The American Medical Association promulgates a Code of Ethics which includes several components, including very brief statements of general "Principles of Medical Ethics" and "Fundamental Elements of the Patient-Physician Relationship."

The AMA's Council on Ethical and Judicial Affairs has issued Opinions dealing with over 160 specific ethical issues facing physicians some of which are age-old and others of which stand as guides at the frontiers of modern medicine. Physicians and their advisors would do well to spend time with the entire Code and, especially, the Opinions and the professional papers and articles referred to in the annotations to them.

The Opinions state the Council's views on hot social policy issues such as abortion, the allocation of limited medical resources, end of life care, the commercial use of human tissue and genetic information, and fetal tissue transplantation.

They also cover a wide range of more mundane issues affecting the professional and business relationships of physicians with each other, their employees, the hospitals in which they serve, managed care organizations, and drug companies. These Opinions are more likely to speak to the day-to-day legal issues physicians and their lawyers must resolve.

Opinion 9.02 states that the Council on Ethical and Judicial Affairs "discourages any agreement which restricts the right of a physician to practice medicine for a specified period of time or in a specified area upon termination of employment . . ." It states that "[r]estrictive covenants are unethical if they are excessive in geographic scope or duration . . . or if they fail to make reasonable accommodation of patients' choice of physician." Yet we lawyers have seen many cases where the courts uphold physician noncompete covenants over arguments that they do not serve the patients' interests and are contrary to sound public policy.

Other Opinions describe the Council's views on payments from pharmaceutical companies and medical device manufacturers, compensation for referrals, investments in ancillary medical services, and a broad range of other business practices, some of which are specifically addressed in federal and state statutes, and others of which are not.
Kentucky's Board of Medical Licensure has adopted the 1994 Edition of the AMA Code of Medical Ethics through a regulation it has promulgated under a statute authorizing the Board to "promulgate a code of conduct governing the practice of medicine." Does this mean that the Board views the entire AMA Code of Medical Ethics, including the numerous Opinions, to be black letter law binding on each Kentucky physician?

The answer appears to be "close, but not quite." The Board (wisely in this writer's view) realizes that many of the Opinions use words and phrases such as "should not" and "in general" instead of "shall not" or "in no circumstances." The Board, moreover, has not always elevated (or reduced, depending on your point of view) every ethical standard to a legal requirement.

In matters involving physical risk for patients or employees, the Board can use the Opinions and other provisions of the Code to support strong punishment. In matters involving business relationships, the Board prudently refrains from interpreting the Opinions as absolute and inflexible standards. Instead, it examines all of the facts and circumstances when, and if, a real problem is brought to its attention.

This is good news. Judges and lawyers should look to the AMA Code of Medical Ethics for guidance but not for absolute tests of legality.

The Preamble to the Principles of Medical Ethics in the Code states that those Principles "are not laws, but standards of conduct which establish the essentials of honorable behavior for the physician."

This Article appeared in the February 2004 edition of Medical News.