2) (1989; Rev. 2017)

E.3

Question: I recently had an adult married women patient tell me that she is having sexual relations with her male therapist with whom she just started treatment maybe a month ago. She has a background of being sexually abused. She understands that the therapist has committed a serious professional boundary violation and there is a good possibility it is not the first time. She refuses to turn him in or to stop seeing him. I do not know the identity of the therapist and I do not think she ever told me who she would be seeing when I asked her to get therapy a few visits back. I told her that I am duty bound to report this kind of infractions. She was referred because she had sex with a total stranger after they had a few drinks and smoked cannabis. They met on an airliner while she was returning home from a business trip. She felt guilty about the incident since she wants to keep her relationship with her husband intact. I told her that I would probably not be able to continue with her care under these circumstances and scheduled her back for follow-up in two weeks to determine the best course of action.

Answer: The woman is an adult of sound mind (i.e., has capacity, as presumed from her going on business trips). She knows what the therapist is doing is wrong but refuses to stop therapy (and sexual relations) with him. She does not want to report the therapist despite knowing she could. The writer has no way of identifying the therapist. If the woman were incompetent or cognitively impaired, that would stimulate a different understanding/response from me. On another note, how does the writer know the therapist is a psychiatrist? Could be some other professional; for example, I do not know the ethics guiding the practice of Licensed Practical Counselors (LPCs) or Licensed Marriage and Family Therapists (LMFTs.) Regardless, the best the writer can do is discuss with the patient, the inappropriateness of her sexual relations with her therapist and the negative impact

on her treatment, especially given her history of sexual abuse. Her pattern of indiscriminate sexual intercourse was the initial impetus for the writer's referral of the patient for therapy. I do not believe the writer should abandon this vulnerable patient at this critical time; she needs an ethical and trusted professional to help guide her treatment through the complicated state of affairs she is currently engaged in. I do not understand why the writer is making treatment contingent on the patient reporting her therapist, or what the writer is really worried about that is yet unspoken. It would be enough for the therapist to document discussions had with the patient regarding this issue and the professional advice rendered, including a discussion (and the patient's understanding) of the options available to her. To stop treating her at this time on account of this issue would be problematic, in my opinion. (Section 4) (2017)

F. ETHICS PROCEDURES

F.1

Question: A psychiatrist was accused by a former patient of sexual misconduct and she was encouraged by her present psychiatrist to file a lawsuit; the psychiatrist also filed a complaint with the licensing board. The original psychiatrist denies his guilt and wants to be heard by his district branch ethics committee, who did not receive a complaint. Can he request a hearing?

Answer: There is no provision for a potentially accused member to seek a hearing; that action lies with the complainant. Perhaps there should be such a mechanism, though the psychiatrist seeking this hearing could be subject to disciplinary actions; he cannot ask for a hearing with immunity. (Section 2) (1988)

F.2

Question: In the reverse of the usual, a “social relationship” turns into a professional relationship. Is this worthy of an investigation?

Answer: Yes. What is the nature of this “social relationship” and does it continue now that a professional relationship has occurred? Was the psychiatrist treating this person honestly in accepting clinical responsibility under the circumstances? And, what is the nature of the professional relationship? Some advice? Comfort in a crisis? Medications? Formal psychotherapy? Was there a treatment contract including a fee? Who is complaining? Answering these questions through investigation should lead to a decision on whether a possible ethics violation has occurred. (Section 2) (1988)

F.3

Question: Should our ethics committee process a complaint of excessive fees?

Answer: The guiding issue is the nature of the contract between patient and psychiatrist. If the psychiatrist may have billed in excess of the contract, or failed to make the contract explicit, an ethics violation may have occurred and justifies your involvement. (Section 2) (1990)

F.4

Question: Our ethics committee has trouble distinguishing between issues of ethics, law, competency, and impairment. We wonder if we err in reviewing competency issues and fear we will lose APA liability coverage.

Answer: To practice incompetently as a pattern of practice, especially after being so advised by peer review, or to practice in an area of medicine without proper training, is to have behaved unethically. An isolated incident of incompetent care may better be handled by other peer review mechanisms. Your district branch might use a routing mechanism to choose the most appropriate component to receive the complaint. Your ethics committee will be covered by the APA if you follow procedures correctly, since incompetency is clearly an ethical issue. (Section 2) (1990; Rev. 2017)

F.5

Question: I have personal knowledge that a colleague has behaved unethically with one or more patients. The patients are unwilling to bring an ethics complaint. Is it possible for me or any other psychiatrist who has such knowledge to bring an ethics complaint?

Answer: Yes. Indeed, The Principles of Medical Ethics include the admonition that an ethical psychiatrist's obligation is to recognize and address the unethical behavior of colleagues. As mentioned in the answer to question E2c, the psychiatrist must do something. Options for addressing the behavior include but are not limited to seeking supervision, discussing conduct with the individual and/or reporting to appropriate authorities, including DB ethics committees. An ethics complaint clearly is an option and may well be warranted. The purpose behind this admonition is to lessen subsequent unethical behavior. Further, if there is extrinsic evidence such as a report of a malpractice suit that includes unethical behavior, a district branch ethics committee as a whole may bring an ethics complaint. (Section 2) (1993; Rev. 2017)

G. FORENSIC ISSUES

G.1

Question: Is it ethical for an employed psychiatrist to perform an evaluation to determine the competency of a patient to assist his hospital employer in collecting charges made to the patient?

Answer: No. This is clearly a situation involving a conflict of interest. Any such evaluation should be performed by a psychiatrist who has no financial relationship to the hospital. An evaluation intended to be used against the patient by a doctor at the same hospital where the patient was treated too easily would lead to confusion about the role of the doctor by the patient. (Section 4) (1973; Rev. 2017)

G.2

Question: A nearby state institution for “the criminally insane” has been the object of continuing charges of patient mistreatment. Should the ethics committee investigate?

Answer: This is not the kind of issue an ethics committee has the resources to investigate. However, if there are allegations that there are psychiatrists in the institution violating the APA Annotations then those psychiatrists could be investigated regarding such possible violations. (Section 1) (1975; Rev. 2017)

G.3

Question: I am a consultant to a Catholic diocese in the matter of approving or disapproving marriage annulments. I review reports and information gathered about the individuals and give an opinion on whether they are competent to request an annulment. I do not examine them personally. Is this ethical?

Answer: Yes. Consultants to various medical, social, and rehabilitative agencies are presented with data provided by agency personnel and are asked to give an opinion on such issues as rehabilitation potential and competency, or consultants are asked to recommend a treatment regimen. To ask them to perform a personal examination in each case would be impractical and prevent such agencies from benefiting from psychiatric consultation. The psychiatrist must, of course, observe the rules of confidentiality (Section 4, Annotation 4, APA) and of proper relationships with other health professionals (Section 5, Annotations 2, 3, and 4, APA). (Section 7) (1976)

G.4

Question: Can an ethical psychiatrist participate in the legal execution of a prisoner by injecting a lethal dose of a sedative?

Answer: Section 1 (AMA) says: A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity.

Section 1, Annotation 4 (APA) states: A psychiatrist should not be a participant in a legally authorized execution.

One could argue that death by injection of a sedative is more compassionate and more dignified than some other methods of execution. Nevertheless, the overriding meaning of this Principle is that the physician–psychiatrist is a healer, not a killer, no matter how well purposed the killing may be. See Opinion 2.06, *AMA Council Opinions*, 2000–2001. (Section 1) (1977; Rev. 2017)

G.5

Question: There has been a series of especially gruesome murders in a community. The similarity of the crimes strongly suggests they have been committed by the same individual, who in all likelihood is mentally ill. A forensic psychiatrist has drawn up a speculative psychological profile. Is it proper for the psychiatrist to make this profile public? If a local psychiatrist believes the profile may be that of a patient, should the psychiatrist report this to the police?

Answer: Since this profile is speculative and not representative of anyone known by the forensic psychiatrist, it is ethical to assist the police by providing them advice about the identification of the killer. If a psychiatrist believes the profile is that of one of his patients, the psychiatrist has the following options: (a) if it appears the problem is now history and future attacks will not occur, the psychiatrist should assist the patient with the assistance of the patient's lawyer in a decision to go to the police; (b) if there is reason to believe the attacks may continue, if the future violence does not seem imminent the psychiatrist should strongly urge the patient, perhaps with the assistance of the patient's lawyer, to go to the police; (c) if the patient refuses, or if in the psychiatrist's opinion the danger is too strong to delay, it is ethical for the psychiatrist to notify the police and any potential identifiable victims as well. Section 4, annotation 8 (APA) states: "This is a permissive statement. In some jurisdictions, there is an obligation to report in some of the circumstances described above or risk legal liability." (Section 4) (1977; Rev. 2017)

G.6

Question: I am asked to render an opinion for insurance purposes to determine if a suicide was a result of illness. Is it ethical for me to offer a diagnosis based on a review of records and without having had an opportunity to examine the patient?

Answer: Yes. The psychiatrist's report should explicitly identify that the methods did not include an in-person evaluation and are based solely on record review. (Section 4) (1983; Rev. 2017)

G.7

Question: A psychiatrist testifies for the state in a criminal case about the competency of the defendant. The psychiatrist based the testimony on medical records and did not examine the defendant nor have the defendant's approval to render an opinion. Was this ethical?

Answer: It depends. In criminal cases, a personal examination generally is necessary. However, if reasonable efforts to perform a personal examination of the criminal defendant are made, a personal examination is not performed, an opinion may be given if the limitations of the exam are stated and the ensuing weakness of the conclusion is acknowledged. In regard to the defendant's approval, in general, a defendant's consent should be obtained prior to an evaluation. In instances where that is not legally required such as when the assessment is court ordered, that issue should be worked out between the psychiatrist, the attorneys and the court. (Section 7) (1983; Rev. 2017)

G.8

Question: In my role as a forensic examiner of sexual offenders for a state agency, it is clear there is an expected opinion from me. What is my ethical responsibility?

Answer: Your responsibility is to give the opinion to which your professional judgment leads you. Submitting to pressure to alter your opinion would be unethical. Section 2 (AMA) states: “A physician shall deal honestly with patients and colleagues.” The *American Academy of Psychiatry and Law Ethics Guidelines for the Practice of Forensic Psychiatry* (Adopted May, 2005) is a source of guidance for defining the role of forensic evaluators when in the role of offering expert opinions: “It is the responsibility of psychiatrists to minimize [bias and distortion] by acting in an honest manner and striving to reach an objective opinion” (IV. Commentary). As always, the ethical conduct of forensic evaluation by expert examiners also requires that notice of reasonably anticipated limitations to confidentiality should be given to evaluatees. Psychiatrists should indicate for whom they are conducting the examination and what they will do with the information obtained. (Section 2) (1986; Rev. 2019)

G.9

Question: I was treating a member of a prominent family when the patient was murdered along with some other family members. Under court order, I testified in the murder trial and in a civil action. Now a TV company wants to make a documentary of this and have me serve as a consultant. May I do so ethically?

Answer: We don’t think it creates a good image of our profession for you, as the treating doctor of one of the victims, to be the named consultant. If you wish to pursue this, we don’t see an inherently unethical issue, but you must reveal nothing new and provide no new insights other than those you made public in the trials. (Section 4) (1987)

G.10

Question: Is it ethical for me to provide a competency examination before the execution of a felon?

Answer: While it is not ethical to participate in an execution (see Opinion G.4), it is ethical to provide a competency examination. The prisoner must be fully informed of the examination’s purpose and lack of confidentiality, have legal representation, and the opinion must be rendered in keeping with accepted standards. The position of the psychiatrist at this point should not be exaggerated to further his or her own opinion of capital punishment and must be supported by the facts. (Section 1) (1990)

G.11

Question: Is it ethical for a psychiatrist to evaluate a family member who is a plaintiff in a civil litigation suit and then testify on the family member’s behalf concerning the issue of mental damage resulting from the family member’s claimed injury and damage?

