

North Carolina Medical Board  
Policy Committee Meeting  
Thursday, September 20, 2012

Committee Members: Dr. Camnitz, Chairman; Dr. Greene; Mrs. Blizzard and Judge Lewis

1. Old Business:

a. Position Statement Review – Request from Board

Issue: NCGS Chapter 90; Article 27, entitled “Referral Fees and Payment for Certain Solicitations Prohibited” states, in part, “A health care provider shall not financially compensate in any manner a person, firm, or corporation for recommending or securing the health care provider's employment by a patient”. MD pays a fee to Groupon for pre-paid vouchers issued by Groupon to Groupon subscribers who purchase the vouchers. Groupon “facilitates” the purchase of MD’s pre-paid vouchers which offer promotional discounts for MD’s services. A patient purchasing a voucher from Groupon pays for the price of MD’s discounted service plus additional promotional, advertising, administrative, and “offer facilitation” fees to Groupon.

2. New Business:

a. Position Statement Review

Issue: In November 2009, the Board approved the Policy Committee's recommendation to review Position Statements at least once every four years. A review schedule has been formulated for the Committee's consideration.

Position Statements for review:

- i. Physician Supervision of Other Licensed Health Care Practitioners
- ii. Medical Testimony

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## **1. Old Business**

### **a. Position Statement Review – Request from Board**

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Board Action: Request Policy Committee to amend Referral fees and fee splitting position statement as it relates to social networking offers.

07/2012 Committee discussion: The Committee decided to delegate revisions to the position statement to Mr. Brosius in consultation with Mr. Jimison. Proposed changes will be presented to the Committee at the September meeting.

07/2012 Committee Recommendation: Tabled until September.

07/2012 Board Action: Accept committee recommendation.

CURRENT POSITION STATEMENT:

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**Referral fees and fee splitting**

Payment by or to a physician solely for the referral of a patient is unethical. A physician may not accept payment of any kind, in any form, from any source, such as a pharmaceutical company or pharmacist, an optical company, or the manufacturer of medical appliances and devices, for prescribing or referring a patient to said source. In each case, the payment violates the requirement to deal honestly with patients and colleagues. The patient relies upon the advice of the physician on matters of referral. All referrals and prescriptions must be based on the skill and quality of the physician to whom the patient has been referred or the quality and efficacy of the drug or product prescribed.

It is unethical for physicians to offer financial incentives or other valuable considerations to patients in exchange for recruitment of other patients. Such incentives can distort the information that patients provide to potential patients, thus distorting the expectations of potential patients and compromising the trust that is the foundation of the patient-physician relationship.

Furthermore, referral fees are prohibited by state law pursuant to N.C. Gen. Stat. Section 90-401. Violation of this law may result in disciplinary action by the Board.

Except in instances permitted by law (NC Gen Stat §55B-14(c)), it is the position of the Board that a physician cannot share revenue on a percentage basis with a non-physician. To do so is fee splitting and is grounds for disciplinary action.

(Adopted November 1993) (Amended May 1996, July 2006)

## Referral fees and fee splitting

Created: Nov 1, 1993

Modified:

May 1996, July 2006

Payment by or to a ~~physician~~ licensee solely for the referral of a patient is unethical. A ~~physician~~ licensee may not accept payment of any kind, in any form, from any source, such as a pharmaceutical company or pharmacist, an optical company, or the manufacturer of medical appliances and devices, for prescribing or referring a patient to said source. In each case, the payment violates the requirement to deal honestly with patients and colleagues. The patient relies upon the advice of the ~~physician~~ licensee on matters of referral. All referrals and prescriptions must be based on the skill and quality of the physician to whom the patient has been referred or the quality and efficacy of the drug or product prescribed.

It is unethical for ~~physicians~~ licensees to offer financial incentives or other valuable considerations to patients in exchange for recruitment of other patients. Such incentives can distort the information that patients provide to potential patients, thus distorting the expectations of potential patients and compromising the trust that is the foundation of the patient- ~~physician~~ licensee relationship.

Furthermore, referral fees are prohibited by state law pursuant to N.C. Gen. Stat. Section 90-401. Violation of this law may result in disciplinary action by the Board.

Except in instances permitted by law (N.C. Gen. Stat. § 55B-14(c)), it is the position of the Board that a ~~physician~~ licensee cannot share revenue on a percentage basis with a non-~~physician~~ licensee. To do so is fee splitting and is grounds for disciplinary action.

