

Employment and Referral Relationships between Ophthalmologists and Other Health Care Providers [86-1]

Issues Raised:

What are the ethical constraints concerning employment and referral relationships among ophthalmologists and other health care providers?

Applicable Rules:

Rule 1. Competence
Rule 2. Informed Consent
Rule 6. Pretreatment Assessment
Rule 7. Delegation of Services
Rule 8. Postoperative Care
Rule 9. Medical and Surgical Procedures
Rule 10. Procedures and Materials
Rule 11. Commercial Relationships
Rule 15. Conflict of Interest

Background

Various commercial or professional relationships may be governed by federal or state law with respect to prohibiting the payment or receipt of rebates and referral fees, fee-splitting, or engaging in the corporate practice of medicine or the unauthorized practice of medicine. The American Academy of Ophthalmology has no obligation in the interpretation or enforcement of these laws. Indeed, the Academy has no desire to limit members in their commercial or professional relationships in any way, except insofar as these relations clearly endanger the principles of honesty, fair dealing, and quality care towards patients. However, when ophthalmologists' commercial or professional relationships involve or encourage conduct that is likely to mislead or harm patients, serious ethical questions are raised about which the Academy's Code of Ethics may provide guidance.

General Discussion

First and foremost, in arranging commercial business relationships, the ophthalmologist must take reasonable precautions to ensure that his/her clinical judgment about what is in the best interest of the patient is not affected by his/her own commercial interests or other conflicts of interest (*Rules 11 and 15*). In ambiguous situations, or in situations that present ethical quandaries, an ophthalmologist must always be guided by the best interest of the patient (*Principle 1*).

Second, by providing services, the ophthalmologist assumes a responsibility to be competent by virtue of his/her specific training and experience (*Rule 1*). All services

performed by the ophthalmologist, or by others under the ophthalmologist's direction, should be competently provided. It is unethical for an ophthalmologist to participate in a commercial relationship knowing that services with which he/she is associated are not being provided in a competent manner.

Third, the ophthalmologist must take steps to ensure that he/she, and others acting under his/her direction, provides the patient with only those laboratory procedures, optical devices, pharmacological agents, and medical and surgical services, that serve the patient's best interest (*Rule 10*). Surgery should be recommended and performed only after a careful assessment of the patient's physical and personal needs (*Rule 6*). Thus, the ophthalmologist should avoid commercial relationships that are structured to create incentives for unnecessary services or products, or for surgery without an adequate preoperative assessment.

Fourth, the provision of all medical and surgical procedures should be preceded by appropriate informed consent (*Rules 2 and 9*). Thus, commercial relationships are unethical unless they ensure that the ophthalmologist engages in an unpressured, careful discussion of the proposed action with the patient, to the full extent appropriate for the treatment or procedure contemplated.

Fifth, the fees charged by the ophthalmologist for his/her services or the services of those operating under his/her direction must not be excessive or deceptively communicated, and must not exploit the patient or others who pay for the services (*Principle 5, Rule 9*). Therefore, commercial relationships that routinely create the potential for duplicative, wasteful, or excessive fees are not ethical.

Sixth, an ophthalmologist must not delegate to other health professionals, however well trained, those aspects of care that are within the unique competence of the ophthalmologist. (These do not include the aspects of postoperative care permitted by law to be performed by auxiliaries; for nonophthalmological physicians, these may also exclude additional functions.) While the ophthalmologist may delegate functions other than those outside his/her unique competence, if the ophthalmologist does so, he/she still has the responsibility to ensure that the auxiliary personnel are qualified and adequately supervised (*Rule 7*). Thus, commercial relationships in which the ophthalmologist exercises supervision of auxiliaries at a level of supervision less than that required by state law, or in which the ophthalmologist delegates to nonophthalmological physicians or allied health personnel functions that only ophthalmologists are competent to provide may harm patients and are therefore unethical.

Seventh, the Code of Ethics makes clear that until the patient has recovered from the immediate effects of the surgery, the provision of those aspects of postoperative care that are within the unique competence of the ophthalmologist ordinarily must be provided by the operating ophthalmologist or by another ophthalmologist, but they may be delegated in emergency-type situations or when the patient's best interest clearly is appropriately served (*Rule of Ethics 8*). In addition, the arrangements for postoperative care must be made before surgery and with the advance approval of the patient.

Code of Ethics Rules 7 and 8 would not preclude an Academy member from referring patients to a nonophthalmological physician or allied health care personnel for those aspects of postoperative care that are not within the unique competence of the ophthalmologist, provided that the person is legally entitled and professionally trained, experienced, and qualified to provide the particular services. (This includes the aspects of postoperative care permitted by law to be performed by auxiliaries, and, for nonophthalmological physicians, it

may also include additional functions.)