Answer: To do the evaluation would be highly questionable from an ethical standpoint. There is too great a likelihood that the psychiatrist’s clinical evaluation will be influenced by the relationship with the family member as well as the likelihood that the patient-relative’s presentation of concerns will be influenced also. Any attempt to serve as an expert witness in a legal proceeding would be vulnerable to challenge. Under these circumstances, providing competent medical service would be too difficult when the patient is also a family member. (Section 1) (1993)

G.12

Question: Do the same ethics principles apply in a diagnostic/consultative relationship (e.g., performing evaluations for an insurance company) as in the physician–patient relationship?

Answer: Yes. Ethical physicians must comply with the code of ethics whenever providing professional services. Even when providing administrative or consultation services, physicians must conduct themselves appropriately. (But in such situations, the confidentiality expected in a therapeutic relationship may not exist.) This lack of confidentiality should be explained to the patient. (See also Sections 2 and 4, APA.) Since performing an evaluation for an insurance company is a forensic psychiatric assessment some additional ethics considerations are applicable. In a forensic psychiatric role answering the legal question truthfully has a greater priority than helping the person evaluated in contrast to a treatment relationship. (Section 1) (1993; Rev. 2017)

G.13

Question: Can a psychiatrist evaluate a prisoner (i.e., patient) for the state and then determine that the prisoner requires involuntary hospitalization?

Answer: Yes. In this determination, the psychiatrist must do a proper psychiatric examination to ensure that the person meets the clinical criteria for involuntary hospitalization. It is important at the outset for the psychiatrist to make clear to the person to be examined the nature, purpose, and lack of confidentiality of the exam. The established criteria for involuntary hospitalization should be cited in the report to the court. (Section 4) (1994; Rev. 2017)

G.14

Question: State-licensed psychiatrists are hired as independent contractors through an independent medical services company to provide all medical and mental health services for a state's prisons. At one facility, the inmates are convicted sex offenders sentenced by the courts to a facility with special treatment capabilities for this population. The treatment is administered using a multidisciplinary team, and offenders are told their treatment records are confidential except for cases of dangerousness issues (e.g., threat of self-harm or harm to others).

Psychiatrists are part of the treatment teams and may or may not have much direct contact with inmates, but at a minimum attend every six-month review meetings where they are privy to the inmates' confidential treatment materials.

Near the end of the inmates' incarcerations, an Inmate Release Committee, composed of lay staff administrators, meets to determine which inmates should be screened for possible involuntary civil commitment as sexually violent predators. If the decision is to have them screened, two or three psychiatrists perform the evaluations. Sometimes these evaluating psychiatrists have been members of the inmates' treatment teams. At times these psychiatrists have allegedly relied upon and revealed confidential treatment material, such as from group therapies, when conducting evaluations and rendering commitment decisions on their own patients.

Is it ethical for a former treating psychiatrist to conduct an evaluation?

Answer: Psychiatrists who are members of a treatment team, even if their contact with inmates is limited, have nevertheless established a physician-patient relationship. Therefore, based on the background information provided, the practice of treating psychiatrists later serving as adversarial evaluators for the state governmental jurisdiction on their patients would constitute a violation of Section 4 of The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry. At the onset of treatment inmates must be informed of the psychiatrist's dual relationship to them and to the prison system, and that their records can later be used to help

determine whether they will be civilly committed as sexually violent predators (SVP). Absent that warning psychiatrists should not engage in SVP evaluations. SVP assessments are especially problematic because while portrayed as a civil procedure the reality often is designed to achieve lengthy confinement with little treatment or likelihood of release. Protections are much more necessary here than in civil commitment in a civil hospital which is primarily designed to help the patient and usually shorter term. (Section 4) (2004; Rev. 2017)

H. INTERACTION WITH OTHER PROFESSIONALS

H.1

Question: Is it ethical to teach counseling principles to the clergy? Is it ethical to give them advice in the management of specific cases?

Answer: It is ethical to teach counseling principles to the clergy. The second question is more complex. Section 5, Annotation 3 (APA) states:

When the psychiatrist assumes a collaborative or supervisory role with another mental health worker, he/she must expend sufficient time to assure that proper care is given. It is contrary to the interests of the patient and to patient care if the psychiatrist allows himself/herself to be used as a figurehead.

Formal supervision of a pastoral counselor would not differ from the supervision of other nonpsychiatrist professionals. It is in informal contacts that problems arise. A cleric might call a psychiatrist for advice or seek a "curbstone opinion." Perhaps a cleric might bring up a specific case during a seminar with a group of other clergies. Ethical psychiatrists should refrain from giving specific patient management advice, assuming there is not an emergency situation, unless they are very much aware of the capabilities of the receiver of the advice and have sufficient information about the patient to make the advice reliable. Psychiatrists are both ethically and legally responsible for the advice they give. (Section 5) (1975)

H.2

Question: Is it ethical for a psychiatrist to be a party to a clinic whose lay advisory board responsibilities include "shall establish or recommend policies regarding the case intake and termination process, duration of treatment, diagnostic groups to be served, scope of services and program evaluation"?

Answer: Section 1, Annotation 3 (APA) states:

It is ethical for a physician to submit his/her work to peer review and to the ultimate authority of the medical staff executive body and the hospital administration and its governing body.

Clearly, a lay board cannot set a policy that requires a psychiatrist to give improper care. However, public-funded clinics are responsible to the public and its representatives, and a public decision can be made that sets general guidelines and limitations for the clinic staff: for example, age groups and diagnostic categories to be served, outpatient or day care or inpatient services, nondiscriminatory policies, and so forth. The clinic cannot do everything for everybody because of finite funding; it is the governing body's responsibility to set the limits with professional advice provided by the clinic staff. (Section 6) (1977)

H.3

Question: Is it ethical for a psychiatrist and a psychologist to form a professional corporation as equal partners?

Answer: Usually there are local laws governing professional corporations that prevent this possibility. Where there are no such laws, such a corporation is permissible. Such a corporate arrangement, if agreed to, should not have features that interfere with the psychiatrist's medical judgment, nor may the psychiatrist delegate to the psychologist any matter that requires medical judgment. This corporation must observe all ethical requirements that an individual physician must meet. The responsibility to see that this occurs falls upon the psychiatrist partner. See Section 5, Annotations 2, 3, and 4 (APA). (Section 5) (1978)

H.4

Question: Is it proper for a psychiatrist to be the “medical director” of a private clinic, the rest of whose staff are nonmedical professionals, when the psychiatrist spends very little time at the clinic?

Answer: It is not ethical for the psychiatrist to lend his or her name to the clinic merely to legitimize it. The psychiatrist must spend sufficient time at the clinic to assure that proper care is given and that nonmedical staff are not assuming responsibilities requiring medical training. See Section 5, Annotations 2, 3, and 4 (APA). (Section 5) (1978)

H.5

Question: Can I market a tape that helps people stop smoking? It will encourage relaxation and instill the idea of being an active nonsmoker rather than quitting smoking and is based on my office experience where I utilize a light hypnotic trance.

Answer: It is ethical to market useful health assistance and information to the public. However, you are subject to the usual ethical constraints to not make exaggerated claims and to provide material that reflects competent medical opinion. (Section 5) (1987)

H.6

Question: A mental health management company wants me to sign a contract with them that says my services would be limited to evaluation and medications (unless otherwise expressly approved), thus serving as a consultant to nonmedical professionals. This doesn't seem proper to me.

Answer: Our Principles and Annotations (Section 5, Annotations 2, 3, and 4, APA) state that you cannot delegate responsibility to those not competent nor serve as a figurehead to cover other practitioners. If you believe this organization demands you do so, don't join. We cannot judge the ethics of the health plan, but we can judge those of any psychiatrists who participate. (Section 5) (1990)

H.7

Question: Our hospital proposes that attending psychiatrists provide medical management and that other hospital-employed professionals provide psychotherapy. We don't have to do this if we think it clinically unwise, but the hospital will preferentially refer patients to those who do. Your opinion, please

Answer: We do not address the ethics of hospitals but those of the psychiatrists practicing there. It is ethical to delegate treatment to other professionals if the psychiatrist is confident they are competent and it will not compromise the patient's welfare. It is not ethical, however, for the psychiatrist to make that decision if financial inducement (patient referrals) takes precedence over the best interests of the patient. Further, a direct quid pro quo referral arrangement would be an unethical payoff. (Section 5) (1990)

H.8

Question: I work in a group practice, and one of our psychologists is being sued by a former patient for their having had a sexual relationship. The psychologist has admitted to it. We fired him, sent a letter to his patients

indicating that he was no longer with the practice, and that we would help arrange for alternative care should they wish to continue treatment with our group. The letter did not indicate that he was fired or why he was no longer without practice.

I share several patients with this psychologist, who is now in solo practice. He sees them for therapy and they see me for medication management. Should I continue to see these ongoing patients, or should I tell them that I am no longer working with this psychologist? If so, how much should I tell them about the reason why I will no longer work with him?

Answer: You could indicate to those patients who continue to see you and the psychologist that (1) you are no longer working with him and (2) you can either refer them to another psychiatrist, or they can ask the psychologist to refer them to another psychiatrist. (Section 2) (2002)

H.9

Question: I work in a group practice and recently learned that a psychologist in the group is giving medication advice to patients, including specific medication directions. I have reported this to the psychologist's supervisor who indicated action will be taken after a review with the department chief. Am I required to report this to the psychology board?

Answer: Reporting this to the supervisor and contacting the Psychology Board to get its input (regarding whether they welcome a report) is wise. The psychologist may have practiced medicine without a license. This is a licensing issue and in some states could rise to a criminal offense. You have been responsibly proactive and have fulfilled an ethical duty to report another professional who may have put a patient in harm's way. (Section 2) (2012)

H.10

Question: I have been in a discussion with a colleague regarding integrated care. He believes that integrated care programs are unethical based on the wording of the Goldwater ruling, as the Psychiatrist is rendering an opinion without seeing the patient directly. I tend to disagree based on a number of factors. I'm not sure whether this has been entertained and would appreciate any comment.

Answer: The Goldwater Rule has no impact in a collaborative care setting for many reasons. The rule addresses public statements based upon publicly available information (e.g. in the media) about a public figure when there is no physician patient relationship. In a collaborative care setting, the psychiatrist is part of the care team with access to the patient's private medical records and history. In most states, there will be a physician/patient relationship between the consulting psychiatrist and the patient who has consented to the psychiatrist being part of the team. In the collaborative care setting, if a psychiatrist were to make public statements about a patient's condition, he or she would be violating basic principles of patient confidentiality and entirely different ethics principles (and state and federal laws) would govern. (Section 5) (2017)

I. MANAGED CARE

I.1

Question: Should I answer telephone inquiries from a UR nurse working for a managed care system asking about my patient's need for treatment and progress?

Answer: If the patient has given his or her consent and you are confident of the identity of the caller, you may do so. However, you should provide only that information relevant to the question and not reveal private information not relevant to the question. The right to confidentiality rests with the patient who has made a decision to relinquish it as a condition of insurance coverage. Under HIPAA, consent is not always required to speak with an insurer or other health care provider; however, from an ethical perspective, it is always best to ask a patient's permission to share information. (Section 4) (1987; Rev. 2018)

I.2

Question: A local PPO does things I feel are unethical. They encourage their members to use PPO psychiatrists, unfairly compete with those of us who didn't join, and use draconian utilization control methods, even interviewing the patients themselves or calling them on the telephone. Do you agree they (the PPO's psychiatrist staff) are unethical?

Answer: Psychiatrists who participate in managed care systems are not inherently unethical if:

1. Patients and prospective patients (or their employers) make an informed decision to participate, which includes knowledge of the following:
 - a. their other options;
 - b. benefit limits;
 - c. the pre-authorization and current authorization process;
 - d. their right to appeal a utilization decision;
 - e. the limits as to whom they can see without having to make a greater financial investment; and
 - f. the potential invasion of their privacy by the review process.
2. No exaggerated claims of excellence are made.
3. Care provided is competent and meets patient needs within the contracted benefit limits.
4. The utilization review process is not unduly invasive of the doctor-patient relationship.
5. Reviewers are not financially rewarded for denying care.

Failure to meet these requirements may justify an ethics complaint against a psychiatrist involved. (Section 6) (1990)

I.3

Question: I don't participate in an insurance plan. My patient has requested reimbursement from an insurance company and the insurance company has demanded the patient charts for an audit. May I provide the records to the insurance company? Can you charge the patient?