### Voucher Advertising

It is the Board's position that, so long as certain conditions are followed, advertising involving the utilization of vouchers (e.g. Groupon) does not constitute unethical fee-splitting or a prohibited solicitation or referral fee under North Carolina law. Those conditions include: (1) ensuring that the negotiated fee between the voucher advertising company and the licensee represents reasonable compensation for the cost of advertising; and (2) incorporating the following terms and conditions in a clear and conspicuous manner in all advertisements:

- (a) A description of the discounted price in comparison to the actual cost of services;
- (b) A disclosure that all patients may not be eligible for the advertised medical service and that decisions about medical care should not be made in haste. Determinations regarding the medical indications for individual patients will be made on an individual basis by applying accepted and prevailing standards of medical practice; and

- (c) A disclosure to prospective patients that, if it is later decided that the patient is not a candidate for the previously purchased medical service, the patient's purchase price will be refunded in its entirety. If the patient does not claim the service, then the patient's purchase price must still be refunded in its entirety. In the event that the voucher advertising company does not refund the purchase price in its entirety, it will be the sole obligation of the licensee to refund the entire purchase price.

2. New Business:

a. Position Statement Review

1/2010 Committee Recommendation: (Loomis/Camnitz) Adopt a 4 year review schedule as presented. All reviews will be offered to the full Board for input. Additionally all reviews will be documented and will be reported to the full Board, even if no changes are made.

1/2010 Board Action: Adopt the recommendation of the Policy Committee.

POSITION STATEMENT	ADOPTED	SCHEDULED FOR REVIEW	LAST REVISED/ REVIEWED/ ADOPTED	REVISED/ REVIEWED	REVISED/ REVIEWED	REVISED/ REVIEWED	REVISED/ REVIEWED
Physician Supervision of Other Licensed Health Care Practitioners	Jul-07	Sep-12	Jul-07				
Medical Testimony	Mar-08	Sep-12	Mar-08				
Advance Directives and Patient Autonomy	Jul-93		Mar-08	May-96			
End-of-Life Responsibilities and Palliative Care	Oct-99		Mar-08	May-07			
Drug Overdose Prevention	Sep-08		Sep-08				
Policy for the Use of Controlled Substances for the Treatment of Pain	Sep-96		Sep-08	Jul-05			
Medical Record Documentation	May-94		May-09	May-96			
Retention of Medical Records	May-98		May-09				
Capital Punishment	Jan-07		Jul-09				
Departures from or Closings of Medical	Jan-00		Jul-09	Aug-03			
Professional Obligations pertaining to incompetence, impairment, and unethical conduct of healthcare providers	Nov-98		Mar-10	Nov-98			
Unethical Agreements in Complaint Settlements	Nov-93		Mar-10	May-96			
What Are the Position Statements of the Board and To Whom Do They Apply?	Nov-99		May-10	Nov-99			
Telemedicine	May-10		May-10				
Contact With Patients Before Prescribing	Nov-99		Jul-10	Feb-01			
Guidelines for Avoiding Misunderstandings During Physical Examinations	May-91		Jul-10	Oct-02	Feb-01	Jan-01	May-96
Access to Physician Records	Nov-93		Sep-10	Aug-03	Mar-02	Sep-97	May-96
Medical Supervisor-Trainee Relationship	Apr-04		Nov-10	Apr-04			
The Treatment of Obesity	Oct-87		Nov-10	Jan-05	Mar-96		
Advertising and Publicity	Nov-99		Nov-10	Sep-05	Mar-01		
Medical, Nursing, Pharmacy Boards: Joint Statement on Pain Management in End-of-Life Care	Oct-99		Jan-11	Oct-99			

HIV/HBV Infected Health Care Workers	Nov-92		Jan-11	Jan-05	May-96		
Writing of Prescriptions	May-91		Mar-11	Mar-05	Jul-02	Mar-02	May-96
Laser Surgery	Jul-99		Mar-11	Jul-05	Aug-02	Mar-02	Jan-00
Office-Based Procedures	Sep-00		May-11	Jan-03			
Sale of Goods From Physician Offices	Mar-01		May-11	Mar-06			
Competence and Reentry to the Active Practice of Medicine	Jul-06		Jul-11	Jul-06			
Prescribing Legend or Controlled Substances for Other Than Valid Medical or Therapeutic Purposes, with Particular Reference to Substances or Preparations with Anabolic Properties	May-98		Sept-11	Nov-05	Jan-01	Jul-98	
Referral Fees and Fee Splitting	Nov-93		Jan-12	Jul-06	May-96		
Self- Treatment and Treatment of Family Members and Others With Whom Significant Emotional Relationships Exist	May-91		Mar-12	Sep-05	Mar-02	May-00	May 96
Availability of Physicians to Their Patients	Jul-93		May-12	Nov-11	Jul-06	Oct-03	Jan-01
Sexual Exploitation of Patients	May-91		May-12	Sep-06	Jan-01	Apr-96	
Care of the Patient Undergoing Surgery or Other Invasive Procedure	Sep-91		Jul-12	Sep-06	Mar-01		
The Physician-Patient Relationship	Jul-95		Jul-12	Sep-06	Aug-03	Mar-02	Jan-00
The Retired Physician	Jan-97		Jul-12	Sep-06			