Eighth, the patient must clearly understand who is responsible for each element of his/her care. This is necessary in order to avoid deception (*Rules 1 and 13*) and to ensure adequate informed consent (*Rules 2 and 9*). Ophthalmologists and nonphysician providers sometimes work together in unique and useful relationships. However, since the services may be provided to the patient in what appears to be a medical setting, the patient may believe that only medical services are being provided. In some cases, a nonophthalmologist physician or allied health care professional may provide eye care for which he/she is licensed, and the patient is not seen by the ophthalmologist unless pathology of the eye or visual system is suspected. In these circumstances, the ophthalmologist has the responsibility to ensure that the patient is aware of who provides each service. In other situations, the ophthalmologist may choose to see the patient after each visit; he/she should then ensure that a useful service to the patient, not just a cursory or redundant one, is provided. Thus, if the effect of a business or commercial relationship is to induce a patient to believe that he/she is under the care of an experienced ophthalmologist when in fact significant elements of the case are shifted to less trained persons, or if the effect is to provide unnecessary or redundant services, serious violations of ethics arise. This is particularly true if the patient is not informed of the arrangements for care and of fees in advance.

Ninth, advertisements and other communications to the public about ophthalmological practice must be accurate and avoid deception (*Rules 1 and 13*).

This revised Advisory Opinion 86-1 is intended to revise, update, supersede, and replace in its entirety the original version of Advisory Opinion 86-1 and all previous interpretations of it. In the case of any inconsistency between this revised Advisory Opinion and Advisory Opinions "Delegation of Care" and "Postoperative Care", this revised Advisory Opinion shall govern.

Applicable Rules

"Rule 1. Competence. An ophthalmologist is a physician who is educated and trained to provide medical and surgical care of the eyes and related structures. An ophthalmologist should perform only those procedures in which the ophthalmologist is competent by virtue of specific training or experience or is assisted by one who is. An ophthalmologist must not misrepresent credentials, training, experience, ability or results."

"Rule 2. Informed Consent. The performance of medical or surgical procedures shall be preceded by appropriate informed consent."

"Rule 6. Pretreatment Assessment. Surgery shall be recommended only after a careful consideration of the patient's physical, social, emotional, and occupational needs. The ophthalmologist must evaluate the patient and assure that the evaluation accurately documents the ophthalmic findings and the indications for treatment. Recommendation of unnecessary treatment or withholding of necessary treatment is unethical."

"Rule 7. Delegation of Services. Delegation is the use of auxiliary health care personnel to provide eye care services for which the ophthalmologist is responsible. An ophthalmologist must not delegate to an auxiliary those aspects of eye care within the unique competence of the ophthalmologist (which do not include those permitted by law to be performed by auxiliaries). When other aspects of eye care for which the ophthalmologist is responsible are delegated to an auxiliary, the auxiliary must be qualified and adequately supervised. An

ophthalmologist may make different arrangements for the delegation of eye care in special circumstances, so long as the patient's welfare and rights are placed above all other considerations."

"Rule 8. Postoperative Care. The providing of postoperative eye care until the patient has recovered is integral to patient management. The operating ophthalmologist should provide those aspects of postoperative eye care within the unique competence of the ophthalmologist (which do not include those permitted by law to be performed by auxiliaries). Otherwise, the operating ophthalmologist must make arrangements before surgery for referral of the patient to another ophthalmologist, with the patient's approval and the other ophthalmologist's approval. The operating ophthalmologist may make different arrangements for the provision of those aspects of postoperative eye care within the unique competence of the ophthalmologist in special circumstances, such as emergencies or when no ophthalmologist is available, so long as the patient's welfare and rights are the primary considerations. Fees should reflect postoperative eye care arrangements with advance disclosure to the patient."

"Rule 9. Medical and Surgical Procedures. An ophthalmologist must not misrepresent the service that is performed or the charges made for that service."

"Rule 10. Procedures and Materials. Ophthalmologists should order only those laboratory procedures, optical devices or pharmacological agents that are in the best interest of the patient. Ordering unnecessary procedures or materials, or withholding necessary procedures or materials, is unethical."

"Rule 11. Commercial Relationships. An ophthalmologist's clinical judgment and practice must not be affected by economic interest in, commitment to, or benefit from professionally related commercial enterprises."

"Rule 15. Conflict of Interest. A conflict of interest exists when professional judgment concerning the well-being of the patient has a reasonable chance of being influenced by other interests of the provider. Disclosure of a conflict of interest is required in communications to patients, the public, and colleagues."

Other References

"Principle 1. Ethics in Ophthalmology. Ethics addresses conduct and relates to what behavior is appropriate or inappropriate, as reasonably determined by the entity setting the ethical standards. An issue of ethics in ophthalmology is resolved by the determination that the best interests of patients are served."

"Principle 5. Fees for Ophthalmological Services. Fees for ophthalmological services must not exploit patients or others who pay for the services."

"Principle 6. Corrective Action. If a member has a reasonable basis for believing that another person has deviated from professionally accepted standards in a manner that adversely affects patient care or from the Rules of Ethics, the member should attempt to prevent the continuation of this conduct. This is best done by communicating directly with the other person. When that action is ineffective or is not feasible, the member has a responsibility to refer the matter to the appropriate authorities and to cooperate with those authorities in their professional and legal efforts to prevent the continuation of the conduct."

"Principle 7. An Ophthalmologist's Responsibility. It is the responsibility of an ophthalmologist to act in the best interests of the patient."

See also *American Academy of Ophthalmology Advisory Opinions of the Code of Ethics; "Delegation of Services,"* and *"Postoperative Care."*

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