Answer: For the physician to provide these charts, it is suggested that consent be obtained from any patient whose chart is to be the subject of such an audit. A general consent, obtained at the time one applies for insurance, may be inadequate. As with court-ordered release of records, attention must be paid to the release of confidential

information about persons other than the patient. This may require that records be redacted for sensitive material by the treating physician. (Section 4) (1998; Rev. 2018)

I.4

Question: Can a psychiatrist who is serving as a managed care or insurance utilization reviewer (who does not have a direct relationship with the patient) ethically limit access to care in ways known to be in violation of parity? Here it is assumed the issue is not medical necessity, but whether the insurance company or manage-care company chooses to cover the benefit in question. (Examples: a reviewer refuses to authorize residential treatment because it is not a covered benefit--and a court has hypothetically determined that it is inconsistent with the parity law to exclude residential benefits, or a reviewer refuses to support treatment for a personality disorder, despite these being major disorders that carry a significant risk of suicide, complicate the treatment of other comorbid disorders, have a practice guideline, and several recognized evidence based treatments. Please note these examples are offered for clarity, but are not the only instances about which I am inquiring.)

Answer: In our opinion, the questions posed can be distilled into one; does the psychiatrist working as a managed care or utilization reviewer owe primary obligation to the patient or to the plan? To be clear, in this situation, the psychiatrist is a non-treating psychiatrist. The Opinions of the APA ethics code are best interpreted as meaning that for a treating psychiatrist in a managed care setting, patient welfare is primary. Similarly, for forensic psychiatrists in most contexts, patient care is not primary, and their primary duties instead are to promote justice and answer questions honestly.

A managed care or utilization reviewer is not a treating psychiatrist. Managed care is designed to cut costs, reduce premiums, and possibly increase profits. The reviewer is hired by the company to assess whether the care meets the criteria the plan has established. The reviewer cannot authorize benefits that are not covered by the plan. The patient who purchased the insurance should have been supplied the coverage by the plan. In our opinion, the psychiatrist managed care or utilization reviewer owes his primary obligation to the managed care company and a secondary one to the patient. In this context, it is a reasonable expectation that the reviewer will stay within the guidelines established by the company.

With regard to violations of parity laws as described in your question, it is not the ethics responsibility of the reviewing psychiatrist to determine whether the plan is meeting parity law requirements. Presumably, that would be outside his employment and obligations. If the plan is not following parity requirements, then others, including the patient or the treating psychiatrist, may take some action against the plan. The primary duty of the reviewing psychiatrist in this situation is to evaluate whether the requested treatment is warranted and covered by the plan. It would be unethical for the psychiatrist to deny care that was in fact covered by the plan. Nevertheless, some may wish to argue that the reviewer may be seen as obligated to advocate for change in the managed care plan. That is a laudable goal, but not one that can be mandated for those psychiatrists who are reticent about engaging in political advocacy. (Section 1) (2015)

J. MILITARY AND OTHER GOVERNMENT AGENCIES

J.1

Question: As a military psychiatrist, I have a responsibility to examine personnel who have used drugs, to determine if it is medically safe to proceed with the administrative process of rehabilitation and separation. Some of these people are one-time users, do not need rehabilitation, nor deserve separation. I object to such participation and believe it is unethical. Am I correct?

Answer: We do not believe you are correct, although we recognize your dilemma. This dilemma is similar to those encountered by psychiatrists working under any system of care and is a conflict of duty and obligation. The service regulations are the law under which you as a military officer serve. You may advise as to your belief that the law is incorrect. However, your opinion that it is medically safe to proceed with requirements of regulations does not place you in an unethical position. (Section 3) (1985; Rev. 2018)

J.2

Question: In an INS investigation, is it ethical for a psychiatrist to certify that an immigrant has revealed his or her homosexuality to the psychiatrist when that is the sole purpose of the “examination” and certification? This will result in exclusion of the person from the United States.

Answer: Section 1, Annotation 2 (APA) states: A psychiatrist should not be a party to any type of policy that excludes, segregates, or demeans the dignity of any patient because of ethnic origin, race, sex, creed, age, socioeconomic status, or sexual orientation.

If the psychiatrist’s only role is an administrative one that requires a physician’s signature confirming a statement of homosexuality, the action is unethical. The psychiatrist would be a party to a policy that excludes because of sexual orientation. (Section 1) (1986)

J.3

Question: A patient gave a signed release for me to respond to a government intelligence agency in the process of seeking a security upgrade. I refused as I believed this was an improper invasion of the treatment, and I do not believe the patient is a security risk. Was my action ethical?

Answer: If the patient knowingly and without coercion gave his or her consent, the privilege of maintaining or not maintaining his or her confidences is the patient’s, not yours. There may be coercion here (no release, no security upgrade), but that is the patient’s choice since presumably the upgrade is to his or her advantage. Your last point raises another issue: are you, or psychiatrists in general, knowledgeable and skilled in determining security risks? Clearly, any deception on your part, or the offering of an incompetent opinion, could be a violation of Section 2 (AMA). (Section 4) (1986)

J.4

Question: Member has a number of patients who work (or may work) for the federal government. The patients give authorization for Member to be contacted and he is sometimes asked to complete security clearance forms regarding those patients which ask him, for example, if the patient is capable of handling high security matters. He doesn’t feel comfortable answering such questions. Can he decline to complete the forms?

Answer: Referred to *Resource Document: Psychiatrists' Response to Requests for Psychiatric Information in Federal Personnel Investigations*. (Section 8) (2017)

J.5

Question: [In response to Trump's tweet to ban transgender people from military service] I greatly appreciate the APA statement: <https://www.psychiatry.org/newsroom/news-releases/apa-opposes-banning-transgender-service-members-from-serving-in-military>.

But, I still do not think this addresses military psychiatrists involvement. Specifically, it is not the policy, per se, which I think that is most unethical (though I might personally disagree with Transgender ban as a policy), rather it is the question of how medical information is being used to harm, which seems most unethical. As you know, with President Trump's announcement on 26JUL2017 on Twitter, stating "... be advised that the United States government will not accept or allow transgender individuals to serve in any capacity in the U.S. Military," military psychiatrists are in an urgent ethical dilemma. I acknowledge that this is still to be sorted out administratively, but regardless of the source/mechanism, statements from the Commander-in-Chief are perceived as military orders. Service members are trained to expect that orders of the President will be followed. Over the past year, psychiatrists assessed Military Members who identify as transgender, and, when appropriate, diagnosed them with Gender Dysphoria, per DSM5. Now, this same diagnosis and medical information, consistent with the President's statement, is being used to do harm, with potential punitive separation from the military. Additionally, there is significant psychological distress, for many, associated with this shift in policy and associated ostracism. Thus, the psychological impact of the order is immediate, regardless of it being implemented. Unlike other matters related to identity, psychiatrists were necessarily involved, due military instructions to first render DSM5 Diagnosis, Gender Dysphoria.

I seek ethical guidance from APA, since my diagnoses, as a military psychiatrist, are being used for harm rather than to alleviate suffering. Moreover, I ask APA to continue to advocate for protections for these patients, whom I diagnosed as having Gender Dysphoria. This could mean, for example, return to the previous policy, or not permitting any prior Gender Dysphoria records (or treatment thereof) to be used punitively. I also for protections for me, as a military psychiatrist, from complaints of unethical practice, given these policy changes were unforeseen.

Answer: Your dilemma regarding how to ethically manage changes in the military's response to trans service members touches on several elements from the *Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry*. Your previous evaluations of trans patients that resulted in a diagnosis of Gender Dysphoria are in the medical record, but are not a public record. One would expect that military medical records would be held to the same standard of confidentiality as civilian records. Psychiatrists practicing in the military should be aware of exceptions to confidentiality in situations where there is risk of harm to the patient or others. Section 4, article 1 of the *Principles* states,

Psychiatric records, including even the identification of a person as a patient, must be protected with extreme care... Because of the sensitive and private nature of the information with which the psychiatrist deals, he or she must be circumspect in the information that he or she chooses to disclose to others about a patient. The welfare of the patient must be a continuing consideration.

If a patient chooses to disclose their Gender Dysphoria diagnosis to commanders or other authorities in their process of making a gender transition, even if that disclosure subsequently causes harm to the patient because of policy changes in the institution, the psychiatrist has not done anything unethical by having made the diagnosis in good faith.

We have identified three questions implicit in your query.

1. What are my ethical obligations to existing patients?

Your ethical duty to patients for whom the diagnosis has already been made and documented in the medical record includes continued vigilance about confidentiality. Section 4, article 2 asserts:

A psychiatrist may release confidential information only with the authorization of the patient or under proper legal compulsion. The continuing duty of the psychiatrist to protect the patient includes fully apprising him/her of the connotations of waiving the privilege of privacy. This may become an issue when the patient is being investigated by a government agency, is applying for a position, or is involved in legal action. The same principles apply to the release of information concerning treatment to medical departments of government agencies, business organizations, labor unions, and insurance companies.

If the military seeks information from the psychiatrist about patients who may have been given a Gender Dysphoria diagnosis, the psychiatrist should only release that information after obtaining proper authorization from the patient, which should include an informed consent discussion about the potential consequences of release of the information. If the military is seeking information from the psychiatrist about patients who may have been given a Gender Dysphoria diagnosis and the patient is unwilling to sign a release, then the psychiatrist should only release information as allowed as per HIPAA and DoDI 6490.08. The psychiatrist may discuss the request with their assigned Medicolegal Consultant prior to making such a release to ensure that only the minimum amount of information necessary, if any, is released. If the military has concerns regarding a trans Service Member that may impact the member's fitness for duty, the psychiatrist should adhere to guidance in DoDI 6490.04. Hormonal therapy is a possible prohibition for deployment, so if an individual wants to deploy they may wish to review with their provider the implications of beginning this therapy.

2. What are my ethical obligations to patients still in the military who are concerned about the impact this will have on them?

Any distress experienced by trans patients because of a change in policy that threatens their employment or service status should be treated with compassion in accordance with usual standards of care. The ethical obligation of the psychiatrist is to remain supportive of the patient.

3. What are my ethical obligations to new patients who are transgender with respect to diagnosing them in their record?

If a new patient comes to the psychiatrist and introduces the subject of transitioning for the first time, which normally requires a revelation to one's commander and obtaining the support of the commander for the process, a psychiatrist must now weigh the patient's clinical needs and the potential implications for their ongoing service. Going forward, it is ethical to have an informed consent discussion with a new trans patient, to help them consider whether it is in their interest to move forward with the transition at this time while things are uncertain. As with any sensitive topic, documentation in the medical record should be circumspect, including only the information necessary to justify a diagnosis and treatment plan, while still accurately reflecting the clinical encounter.

In addition to these guidelines, the ethical psychiatrist employed by the military may also want to consider Section 1, article 2: *"A psychiatrist should not be a party to any type of policy that excludes, segregates, or demeans the dignity of any patient because of ethnic origin, race, sex, creed, age, socioeconomic status, or sexual orientation."* This principle may need to be considered along with Section 3: *"A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient."* Military psychiatrists may want to consider the extent to which they can advocate for the wellbeing of their patients without threatening their ability to continue to serve their patients. (Section 4) (2018)

K. PAYMENT, FEE AND FEE SPLITTING ISSUES

K.1

Question: A new psychiatrist in town who works for a local clinic needs a part-time office where he can start up his private practice. To help him, I told him he could use my office in the evenings and pay me a small percentage of his billings. Is this ethical?

Answer: The proper arrangements are to negotiate a reasonable charge for the use of space, secretarial coverage, and other expenses. Greater use, or lesser, would require renegotiation of what constitutes reasonable charges. Though the agreed-upon amount might be similar to what would have resulted from a percentage arrangement, the appearance of fee splitting—the office owner benefiting from referring patients to the new psychiatrist—would be avoided. (See Opinions 6.02 and 6.03, *AMA Council Opinions*, 2000–2001.) (Section 2) (1975; 1976; 1978; 1984)

K.2

Question: A psychiatrist brings a colleague into the office. What is a proper means of paying that colleague for his or her services? Would it be any different if the colleague is not a psychiatrist but a nonmedical mental health professional?