2. New Business:
  - a. Position Statement Review
    - i. Physician Supervision of Other Licensed Health Care Practitioners

CURRENT POSITION STATEMENT:

**Physician supervision of other licensed health care practitioners**

The physician who provides medical supervision of other licensed healthcare practitioners is expected to provide adequate oversight. The physician must always maintain the ultimate responsibility to assure that high quality care is provided to every patient. In discharging that responsibility, the physician should exercise the appropriate amount of supervision over a licensed healthcare practitioner which will ensure the maintenance of quality medical care and patient safety in accord with existing state and federal law and the rules and regulations of the North Carolina Medical Board. What constitutes an “appropriate amount of supervision” will depend on a variety of factors. Those factors include, but are not limited to:

- The number of supervisees under a physician’s supervision
- The geographical distance between the supervising physician and the supervisee
- The supervisee’s practice setting
- The medical specialty of the supervising physician and the supervisee
- The level of training of the supervisee
- The experience of the supervisee
- The frequency, quality, and type of ongoing education of the supervisee
- The amount of time the supervising physician and the supervisee have worked together
- The quality of the written collaborative practice agreement, supervisory arrangement, protocol or other written guidelines intended for the guidance of the supervisee
- The supervisee’s scope of practice consistent with the supervisee 's education, national certification and/or collaborative practice agreement

(Adopted July 2007)

2. New Business:

- a. Position Statement Review
- ii. Medical Testimony

1 CURRENT POSITION STATEMENT:

2 **Medical testimony**

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4 The Board recognizes that medical testimony is vital to the administration of justice in both judicial and  
5 administrative proceedings. In order to provide further guidance to those physicians called upon to  
6 testify, the Board adopts and endorses the AMA Code of Medical Ethics Opinion 9.07 entitled "Medical  
7 Testimony."<sup>1</sup> In addition to AMA Ethics Opinion 9.07, the Board provides the following guidelines to  
8 those physicians testifying as medical experts:

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- 10 • Physician expert witnesses are expected to be impartial and should not adopt a position as an  
advocate or partisan in the legal proceedings.
  - 11 • The physician expert witness should review all the relevant medical information in the case and  
12 testify to its content fairly, honestly, and in a balanced manner. In addition, the physician expert  
13 witness may be called upon to draw an inference or an opinion based on evidence presented in the  
14 case. In doing so, the physician expert witness should apply the same standards of fairness and  
15 honesty.
  - 16 • The physician expert witness is ethically and legally obligated to tell the truth. The physician  
17 expert witness should be aware that failure to provide truthful testimony constitutes  
18 unprofessional conduct and may expose the physician expert witness to disciplinary action by the  
19 Board pursuant to N.C. Gen Stat. § 90-14(a)(6).
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22 <sup>1</sup> The language of AMA Code of Medical Ethics Opinion 9.07 provides:

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24 In various legal and administrative proceedings, medical evidence is critical. As citizens and as professionals  
25 with specialized knowledge and experience, physicians have an obligation to assist in the administration of  
26 justice.

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28 When a legal claim pertains to a patient the physician has treated, the physician must hold the patient's  
29 medical interests paramount, including the confidentiality of the patient's health information, unless the  
30 physician is authorized or legally compelled to disclose the information.

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32 Physicians who serve as fact witnesses must deliver honest testimony. This requires that they engage in  
33 continuous self-examination to ensure that their testimony represents the facts of the case. When treating  
34 physicians are called upon to testify in matters that could adversely impact their patients' medical interests,  
35 they should decline to testify unless the patient consents or unless ordered to do so by legally constituted  
36 authority. If, as a result of legal proceedings, the patient and the physician are placed in adversarial positions  
37 it may be appropriate for a treating physician to transfer the care of the patient to another physician.

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39 When physicians choose to provide expert testimony, they should have recent and substantive experience or  
40 knowledge in the area in which they testify, and be committed to evaluating cases objectively and to  
41 providing an independent opinion. Their testimony should reflect current scientific thought and standards of  
42 care that have gained acceptance among peers in the relevant field. If a medical witness knowingly provides  
43 testimony based on a theory not widely accepted in the profession, the witness should characterize the  
44 theory as such. Also, testimony pertinent to a standard of care must consider standards that prevailed at the  
45 time the event under review occurred.

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47 All physicians must accurately represent their qualifications and must testify honestly. Physician testimony  
48 must not be influenced by financial compensation; for example, it is unethical for a physician to accept  
49 compensation that is contingent upon the outcome of litigation.

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51 Organized medicine, including state and specialty societies, and medical licensing boards can help maintain  
52 high standards for medical witnesses by assessing claims of false or misleading testimony and issuing  
53 disciplinary sanctions as appropriate. (II, IV, V, VII) Issued December 2004 based on the report "Medical  
54 Testimony," adopted June 2004.

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56 (Adopted March 2008)

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