Physicians Selling Products: Legal and Ethical Considerations

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As physicians look for ways to improve their bottom line, many are looking to alternative sources of revenue through the sale of products such as vitamins, creams, and diet supplements. Most physicians seem to believe that if the item is not covered by Medicare, there are no restrictions. This is simply not true.

Although many individuals are smart consumers, some patients will willingly purchase a cream recommended to reduce wrinkles or a nutritional supplement, whether needed or not, if a physician recommends it. Perhaps this is because of trust in their physician's recommendation or maybe they're too uncomfortable to refuse.

Before selling any product, physicians must consider all legal and ethical limitations. Under the AMA Code of Medical Ethics, Opinion 8.063, which addresses the sale of non-prescription products that provide a “health” benefit, the AMA raises several concerns about products sold to patients, such as whether it creates a financial conflict of interest; places undue stress on the patient; erodes patient trust; or undermines the primary obligation of physicians to serve the interests of patients before their own. These concerns exist not only when a physician dispenses items in exchange for money, but also when he or she endorses a product that the patient may order or purchase elsewhere which results in remuneration for the physician.

In its guidance, the AMA states physicians should not sell health-related products whose claims lack scientific validity and should rely on peer-reviewed literature and unbiased scientific sources to review products. Additionally, physicians must take steps to minimize financial conflicts of interest by disclosing financial arrangements with a manufacturer or supplier and by letting the patient know where else the products can be obtained.

With regard to selling non-health related goods, the AMA also provides guidance under opinion 8.062 which indicates a physician may sell low-cost non-health-related goods for the benefit of community organizations, provided that: (1) the goods in question are low-cost; (2) the physician takes no share in profit from their sale; (3) such sales are not a regular part of the physician's business; (4) sales are conducted in a dignified manner; and (5) sales are conducted in such a way as to assure that patients are not pressured into making purchases. It should be noted that AMA guidance is intended to apply whether the products are sold in the physician's office or through a practice website.

There are also legal concerns when it comes to physicians selling products. For example, in Illinois under 225 ILCS 22(18), physicians are prohibited from conduct that involves: “promotion of the sale of drugs, devices, appliances, or goods provided for a patient in such manner as to exploit the patient for financial gain of the physician.” Although this language is not currently being used to stop physicians from selling items such as designer eyeglasses and beauty creams, it is possible state agencies may take notice as physicians start to profit more from such sales and some states may have more specific restrictions. Physicians should be especially watchful for patient complaints to practice staff or even web reviews that suggest patients feel coerced or uncomfortable with a practice’s sales pitch. These types of grievances can prompt an investigation into your practice.

Physicians should also be wary of wellness or diet clinics seeking physician sponsorship. I recently reviewed a license agreement with a franchise of an international diet plan that required a physician to allow her license to be on “record” so the franchisee could purchase and sell the products. The physician was not required to sell, promote, or oversee the products or clinic but she was to be paid a percentage of all goods sold at the franchise. Physicians need to be careful about letting their licenses be “used” (which most state laws prohibit) and to be aware that if something unexpected
goes wrong, the physician’s license will be on the line.

As always, consult with counsel to make sure you are in compliance with your state consumer fraud and other statutes that may apply. It’s always nice to find a way to supplement practice income, but physicians need to make sure to balance financial goals with patients' interests.

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