Answer: See Section 2, Annotation 7 (APA):

An arrangement in which a psychiatrist provides supervision or administration to other physicians or nonmedical persons for a percentage of their fees or gross income is not acceptable; this would constitute fee splitting. In a team of practitioners, or a multidisciplinary team, it is ethical for the psychiatrist to receive income for administration, research, education, or consultation. This should be based on a mutually agreed-upon and set fee or salary, open to renegotiation when a change in the time demand occurs.

A physician is licensed by the people of a state to provide medical care. He is not licensed to establish an entrepreneurial business when the care of patients is subordinated to profit. His role as “captain of the ship” does not entitle him to profit from the efforts of nonmedical practitioners nor from psychiatrists dependent upon him for an opportunity to enter the community. He may pay a salary to the new colleague commensurate with his professional work. If the arrangement provides for the colleague(s) to collect fees, he may only charge that colleague(s) what is appropriate for services he provides, such as space, secretarial support, supervision, and consultation. To the extent psychiatrists ignore this ethical requirement, they lose the support of public trust. (Section 2) (1976; 1978; 1990)

K.3

Question: Is it ethical for psychiatrists to charge for telephone calls from their patients?

Answer: Psychiatrists can ethically charge for phone calls. Factors for psychiatrists to consider in determining the ethical appropriateness of these charges include whether the charges are reasonable for the services provided, whether they are explicitly established, and whether such charges would create an undue burden for patients seeking appropriate and timely care. (Section 2) (1976; Rev. 2018)

K.4

Question: Quite often I have patients in my psychiatric practice who let large balances accumulate over and above what their health insurance pays. I've heard that some offices ask the patient in continuing treatment to sign a payment schedule agreement when this happens. Is this ethical?

Answer: Yes. This should be established with the patient's consent as part of the contractual agreement. See Section 2, Annotation 5 (APA). It would also be permissible to add a service charge for the actual administrative costs of rebilling. (See Opinion 6.08, *AMA Council Opinions*, 2000–2001.) (Section 2) (1977; 1979)

K.5

Question: Is it ethical for a psychiatrist to bill for services provided by a nonmedical professional?

Answer: Yes, as long as the psychiatrist indicates the role was supervisory and what the discipline of the nonmedical professional was. It would not be ethical, in fact it would probably be fraudulent, to bill for the services of another as if performed by the psychiatrist himself or herself. (Section 5) (1977)

K.6

Question: Is it ethical to charge for missed appointments? To raise fees in the middle of treatment?

Answer: Yes to both questions, but with consideration of the following ethical statements:

Psychiatric services, like all medical services, are dispensed in the context of a contractual arrangement between the patient and the treating physician. The provisions of the contractual arrangement, which are binding on the physician as well as on the patient, should be explicitly established. (Section 2, Annotation 5, APA)

It is ethical for the psychiatrist to make a charge for a missed appointment when this falls within the terms of the specific contractual agreement with the patient. Charging for a missed appointment or for one not canceled 24 hours in advance need not, in itself, be considered unethical if a patient is fully advised that the physician will make such a charge. The practice, however, should be resorted to infrequently and always with the utmost consideration of the patient and his/her circumstances. (Section 2, Annotation 6, APA). Clearly, problems exist only when the psychiatrist fails to establish the financial aspects of the treatment relationship with the patient. (Section 2) (1978)

K.7

Question: I have two psychologists in my group practice. They receive case supervision from me on a regular schedule, and I charge them a specific and agreed-upon fee. Is this ethical?

Answer: It certainly is. Section 2, Annotation 7 (APA) states:

An arrangement in which a psychiatrist provides supervision or administration to other physicians or nonmedical persons for a percentage of their fees or gross income is not acceptable; this would constitute fee splitting. In a team of practitioners, or a multidisciplinary team, it is ethical for the psychiatrist to receive income for administration, research, education, or consultation. This should be based on a mutually agreed-upon and set fee or salary, open to renegotiation when a change in the time demand occurs.

See also Section 5, Annotations 2, 3, and 4 (APA). (Section 2) (1978)

K.8

Question: A patient with limited resources pays a small fee for psychotherapy, unaware her mother pays the remainder. The patient assumes she is being seen for a reduced rate. Is this unethical?

Answer: A physician shall deal honestly with patients. This arrangement violates honesty. Should the patient find out her mother has been subsidizing her treatment behind her back and the psychiatrist is complicit it could affect the treatment. If, on the other hand, the patient is involved in setting the arrangement and the patient agrees, then it would not be unethical. (Section 2) (1984; Rev. 2018)

K.9

Question: It has been brought to our attention by angry ex-patients that a colleague not only charges for missed appointments canceled more than 24 hours in advance but also charges for future appointments after the patient refuses to continue treatment. If these arrangements were in the original treatment contract, are they ethical?

Answer: There are limits to how much a contract can commit a patient since it can be argued that the contract was not drawn between equal parties. When a patient discontinues treatment, charging for appointments made for the future may be a futile exercise and incomprehensible to most patients and medical colleagues. However, more important than a legalistic view of contracts is Section 1 (AMA):

A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity.

There are occasions when issues of fees have to be given secondary importance if aggressive pursuit of payment is experienced by the patient as an assault upon his or her dignity and integrity. The wise and ethical physician recognizes times when it is best to accept the position of the patient. We believe your colleague's behavior is not ethical. (Section 2) (1985)

K.10

Question: Is the following arrangement ethical? I practice forensic psychiatry, and a group of lawyers will provide my name as an expert to prospective clients for a proportion of my fee.

Answer: No. Opinion 6.02, AMA Council Opinions, 2000–2001, states:

Payment by or to a physician solely for the referral of a patient is fee splitting and is unethical.

In our opinion, it is equally unethical if the fee is split with an attorney. (Section 2) (1985)

K.11

Question A: A group of us cover for each other during vacations and sometimes for convenience, such as providing ECT for each other's patients. Is it proper for the attending psychiatrist to bill for colleagues' services and share the payments with them?

Answer: Yes, with three conditions: the billing indicates who provided the services, the patient is advised and agrees to the arrangement, and there is no fee splitting. (Section 2) (1986)

Question B: If the insurance company requires the covering physician to bill separately rather than the attending, is that ethical?

Answer: Yes, as above, and if the covering charge represents actual services performed. (Section 2) (1986)

K.12

Question: A hospital owned by a psychiatrist plans to pay each admitting doctor \$300 for the admission and completion of an “admission plan.” Is this ethical?

Answer: No. It is expressly termed unethical by the AMA (Opinion 4.01, AMA Council Opinions, 2000–2001). It is also illegal in many jurisdictions and nationally for federally funded patients. It is not clear what an “admission plan” is. If it is the initial treatment plan, this is the normal responsibility of the attending physician to complete. (Section 2) (1986)

K.13

Question: I billed my patient’s insurance company for his care and when no payment was received, I billed the patient. When the patient did not pay, I utilized a collection agency that eventually collected the full amount but kept one-third as their share. Then the insurance company paid and the patient demanded the money. I want to keep the amount I lost to the collection agency. Is that ethical?

Answer: No. You should refund to the patient the payments received from the insurance company. Fees and their payment are a contractual agreement with the patient. In this situation, there was a presumption the insurance company would pay a portion of the bill, something the patient relied upon. Their failure does not make the patient liable for your collection costs. Collection costs, like other billing expenses, are part of the practice overhead built into your fee schedule. (Section 2) (1986)

K.14

Question: A private referral organization will make referrals to me in return for payment proportional to the number of referrals I receive. Is this unethical fee splitting?

Answer: It would certainly appear to be. Charges could be made on the basis of cost of the business plus a desired profit but not tied to the amount of fee-generating business volume. Additionally, the psychiatrist needs to be assured that he or she is a participant in an operation that is competent and ethical in other regards: no exaggerated claims, referral only to competent professionals, and referrals themselves made in a competent manner based on patient need. (Section 2) (1986)

K.15

Question: Is it ethical to allow the father of a former patient to provide construction services to me to pay off the bill and to pay off his own bill since the father is now my patient?

Answer: It is ethical to receive goods or services in lieu of fees for the son's bill as long as it is at fair market value and does not exploit the patient. However, while not clearly unethical relative to the father's bill, we recommend against such an arrangement with a current patient because of the likelihood of impairing the treatment relationship. (Section 2) (1988)

K.16

Question: Is it proper for me to pay a psychology group a percentage of my fees for office space, secretarial coverage, and billing costs? I am entirely independent of them to avoid any shared liability problems.

Answer: While this is a common practice, unfortunately, it is not ethical and constitutes fee splitting. The costs of these services should be established at market value and paid per your agreement or contract. Whether this is a sufficiently arms-length arrangement to avoid shared liability requires a legal opinion. (Section 2) (1988)

K.17

Question: A local hospital privileges only members of a psychiatric group, not accepting those who are not members. The hospital excluded local child psychiatrists who are not group members, but it claims to provide child psychiatric services. Further, the group charges a percentage of fees for administration from its members. Is the hospital unethical?

Answer: Our function is to keep our members ethical, not hospitals. Hospitals may contract exclusively with a medical group. Deceptive advertising is not proper for a hospital, and this may be occurring. The psychiatric group relationship appears to constitute fee splitting and may not be ethical. While we may not declare a hospital unethical, our members who participate in such questionable activities, or benefit from them, may be called before an ethics committee. (Section 6) (1990)

K.18

Question: I am treating a patient in regular weekly psychotherapy; the patient occasionally is unable to attend and cancels at the last minute due to business demands. The patient wants to pay for these missed appointments. Is it ethical to bill her?

Answer: Psychiatrists should explicitly review with the patient any policy about charges for missed appointments. (See Section 2, Annotations 5 and 6, APA.) If a physician has not charged for missed appointments and is now thinking of a change, consideration of the motives for the change is important. The new policy should apply to all patients. If the patient understands and agrees to the policy, then it is entirely ethical to bill for missed appointments. The bill should explicitly identify the charge as being for a missed appointment. Charging a fee and billing as a medical psychotherapy session is improper, deceptive, and opens the physician to possible allegations of insurance fraud, billing fraud, or both. Billings now include other payers in addition to the patient. Some contracts for services, including federal and state programs, clearly exclude the option of billing for missed appointments. The ethical psychiatrist must honor his or her agreement under the contract's terms. In some states, laws may prohibit billing for missed appointments under any circumstances. Such billing might be construed as representing services that were not provided, thus placing the physician at risk of being unethical. (See Section 3, APA, which states in part: "A physician shall respect the law...")

So the answer is: "It depends." Do review any contractual agreements you may have and the state law. (Section 2) (1998)

K.19

Question: A psychiatrist sees a patient at a reduced fee until the patient obtains insurance, and then bills the insurance company the full amount for subsequent sessions. Is this ethical?

Answer: If the doctor states the usual and customary fee to the patient at the beginning of treatment, but then reduces the fee given the patient's limited resources, it is not unethical to restore to a higher fee when the patient's financial situation improves, that is, the patient now has insurance coverage. (Section 2) (2018)

K.20

Question: My patient died and there is a longstanding balance that has not been paid. Is it ethical to pursue collection of the unpaid balance with the deceased patient's husband?

Answer: It is ethical to pursue payment through the patient's estate. Psychiatrists should be aware that responsibilities for patient's confidentiality persist beyond a patient's death and therefore should limit collection efforts to the executor or another representative of the estate. (Section 2) (2018)

K.21

Question: For clinical work that may be prolonged and collection of fees potentially difficult and protracted, may I insist on prospective payment?

Answer: For any treatment, contemporaneous payment at the time of service or payment on a short-time basis (e.g., each week) for ongoing service is preferable. Prospective payment may be ethically permissible if the terms are fully disclosed and agreed upon prior to beginning treatment. However, the psychiatrist should be aware of the potential for coercion in prospective payment arrangements. (Section 2) (2018)

L. PHARMACEUTICALS

L.1

Question: Can a physician buy stock in a company that makes a medication that one prescribes for patients?

Answer: The key consideration is if there is a conflict of interest. For example, is there exploitation of the physician–patient relationship for the physician’s financial gain (i.e., does the physician’s ownership influence the clinical decision)? This seems unlikely if a physician owns shares of stock in a publicly held company and prescribes one of the medications that the company makes. However, if the physician has control of a pharmacy committee of a large organization and can direct that only one brand of a certain class of drugs will be available, then there is more likelihood of some conflict. (Section 2) (1994)

L.2

Question: Is it ethical for a psychiatrist to accept payments from pharmaceutical companies for referring patients to participate in drug studies?

Answer: It is unethical for psychiatrists to accept fees for referring patients for clinical care, research, or any other service. (Section 2) (1997; Rev. 2018)

L.3

Question: If the FDA has provided a package insert saying that the drug is contraindicated in patients with particular presentation of their illness, would it be ethical to provide the patient with that drug if it is the only drug that has been effective on one of the patient’s multiple diagnosis in the past. Does the answer differ if the patient has never been on the drug before? What are the ethical issues that the prescribing physician needs to be aware of?

Answer: The ethical question is not whether a drug should ever be used in a patient without full FDA approval; instead it is whether the psychiatrist has conducted a thorough patient evaluation and history in addition to researching the particular medication in light of that evaluation and history and discussed the potential effects with a patient who has given consent.

Many of the medications psychiatrists prescribe (e.g., anticonvulsants for bipolar disorder) are not FDA approved. We give medications with black box warnings, that are “off-label,” or that pose a risk of potential serious harm (e.g., clozapine, lamotrigene) in carefully evaluated clinical situations. “Contraindication” is a relative term, and there is a gradient ranging from “use with caution” to “absolutely contraindicated.”

Sometimes, when there are few alternatives, the patient may be willing to assume high risks, especially in the face of no other alternatives, particularly if there is high risk without treatment, or large potential benefits. Obviously, the risk/benefit analysis would be aided by knowing that a patient has responded to the medication in the past.

The psychiatrist should conduct a thorough exam; examine the family history and the patient’s history concerning that specific medication; and discuss the case with a colleague or supervisor, after having referenced current literature concerning off-label use of that specific medication. If such an evaluation indicates that off-label use of a drug would be the patient’s best option, then competent patients should be fully engaged in a discussion of the risks and benefits of a medication as well as your thinking regarding the analysis of those factors.

The patient should be educated about why a drug might have a contraindication, what are the potential adverse consequences of using it, what are the risks and benefits compared with alternatives or no treatment, and how past experience with the medication (when that exists) might figure into the calculus.

Thus, the ethical issue is not in WHETHER to prescribe a medication in some circumstances, but HOW the prescribing of that medication is decided upon by the psychiatrist and presented within the clinical encounter, and the self-determined willingness of a competent patient (or his/her proxy) to assume that risk.

It would be wise for legal reasons for the psychiatrist to document the research conducted and the patient discussions, and even to have all the considerations written out and then have the patient give informed consent in writing in particularly risky situations when working with an FDA-listed “contraindication.” (Section 5) (2016)

M. PHILANTHROPY, GIFTS AND WILLS

M.1

Question: My patient of almost 5 years has a terminal illness. With my assistance she has been able to more effectively deal with her approaching death. She has no family and wishes to bequeath her estate to me. Would it be ethical for me to accept?

Answer: It would not be advisable for you to knowingly permit yourself to be the beneficiary. To do so gives the appearance of impropriety and raises the possibility of exploitation of the therapeutic relationship. We advise you to encourage your patient to make this gift to a trust, foundation, educational institution, or public charity whose purposes are consistent with the patient's wishes. (Section 1) (1983)

M.2

Question: A patient of mine died and, without my prior knowledge, bequeathed a painting to me. Is it ethical for me to accept this bequest?

Answer: Questions to be asked are the relative value of the painting compared with amounts left to the family, their feelings on the matter, and your sureness of no element of coercion on your part. On the face of it, considering you had no chance to advise the patient on this matter before death, it would appear to be ethical to accept this bequest as a token of appreciation. (Section 1) (1986)

M.3

Question: I have been the psychiatrist for a family, seeing various members when necessary for the past 5 years. The father, knowing my concern and knowledge of the family and their trust of me, asks if I will consent to be executor of his estate and possible trustee of the children. Ethically, may I accept such a responsibility, perhaps waiving the usual executor or trustee fees?

Answer: We believe this responsibility would be an unethical and unwise mixture of roles that opens the possibility of information gained in the confidence of treatment to alter your performance as an executor or trustee. This information might result in impairing your necessary objectivity to conduct either or both of these responsibilities. (Section 2) (1989)

M.4

Question: A group of former patients have organized a nonprofit foundation to raise funds to promote a particular form of therapy of mine. None of the money comes directly to me. Is this ethical?

Answer: The issue is whether this is unethical exploitation of former patients by endeavors not directly relevant to the treatment goals. It would appear to be and, thus, is unethical. (Section 1) (1990)

M.5

Question: Our university asks us to solicit donations from former patients to support research. I wonder if this is ethical?

Answer: It would appear not to be ethical as it exploits the therapeutic relationship for purposes not relevant to the treatment goals. This would be even more so if you or other treating psychiatrists personally benefited from the donations. (Section 1) (1990)

M.6

Question: I am the executive director of an institute where I direct research and produce teaching events, among other things. Is it ethical to solicit present or former patients to contribute to this charitable institute?

Answer: The ethical issue is whether the psychiatrist exploits the special relationship with a patient or a former patient. Receiving the benefits of a fundraising effort, even if this includes contributions from patients, does not in and of itself create an ethical problem as long as there is no exploitation or coercion. For example, if there is a general fundraising effort in which the general public is solicited by your organization, no violation of ethics principles has occurred. On the other hand, if you suggest to a fundraiser that one or more particular persons (current or former patients) might be receptive to a solicitation, then you may have crossed over the ethical line, exploiting the physician–patient relationship, and perhaps breaching the patient’s confidentiality. (Section 1) (1993)

M.7

Question: Is it ethical to accept a large monetary gift from a current patient that was given in appreciation of recommending an attorney at the patient’s request, a recommendation that was financially beneficial to the patient?

Answer: No. Taking such a gift, even if unsolicited, very likely exploits the physician–patient relationship and generally would result in a contamination of the treatment process to the disadvantage of the patient. (Section 2) (1993)

M.8

Question: A psychiatrist has been named in the will of a former patient; the will stipulates that scholarships be given in honor of the psychiatrist. Is this ethical?

Answer: Yes. As long as the psychiatrist does not participate in the selection of the candidates or other uses of funds, there is no possible exploitation or conflict of interest. (Section 2) (1994)

M.9

Question: Is it ethical for a physician to make a memorial contribution to a scholarship fund, established for a patient who recently took her life?

Answer: It is ethical for a physician to respond with a reasonable contribution to the memorial scholarship fund established on behalf of her now deceased patient. As Karl Menninger said, “When in doubt, be human.” Furthermore, physicians are encouraged to participate in activities that will lead to the betterment of the community and public health, and making a contribution to a scholarship fund would be one example of how to advance these ethical goals. (Section 7) (2001)

N. PRACTICE ISSUES

N.1

Question: Is it ethical for a psychiatrist to direct an acupuncture clinic where he or she supervises Chinese acupuncturists?

Answer: Section 2, Annotation 3 (APA) states:

A psychiatrist who regularly practices outside his/her area of professional competence should be considered unethical.

If providing acupuncture treatment, is the psychiatrist competent to do so based on training and experience? Section 5, Annotation 3 (APA) states:

When the psychiatrist assumes a collaborative or supervisory role with another mental health worker, he/she must spend sufficient time to assure that proper care is given. It is contrary to the interests of the patient and to patient care if the psychiatrist allows himself/herself to be used as a figurehead.

Is the psychiatrist providing sufficient supervision to assure that good care is being given? Because acupuncture is a recognized form of therapeutics in many jurisdictions, if the answer to the above question is positive, the psychiatrist is behaving ethically. Section 3, Annotation 2 (APA) states:

Where not specifically prohibited by local laws governing medical practice, the practice of acupuncture by a psychiatrist is not unethical per se.

The psychiatrist should have professional competence in the use of acupuncture. Or, if he/she is supervising the use of acupuncture by nonmedical individuals, he/she should provide proper medical supervision. (Section 3) (1973; Rev. 2018)

N.2

Question: Because of ill health, it has become necessary for me to retire. I have sent a written announcement to that effect to all my patients 90 days in advance. Full-fee patients have been accepted by other psychiatrists, but I am having great difficulty placing my Medicaid patients. The local public clinics have long waiting lists. Will I be abandoning my patients?

Answer: No. Ninety days written announcement is quite adequate. It is unfortunate you are having such difficulty placing your Medicaid patients, but you have done all you can be expected to do. (Section 6) (1978; Rev. 2018)

N.3

Question: Is it ethical for a colleague to make a diagnosis of mental illness solely because the individual has joined a "new religion" or "cult"?

Answer: No. See Section 1 (AMA):

A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity.

and Section 1, Annotation 2 (APA):

A psychiatrist should not be a party to any type of policy that excludes, segregates, or demeans the dignity of any patient because of ethnic origin, race, sex, creed, age, socioeconomic status, or sexual orientation.

While a person who joins a “cult” might be mentally ill, that decision must be made based on the accepted diagnostic standards, not “cult” membership per se. (Section 1) (1984)

N.4

Question: Is it ethical for a psychiatrist to admit and treat staff members or their families in the hospital where the staff member works?

Answer: It is ethical if the patient wishes to be treated in this hospital and there are limited options in the community. Ideally, separating the treatment role from the co-worker role is a good idea in order to maintain boundaries that allow for more effective treatment and better protect the patient and his or her family’s confidentiality. The options should be discussed with the patient, to achieve informed consent. (Section 6) (1985; Rev. 2018)

N.5

Question: Is it proper for a psychiatrist to practice psychotherapy with one particular “Christian perspective,” such as taking fundamentalist positions on such issues as homosexuality, sex outside of marriage, and failure of faith and prayer causing illness?

Answer: If the patient is fully informed of the psychiatrist’s views and seeks psychotherapy within such a “Christian perspective,” yes. Obviously, this does not absolve the psychiatrist of providing competent care. A potential ethical problem arises if the patient is unaware of the psychiatrist’s orientation, and the psychiatrist criticizes or diminishes the value of the patient’s beliefs. This would violate Section 1, Annotation 2 (APA), which prohibits demeaning the dignity of a patient because of his creed. (Section 1) (1986; Rev. 2018)

N.6

Question: Is it ethical for a hospital to use nonpsychiatrist unit directors?

Answer: The ethical question is for the psychiatrist to decide if the hospital provides the quality of care needed for his patients and, if not, to use another hospital. This does not necessarily, nor only, hinge upon specific degrees assuming local licensure laws are followed. (Section 2) (1986; Rev. 2018)

N.7

Question: A reviewing psychiatrist for an insurance company has not examined my patient. Is it ethical for the reviewing psychiatrist to tell me how to treat my patient?

Answer: No; but it is ethical for the reviewing psychiatrist to raise questions about the care or offer suggestions. The treating psychiatrist and the patient are decision makers about the treatment. However, the contract between the patient and the insurance company includes the right of review and the right of the insurer, in some circumstances, to terminate the benefits. Generally, there is also a right of appeal by the patient and the treating

physician. Outright rejection by the reviewing psychiatrist may result in benefit termination, throwing the financial responsibility upon the patient. Ultimately, patients have a right to participate in the decision to have their care undergo review, understanding that refusal to allow review might jeopardize their insurance coverage. (Section 1) (1987)

N.8

Question: I recently terminated therapy with a very troublesome patient after providing proper notice and choices of alternate treatment. The patient continues to harass me with endless vituperative phone calls. For the telephone company to intervene, I will have to provide the patient's name. Can I ethically do this?

Answer: An ethical psychiatrist must respect patient confidentiality. In such circumstances, consultation with an attorney may inform the psychiatrist about the legal definition of harassment and available remedies that may still protect the medical information of the patient. (Section 4) (1988; Rev. 2018)

N.9

Question: Is it ethical for a supervising psychiatrist to sign a diagnosis on an insurance form for services provided by another professional that he or she is supervising and when the supervising psychiatrist has not examined the patient?

Answer: Section 5, Annotation 3 (APA) clearly states that the supervising psychiatrist must expend sufficient time to assure that proper care is given and not allow the role to be that of a figurehead. What is required differs among public payers such as Medicare and Medicaid, and among private insurers. The ethical psychiatrist must not engage in abuse, deception, or waste of public resources. (Section 5) (1988; Rev. 2018)

N.10

Question: Is it ethical for a psychiatrist practicing in a small community to treat an adult member of another psychiatrist's family when there is much family acrimony? The psychiatrists do not work together and have infrequent contact.

Answer: The treating psychiatrist must assure confidentiality, of course, and provide a treatment environment in which the patient feels secure. Further, any relationship with the parent psychiatrist must not preclude a sense of trust on the part of those involved. Another consideration is whether there is another psychiatrist within reasonable distance. With proper consideration of those concerns, it would not be unethical. (Section 6) (1989)

N.11

Question: Family members, as well as patients, occasionally complain that the psychiatrist will not share information with them about diagnosis, treatment recommendations, and treatment alternatives. What are the ethical requirements?

Answer: A patient has the right to be fully informed about these issues to be able to give consent to the treatment plan but with consideration that the information will not be harmful. Family members, however, are very limited in the amount of information they can receive unless the patient gives consent. There are exceptions, of course, such as imminent danger to self or others or incompetence of the patient who needs family protection. States have different laws limiting release of information about patients, and this should be well understood by

psychiatrists in each state. At the same time, the psychiatrist should help family members understand the legal and ethical limits of divulgence and provide them with support and understanding within those limits. To not do so makes the psychiatrist appear to be indifferent to family distress. (Section 4) (1989)

N.12

Question: If the family of an adult patient requests a second opinion, what are the obligations of the consultant? Can he or she disagree with the treating psychiatrist?

Answer: If the patient is competent, a second opinion should be at his or her request. If the patient is incompetent, the request should come from the legally empowered surrogate decision-maker. The treating psychiatrist should agree to the request. With proper consent, the treating psychiatrist may discuss the case with the consultant. Also, with proper consent, the consultant may discuss his or her opinion with the treating psychiatrist; however, the consultant is not obligated to do so since he or she was employed by the patient or surrogate to give them advice, and the choice to include the treating psychiatrist is theirs alone. Of course, the consultant can disagree with the course of treatment based on his or her professional judgment, or there would be no purpose in obtaining a second opinion. (Section 5) (1989; Rev. 2018)

N.13

Question: We have a difficult time getting other physicians to do our hospital physical examinations. Some of our psychiatrists are doing them. Is this ethical?

Answer: Yes, in fact it is the standard of practice in some areas. The psychiatrist as a licensed physician can do this quite appropriately, assuming he or she has the necessary skills and calls in another psychiatrist if he or she believes it could be harmful in a particular situation. (Section 1) (1990)

N.14

Question: My public hospital requires me to assume more clinical responsibility than my salaried time allows me to manage competently. Is my attempt to do this unethical?

Answer: Your first effort should be directed at getting the hospital to remedy the situation. That failing, you might feel compelled to resign. If you remain and do your best, you are behaving ethically. For us to declare otherwise might place an even greater burden upon our underfunded public institutions. (Section 1) (1990)

N.15

Question: Is it ethical to restrict admission of chronic psychiatric patients to a state facility to those who agree to accept a trial of clozapine therapy?

Answer: It would not be ethical for an individual psychiatrist to restrict admissions in a coercive manner. States may as a matter of public policy place some conditions upon admission which may be coercive (e.g., court ordered admission and treatment). State facilities face the dilemma of triaging psychiatric patients, given the shortage of inpatient beds in most states. For state facilities to prioritize is reasonable as long as the process involves transparency and involvement of clinicians. If psychiatrists believe such policies are unjust or place them in an unethical situation, they should protest the problematic law or regulation. (Section 1) (1993; Rev. 2018)

N.16

Question: Is it ethical for a psychiatrist to perform full physical examinations, including vaginal examinations, on female patients either in the office or in the hospital?

Answer: A physical examination may be an important part of a comprehensive psychiatric evaluation. Physical examinations should be performed with the usual safeguards to avoid any exploitation of the patient. It is also essential that the psychiatrist not practice outside of his or her area of professional competence. When a psychiatrist performs sensitive elements of physical examinations, such as vaginal and rectal exams, as part of the psychiatrist's competent practice, it should be done with awareness of the potential effects on the doctor-patient relationship, especially if the treatment includes psychotherapy. In general, even in training situations, the physician who performs an extensive physical examination does not take on the primary role of psychiatrist to that same patient. However, in some training facilities because of staffing shortages, it may be necessary for the psychiatrist who provides mental health treatment to also be the psychiatrist who performs initial physical examinations at time of admission. (Section 1) (1993, rev. 2018)

N.17

Question: Does the psychiatrist have an ethical obligation to use interpreters when dealing with patients of limited English proficiency?

Answer: Psychiatrists have an obligation to communicate effectively with patients about their medical condition, treatment options, recommendations, and other pertinent information such that patients may make informed decisions about their medical care. As such psychiatrists must use reasonable efforts to secure assistance in effective communication that would allow patients to make informed consent decisions. See Opinion 8.08, *AMA Council Opinions*, 2000–2001. (Section 1) (1993; Rev. 2019)

N.18

Question: Is it ethical to engage in a therapy (such as reparative or conversion therapy) to change sexual orientation?

Answer: No. Although successful and ethical treatments for legitimate psychiatric diagnoses may sometimes lead to some changes in sexual behavior, any treatment that is based on an assumption that homosexuality per se is a mental disorder, or is based on an assumption that the patient should change his or her sexual orientation, is by its nature unethical, as it violates numerous ethics principles. Such so-called "treatment" ignores established scientific evidence, demeans the dignity of the patient, succumbs to individual and social prejudice and stigma, and has often been significantly harmful to patients, families, others, and their relationships. (Section 1) (1999)

N.19

Question: Is a group contract to provide evaluations for medication purposes ethical if it prohibits a physician from discussing anything else with the patient?

Answer: Such a contract is not ethical because it places the physician in clear violation of his or her obligations under ethics principles. A psychiatrist cannot withhold information that a patient needs to make informed treatment decisions, including treatment options not provided by the psychiatrist. (See also Section 5 and Addendum 1, APA.) (Section 2) (2000)

N.20

Question: Has the APA formulated any position regarding the use of placebos in a clinical, non-research setting? I have a psychiatric colleague who regularly uses placebos with his patients who have chronic pain and chemical dependency issues with the justification that if they voice pain relief with the use of the placebo (which he informs them is active drug), then that tends to confirm that the pain "isn't real." It is my understanding that such a practice is unethical but I have not been able to find any documentation from the APA (including a thorough review of *The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry*, 2001 Edition).

Answer: The use of placebos in routine clinical practice with the specific intent to deceive the patient is unethical, and represents a violation of Section 2 of The Principles of Medical Ethics which calls for honesty in all professional interactions. This is unlike the use of placebo in research which usually occurs only under very specific circumstances, with a clear scientific justification and with multiple specific safeguards to prevent exploitation of research volunteers. You may also wish to see the section in the AMA Council Opinions entitled, Placebo Use in Clinical Practice. An excerpt from this section follows:

“A placebo is a substance provided to a patient that the physician believes has no specific pharmacological effect upon the condition being treated. In the clinical setting, the use of a placebo without the patient’s knowledge may undermine trust, compromise the patient-physician relationship, and result in medical harm to the patient.

Physicians may use placebos for diagnosis or treatment only if the patient is informed of and agrees to its use. A placebo may still be effective if the patient knows it will be used but cannot identify it and does not know the precise timing of its use. (Section 2) (2004)

N.21

Question: Three of my employees are leaving my practice, and are setting up an office within a pre-agreed upon non-compete radius of five miles. Who is supposed to inform patients of their switching practices? Are they allowed to put their contact phone numbers on the letter, which may be seen as patient solicitation, in violation of their contract? I have proposed sending a certified letter containing their emergency contact information to only patients deemed to be high risk. I will also include information on how these patients may get their medical records.

On another note, since these clinicians have violated a number of agreements in their contracts, am I allowed to terminate them and collect their keys to this building?

Answer: Your questions/concerns are largely legal in nature. You would best be served by consulting an attorney. The issue of patient abandonment has strong ethical implications, however. You must be careful not to interfere with the ability and means of the departing practitioners' patients to be able to find, communicate with, and continue to see their clinicians. For instance, the concern about "patient solicitation" cannot supersede the continuity of appropriate and adequate patient care. (Section 1) (2006)

N.22

Question: I am working with a patient currently who is being transferred to Europe temporarily for her husband's job. She has been doing well with her current mental health team and wants to continue working with us while

she is in Europe. Her plan is to return to her home state every 2-3 months and would see us in person during those visits. She would like me to continue to provide her with medication management services when she is in Europe, speaking on the phone or doing telemedicine appointments monthly or as needed.

I asked the state medical board if they thought this arrangement was acceptable and they said yes. How does the APA view this arrangement?

Answer: Providing advice to a known patient who is temporarily out-of-state or out of the country is appropriate. The practice of telemedicine, including prescribing, across state or national boundaries, may be subject to licensure restrictions. The ethical psychiatrist will be respectful of the law and the licensure requirements to practice utilizing the tool of telemedicine. (Section 1) (2011; Rev. 2018)

N.23

Question: Psychiatrist had been prescribing psychotropic antidepressants for a patient who is now leaving town and “wants nothing to do with the doctor.” The patient’s prescription already ran out and the doctor believes he needs an immediate refill due to his severe depression. Clearly this is more of a legal issue since the doctor cannot prescribe medication after the patient chose to end the relationship. Do you have any advice on what recourse the doctor has to try and ensure the patient remains on medication?

Answer: You should first consider the legal and risk management ramifications of your inquiry. We recommend that you contact your malpractice insurance carrier to determine how to ensure the doctor-patient relationship is really terminated. From an ethical perspective, the patient can terminate the relationship. It is ethically sound for the psychiatrist to want to do something to assist with ongoing care (beneficence) while also respecting the patient’s self-determination (autonomy). You could contact the patient, in writing, stating your opinion that the patient is at risk and should seek follow-up care, and that you are available to provide referrals for ongoing care and/or provide bridge care, pending new treatment if the patient so chooses. If the patient has imminent risk of harm or meets involuntary evaluation or treatment criteria, you would be well-advised to seek that treatment for the patient. Although you had expressed that you do not believe the patient to be suicidal, we must stress that you should assess imminent risk to the best of your ability. You might find it helpful to consult a risk person and a clinician on the matter. (Section 6) (2016)

N.24

Question: Invariably, the patients feel totally justified in their request for a therapy dog letter and see the doctor as being uncaring and lacking empathy for refusing to write it. When I've tried to say no, it clearly damages the doctor-patient relationship. Which of my patients is it inappropriate to write a letter for? Again, every patient feels that their request is justified and appropriate.

Answer:

This question raises three compelling issues:

1. Integrity: The psychiatrist must not write anything in a letter that he doesn't believe is true. We receive requests to bend the rules (eg: to write a prescription for a larger amount of a medication to save on patient copays), and it is up to us to protect our integrity by refusing to do anything fraudulent. If the psychiatrist doesn't believe the companion animal is truly necessary for the patient's mental health, then he shouldn't write the letter. Alternatively, if he agrees that a companion animal would be helpful in the patient's housing, but that the patient doesn't need the animal in order to fly on a plane or eat in a restaurant, the letter can specify that.

2. Protecting the doctor-patient relationship: While denying a patient's request may feel like it harms the alliance in the moment, allowing the patient to manipulate the psychiatrist into a false position also is harmful to the relationship. If the patient knows the doctor doesn't really believe what he's putting in the letter, the doctor's credibility is eroded. The patient may start to wonder what else the doctor says but doesn't fully believe.
3. Federal and state regulations: The ADA is quite clear that emotional support animals are not service animals, so they don't enjoy the same latitude of exemptions from restrictions. For example, an emotional support dog is not allowed in medical/clinical settings, but a service animal is. I believe some states have specific laws concerning emotional support animals, so this psychiatrist may want to check Florida statutes to determine what criteria exist, if any, to guide his determinations.

(Section 2) (2017)

N.25

Question: I have been treating a patient with bipolar disorder, depression, borderline personality disorder, and an eating disorder. At present, I am the only physician treating the patient. The patient is not accepting or following my recommendations regarding treatment for her eating disorder (for example, I referred her to an outpatient treatment clinic but she is not attending treatment or seeing any other eating disorder therapist/clinic); at present the patient is consuming less than 500 calories daily. Is it ethical for me to terminate the relationship?

Answer: It would be unethical to terminate the relationship until a subsequent plan of care has been established. Your patient is consuming less than 500 calories/day, and she is showing no evidence of a willingness meaningfully address her current illness. Given the urgent nature of this patient's medical situation, it may be advisable to involve any possible family members in her care and treatment. As the only treating physician in this case, it is incumbent upon you, either yourself, or by referral to another identified medical/psychiatric individual or facility to see that this clinical situation is addressed. The usual methods for initiating emergency medical treatment, including involuntary emergency evaluation and possible commitment, may need to be employed. See Section 3.1.2 of *Commentary*. (Section 6) (2018)

N.26

Question: In our underserved area, the doctors at a local mental health center do not have or want privileges at a local hospital and do not feel they have responsibility if a patient of theirs needs to be hospitalized. Is this ethical?

Answer: The ethical psychiatrist providing only outpatient care must provide advice and referral to one of his or her patients who is in need of hospitalization, although the psychiatrist is not necessarily required to provide such inpatient services himself/herself. At the time of beginning treatment, informed consent requires that patients should be fully informed about the limitations of the treatment offered, including the limitation that the treating psychiatrist does not practice in an inpatient setting. In addition, the psychiatrist should have a clear plan of advice and referral to ensure that adequate care will be available for the patient should inpatient care be needed. (Section 6) (2018)

N.27

Question: I work in a hospital in an area with a sparse population of psychiatrists. In cases of emergency, I may treat adolescents on occasion. Despite the fact that I am not a child and adolescent psychiatrist, my employer has asked that that I begin to treat patients as young as 4 years old. I am concerned that it is unethical for me to

provide this treatment because I lack training and experience with this patient population. However, although my employer has advertised for a child and adolescent psychiatrist, the facility has not been able to hire one.

Answer: Given that you do not have the education or training to practice with children below the age of 12-14, it would be unethical for you to do so on a regular basis. Section 2.3 of *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* expressly states that a physician who regularly practices outside of his area of competence is unethical. Competence is determined by peer review boards or other appropriate bodies. The *APA Commentary on Ethics in Practice*, Section 3.1.2, recognizes that professional competence means practicing within accepted standards of care, remaining current, and sometimes working with supervision and/or consultation. Professional competence includes recognizing the limits of one's skills and referring patients when possible or seeking consultation from a more experienced clinician on issues where the psychiatrist's competence is not clear. *Commentary*, Section 3.4.5., notes that in small or underserved communities it may be ethical for a psychiatrist to practice outside of the usual scope of practice *if her training is closely related, there is urgency, and the psychiatrist possesses the most readily available relevant expertise*, but that in such a case the psychiatrist should have appropriate supervision and access to competent consultation.

Two ethical conclusions emerge from this. If you do not believe you are competent to handle certain ages of children even with ready access to consultation, it would be unethical to do it. If you do believe you can competently handle particular age groups, you should have ready access to consultation from a board certified child and adolescent psychiatrist (e.g. Skype, telepsychiatry, etc.) to be able to consult as needed to ensure the patient gets competent care. If there are cases where you are still not comfortable treating the patient, you need to refer them to a board certified child and adolescent psychiatrist.

Given that you are not board certified in child and adolescent, it would not be ethical for you to assume this role unrestricted (e.g. without supervision or consultation) or to assume it at all if you are not comfortable that you can do it competently with expert consultation. If you do assume this position, it should only be temporary until a board certified child and adolescent psychiatrist for the hospital can be found.

You should inform the hospital administration of your concerns regarding the request, as the hospital may need to reconsider what ages it can safely and ethically treat given that they do not have a board certified child and adolescent psychiatrist no matter how underserved the area is. The hospital could seek locum tenens child psychiatry coverage, or as a more immediate alternative seek a child psychiatrist via telepsychiatry. (Section 2) (2019)

O. PROFESSIONAL LISTINGS, ANNOUNCEMENTS

O.1

Question: A member lists himself in the telephone Yellow Pages as a “certified psychoanalyst.” His colleagues know he is not a psychoanalyst. Is he unethical?

Answer: Section 2, Annotation 3 (APA) states:

A psychiatrist who regularly practices outside his/her area of professional competence should be considered unethical. Determination of professional competence should be made by peer review boards or other appropriate bodies.

It is not ethical to claim a competence not possessed. The ethics committee would want to know what the psychiatrist’s actual training and experience were. The title “psychoanalyst” is not owned exclusively by any organization. Thus, a person might not be unethical in using that title, even though he or she was not a graduate of an accredited training center, if training from other sources reasonably related to the task of being a psychoanalyst had been received. (Section 2) (1978)

O.2

Question: Can an ethical psychiatrist list himself in a professional directory?

Answer: While the answer to this question is generally yes, one is advised to seek guidance from the local medical society on all matters related to what can be broadly called advertising. Certainly it would be unethical for the psychiatrist to misrepresent himself or to make fraudulent claims. Deception of the public by misleading, inflated, and self-laudatory claims is to be avoided. (See Opinion 5.02, *AMA Council Opinions*, 2000–2001.) (Section 2) (1978)

O.3

Question: I plan to purchase a solo psychiatric practice and request information on the ethical aspect of this situation. What sort of notices can be sent to other physicians and how can I indicate that I am taking over a practice?

Answer: It is ethical for you to send an announcement to other physicians and agencies from whom you expect referrals that you are taking over another doctor’s practice. If you have questions about the format, your local medical society should be consulted. For additional guidance see Opinions 7.03 and 7.04, *AMA Council Opinions*, 2000–2001. (Section 2) (1980)

O.4

Question: May I send out notices to doctors and lawyers in my neighborhood stating I would appreciate referrals?

Answer: Yes, as long as the notices are not deceptive, misleading, or false. Claims of unusual or special competence would be improper. (Section 2) (1990)

O.7

Question: Is it ethical for a psychiatrist to offer his or her professional services to a public figure based on data from the media?

Answer: No. Section 7, Annotation 3 (APA) cautions against drawing clinical conclusions based on information gleaned outside the clinical setting. Furthermore, it would seem unwise for a physician to solicit patients by such means. (Section 7) (1994)

P. REFERRAL PRACTICES

P.1

Question: Is it ethical for a psychiatrist to refer a patient to a qualified mental health professional who happens to be his wife?

Answer: Yes. However, the psychiatrist has the same ethical responsibilities in making that referral as he would have if the person were not his wife. He cannot refer cases requiring medical care to her, nor can he give her only token supervision. He should also make clear to the patient that the referral is to the spouse. (Section 5) (1976)

P.2

Question: Is it proper for a public clinic to establish a referral list that excludes some psychiatrists? All psychologists?

Answer: Only if the exclusions are based on reasonable grounds. For example, the clinic might limit the list to psychiatrists willing to take emergencies, or to reduce their fees, or be available to provide hospital care, and so forth. The clinic certainly has a right, in fact an obligation, not to refer to a psychiatrist it has good reason to believe is not ethical or competent. The clinic would not be obligated to refer a child to a general psychiatrist if a child psychiatrist were available. Excluding psychologists is another matter if this is a blanket exclusion. Since laws governing the practice of psychology are so different, this would have to be determined by local laws. It would not be appropriate to refer a patient who needs the special skills of a psychiatrist to a psychologist. Section 5, Annotation 4 (APA) states:

In relationships between psychiatrists and practicing licensed psychologists, the physician should not delegate to the psychologist or, in fact, to any nonmedical person any matter requiring the exercise of professional medical judgment. (Section 5) (1978)

P.3

Question: Is it ethical for a psychiatrist to continue to see a patient in his or her private practice whom the psychiatrist began seeing as an employee of a public clinic? Can other professional members of the clinic refer patients to the psychiatrist?

Answer: The issue is what is best for the patient, rather than for the physician or the clinic. Patients must have the right of free choice of their physician. See Opinion 9.06, *AMA Council Opinions*, 2000–2001:

Free choice of physicians is the right of every individual. One may select and change at will one's physicians, or one may choose a medical care plan such as that provided by a closed panel or group practice or health maintenance or service organization. The individual's freedom to select a preferred system of health care and free competition among physicians and alternative systems of care are prerequisites of ethical practice and optimal patient care.

It is important to ensure that the patient's choice is an informed and voluntary choice. It is the responsibility of the treating psychiatrist to inform the patient of the potential disadvantages – as well as any advantages – of transferring care to a private clinic, including coordination of care, other services provided, and availability of urgent care services, for example. The psychiatrist should avoid any actions that could be construed as initiating or encouraging such a transfer of care. (Section 6) (1979; 1981; 2019)

P.4

Question: A patient had been seeing a particular psychiatrist. The patient now is covered by a PPO of which the psychiatrist is not a participant. An emergency occurs, and the primary care physician refers the patient to a mental health clinic that contracts with the PPO; the clinic states the patient will go on its waiting list for services. Who is responsible?

Answer: As in this case, if a psychiatric emergency occurs, it is the responsibility of the primary care physician to refer the patient to emergency care. In addition, whether or not the PPO covers the established psychiatrist, if the established psychiatrist is contacted or involved at the time of the emergency, the psychiatrist must not abandon the patient in the setting of this emergency. The psychiatrist, however, is not required to treat the patient but at a minimum must refer the patient to timely available emergency. (Section 6) (1989; 2019)

P.5

Question: A colleague and I wish to own and manage a day hospital. Will it be a conflict of interest if I refer my patients there?

Answer: Self-referral is a conflict of interest. You may take steps to manage this conflict such that referrals could be ethical by informing your patients and all other involved parties (such as additional treaters) of the financial conflict and offering alternatives to the program you own. Ethical conduct also requires that you make other arrangements for them if they object. (Section 2) (1991; 2019)

P.6

Question: Our state hospital has an arrangement with a public clinic to have the clinic's psychiatrists treat their patients in our hospital and refer patients back to the clinic at discharge. Any problems?

Answer: No, assuming the psychiatrist taking the discharge referral is the clinically proper person. This is the standard practice in the private sector attending model. (Section 2) (1991)

P.7

Question: Dr. X is the only doctor who does ECT at a large hospital. It's a very active ECT practice; he does 12 or 15 ECT treatments in a morning. He is planning on retiring and is wondering if he can essentially sell this lucrative practice. Right now, he deals directly with the insurance company for the service but uses the hospital's facilities. Both he and the hospital bill the insurance company as he is a contractor to the hospital. He gets his referrals from the hospital. Is it ethical for him to sell this practice?

Answer: Although it's not typically a practice in psychiatry, physicians and dentists sell their practices all the time, and there is nothing unethical about it. Today, many physicians' practices are actually bought by hospitals. However, this particular inquiry takes a little bit of a different twist. It's not clear what is Dr. X's current relationship with the hospital, is he a totally independent practitioner who is a private attending physician at the hospital, or does the contractual arrangement that the doctor currently has with the hospital mean that the patients who are referred to him for ECT really belong to the hospital, and not to the doctor. In that case, there is no assurance that the hospital will continue to refer to the "buyer" physician, so Dr. X may not have anything to sell, or at very least, ethically, this nuance needs to be made known to the buyer, and written into the "bill of sale". (Section 2) (2017)

Q. RESEARCH AND SCHOLARLY ACTIVITIES

Q.1

Question: Are there ethical problems in writing a psychoanalytic casebook?

Answer: Section 4, Annotation 3 (APA) states:

Clinical and other materials used in teaching and writing must be adequately disguised in order to preserve the anonymity of the individuals involved.

The problem of disguising is not always easily resolved. Close friends, family members, or the patients themselves might see through the disguise. This could lead to legal liability as well as a charge of unethical conduct. Thus, the psychiatrist-writer must give special attention to this matter and may have to sacrifice some scientific accuracy for the sake of preserving privacy. On occasion, the psychiatrist-writer has shown the material in advance to his or her patients and received their informed consent for its publication. (Section 4) (1976)

Q.2

Question: What happens when an individual is unable to consent to be a research participant in a study with the potential to improve knowledge about the individual's conditions? What is the ethical position in this dilemma?

Answer: For research, proceeding without consent is unethical. Therefore, mechanisms that protect or delegate the individual's consent could be employed. For example, the preparation of an advanced directive at the time the person was competent could grant permission for a surrogate decision-maker to consent to future research participation. Alternatively, where no prior authorization exists, a protective guardianship proceeding could be used. See Opinion 2.07, *AMA Council Opinions, 2000–2001*. (Section 5) (1977; 2019)

Q.3

Question: A convict has sued me for a number of reasons including violation of his confidentiality, and he seeks to prevent my publication of any case based on his history. He has made my manuscript part of the court record. I believe the court will rule in my favor, but what about the ethical issue? Section 4, Annotation 3 (APA) requires adequate disguise, but Annotation 10 (APA) requires fully informed consent as does Annotation 11 (APA).

Answer: Taken in total, presenting case material requires that patient identity be hidden; if this is not possible (for example, the patient or a video is presented), then fully informed consent is required. In this situation, however, since the patient has made known that the manuscript applies to him, it is not possible to hide his identity so that informed consent is necessary. A court decision may settle the legal issues but not the ethical issues. (Section 4) (1989)

Q.4

Question: What are the obligations and responsibilities of the executors of the estate of a deceased psychiatrist with respect to the records of former patients? May they be used for scientific or research purposes?

Answer: The ethical issue is one of confidentiality. The records remain confidential notwithstanding the death of the psychiatrist. Any disclosure of the records must have the consent of the individual patient. (Section 4) (1993; 2019)

Q.5

Question: Does the ethical prohibition embodied in Section 7, Paragraph 3 of the Annotations apply to psychologically informed leadership studies based on careful research that do not specify a clinical diagnosis and are designed to enhance public and governmental understanding?

Answer: The psychological profiling of historical figures designed to enhance public and governmental understanding of these individuals does not conflict with the ethical principles outlined in Section 7, Paragraph 3, as long as the psychological profiling does not include a clinical diagnosis and is the product of scholarly research that has been subject to peer review and academic scrutiny, and is based on relevant standards of scholarship. (Section 7) (2008)

Expanded Opinion (2017):

Question: May a psychiatrist give an opinion about an individual in the public eye when the psychiatrist, in good faith, believes that the individual poses a threat to the country or national security?

Answer: Section 7.3 of *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* (sometimes called “The Goldwater Rule”) explicitly states that psychiatrists may share expertise about psychiatric issues in general but that it is unethical for a psychiatrist to offer a professional opinion about an individual based on publicly available information without conducting an examination. Making a diagnosis, for example, would be rendering a professional opinion. However, a diagnosis is not required for an opinion to be professional. Instead, when a psychiatrist renders an opinion about the affect, behavior, speech, or other presentation of an individual that draws on the skills, training, expertise, and/or knowledge inherent in the practice of psychiatry, the opinion is a professional one. Thus, saying that a person does not have an illness is also a professional opinion. The rationale for this position is as follows:

1. When a psychiatrist comments about the behavior, symptoms, diagnosis, etc., of a public figure without consent, the psychiatrist violates the fundamental principle that psychiatric evaluation occurs with consent or other authorization. The relationship between a psychiatrist and a patient is one of mutual consent. In some circumstances, such as forensic evaluations, psychiatrists may evaluate individuals based on other legal authorization such as a court order. Psychiatrists are ethically prohibited from evaluating individuals without permission or other authorization (such as a court order).
2. Psychiatric diagnosis occurs in the context of an evaluation, based on thorough history taking, examination, and, where applicable, collateral information. It is a departure from the methods of the profession to render an opinion without an examination and without conducting an evaluation in accordance with the standards of psychiatric practice. Such behavior compromises both the integrity of the psychiatrist and of the profession itself.
3. When psychiatrists offer medical opinions about an individual they have never examined, this behavior has the potential to stigmatize those with mental illness. Patients who see a psychiatrist, especially their own psychiatrist, offering opinions about individuals whom the psychiatrist has not examined may lose confidence in their psychiatrist and/or the profession and may additionally experience stigma related to their own diagnoses. Specifically, patients may wonder about the rigor and integrity of their own clinical care and diagnoses and confidentiality of their own psychiatric treatment.

Psychiatrists, and others, have argued against this position. We address five main arguments against this position:

- a) Some psychiatrists have argued that the “Goldwater Rule” impinges on an individual’s freedom of speech as it pertains to personal duty and civic responsibility to act in the interest of the national well-being. This argument confuses the personal and professional roles of the psychiatrist. The psychiatrist, as a citizen, may speak as any other citizen. He or she may observe the behavior and work of a public figure and support, oppose, and/or critique that public action. But the psychiatrist may not assume a professional role in voicing that critique in the form of a professional opinion for the reasons discussed above, those being, lack of consent or other authorization and failure to conduct an evaluation.
- b) Psychiatrists have also argued that the “Goldwater Rule” is not sound because psychiatrists are sometimes asked to render opinions without conducting an examination of an individual. Examples occur, in particular, in certain forensic cases and consultative roles. This objection attempts to subsume the rule with its exceptions. What this objection misses, however, is that the rendering of expertise and/or an opinion in these contexts is permissible because there is a court authorization for the examination (or an opinion without examination), and this work is conducted within an evaluative framework including parameters for how and where the information may be used or disseminated. In addition, any evaluation conducted or opinion rendered based on methodology that departs from the established practice of an in-person evaluation must clearly identify the methods used and the limitations of those methods, such as the absence of an in-person examination.
- c) Psychiatrists have further argued that they should be permitted to render professional expertise in matters of national security and that the “Goldwater Rule” prohibits this important function. While psychiatrists may be asked to evaluate public figures in order to inform decision makers on national security issues, these evaluations, like any other, should occur with proper authority and methods within the confidentiality confines of the circumstances. Basing professional opinions on a subset of behavior exhibited in the public sphere, even in the digital age where information may be abundant, is insufficient to render professional opinions and is a misapplication of psychiatric practice.
- d) Some psychiatrists have argued that they have a responsibility to render an opinion regarding public figures based on Tarasoff duties to warn and/or protect third parties. This position is a misapplication of the Tarasoff doctrine. Actions to warn and/or protect a third party occur in situations in which a psychiatrist is providing treatment to or an evaluation of an individual who poses a risk to others and Tarasoff serves as a rationale for a limited sharing of otherwise confidential or privileged information. However, for information in the public domain, law enforcement agencies that have the same, and perhaps even greater, access to information about the individual are charged with protecting the public.
- e) Finally, some psychiatrists have argued that rendering an opinion based on information in the public domain without conducting an examination should be permissible because psychiatrists are often involved in psychological profiling. However, psychological profiling differs markedly from self-initiated public comments as described in this opinion. Psychological profiling occurs when a law enforcement or other authorized agency or authorized party engages a mental health professional to provide information about the characteristics of an individual who might have perpetrated a crime; the behavior of a suspect or other figure; other characteristics of an individual; or a prediction of future risk. The authorization for this work derives from the requester and is not initiated by the

psychiatrist. It is also meant to be shared with the requester, and not the general public. Finally, as this work often lacks examination of the individual and relevant data from appropriate collaterals, the psychiatrist must explicitly address the limitations of the methods used in rendering a profile, should not opine about a diagnosis, should not include a diagnostic opinion, and must clearly state the inherent limitations in making predictions about future behavior.

Nothing in this opinion precludes the psychological profiling of historical figures aimed at enhancing public and governmental understanding of these individuals. As Opinion Q.7.a states, this profiling should not include a diagnosis and should be based in peer-reviewed scholarship that meets relevant standards of academic scholarship. Such scholarship should clearly identify the methods used, materials relied upon, and methodologic limitations, including the absence of formal evaluation of the subject of inquiry.

Q.6

Question: Would it be ethically appropriate to write a paper on the crucial nature of leadership, including political, without naming names, to address an important issue (such as the growing threat of global warming)?

Answer: Yes, it could be ethically appropriate to write a paper on the crucial nature of leadership, including to address the growing threat of climate change. Commenting in general terms about leadership qualities that would be desirable to make a difference in a policy area would be legitimate and appropriate, *provided that* the comments about the individual are not based on medical knowledge or training.

The Goldwater Rule applies to professional opinions related to individuals one has neither the clinical basis nor the permission to discuss publicly. Talking about what one wishes to see in a leader and what it would take to make a real difference in climate change or any other policy area is perfectly legitimate - provided it does not make any statements about individuals which would require the speaker to call upon his/her medical knowledge or training.

Identifying an individual as having particular behavior traits that suggests the utilization of psychiatric expertise to support an opinion of the identified leader or casting the author's comments in psychiatric terms that would suggest a professional evaluation of issues and personalities involved would not be appropriate. (Section 7) (2018)

R. RESIDENT, STUDENT AND OTHER TRAINEE ISSUES

R.1

Question: As a student health service psychiatrist, I treat some students psychotherapeutically and see others for administrative reasons. Do I have a potential ethical conflict?

Answer: You certainly do if you do not define your roles clearly and in advance to the student. You cannot give an administrative opinion if the student has made a psychotherapeutic contract with you. This is a classic example of “double-agency.” If the college demands that you confuse your roles, you should refuse to participate and must ethically withdraw from the arena if the college will not relent. Even a student’s consent for you to make an administrative report after a period of psychotherapy does not resolve your conflict since the consent may not be freely given but coerced. The college should be advised to seek an administrative opinion from a psychiatrist not involved in a treatment relationship with the student. (Section 4) (1977)

R.2

Question: One of our young male residents on one occasion asked the wife of a man he saw in consultation for a date and on another accepted a ride from a woman patient of his with an eroticized transference toward him. Has he behaved unethically and should he be sanctioned?

Answer: Asking the wife of the patient on a date is unethical. At a minimum, the second event is a significant boundary crossing. Learning to maintain professional boundaries is a critical milestone in psychiatry residency. This resident’s behavior, at a minimum, indicates a need for supervision, assessment, and education about boundaries. The ethical training supervisor must not ignore these events and instead engage in careful monitoring and assessment of the resident’s ability to learn and practice within the ethical norms of the profession. (Section 2) (1987; 2019)

R.3

Question: In a training program in psychotherapy, do trainees need to obtain informed consent from patients in order to present the patient’s therapy in class discussions and in supervision groups?

Answer: No, provided that the patient’s confidentiality and identity are preserved and patients are aware of the supervisory processes. In addition, the confidentiality of the material presented, even if deidentified, should be a condition of the supervision. (Section 4) (1993; 2019)

R.4

Question: Several years ago as a psychiatric resident I was involved in the psychopharmacological treatment of an adolescent patient. She has since moved out of her mother’s home. Recently I encountered the patient’s mother in a Divorce Recovery Course. We subsequently met for coffee. Is it ethical for this to become a dating relationship?

Answer: A doctor-patient relationship is established when a psychiatrist provides treatment to a patient; this includes provision of “split treatment. Parents are typically an integral part of the treatment of children or adolescents. For example, parents must provide informed consent when psychotropics are prescribed to a minor in most instances, thereby assuring their active participation. Romantic involvement either during or subsequent

to treatment with key family members may be construed as exploitation of the patient and family; it could be a method by which a psychiatrist meets his or her own needs. Furthermore, this romantic involvement may discourage the original patient and other family members from seeking subsequent treatment with the trusted psychiatrist. Romantic involvement with key family members is also unethical. (Section 2) (2003)

R.5

Question: I run a process group for psychiatric residents at a training hospital, and I have learned that some of the residents refuse to admit patients from certain hospitals or with certain diagnoses. Are the residents' actions unethical? What are my ethical responsibilities as the process group leader, given the constraints of confidentiality for this group?

Answer: Ethical practice requires informing the residents of the expectations of and limitations on confidentiality at the beginning of the process group. This training experience should maintain confidentiality in order to assist the residents in the training process. However, refusing admission of patients could be unethical. An exploration of the reasons residents refused patient admissions would need to occur to understand the ethical implications. Psychiatrists have an ethical responsibility to address unethical conduct of other psychiatrists (and trainees in this case), which could be most ethically achieved in situations in which the limits on confidentiality are established at the outset. (Section1) (2006; revised 2018)