

ADVISORY OPINION OF THE CODE OF ETHICS

Subject: Postoperative Care

Issues Raised: (1) What are the obligations of the operating ophthalmologist with respect to postoperative care?

(2) What arrangements must be made when postoperative care is to be provided by someone other than the operating surgeon?

Applicable Rules: Rule 2: Informed Consent
Rule 8. Postoperative Care
Rule 9. Medical and Surgical Procedures
Rule 11. Commercial Relationships

Background

Providing postoperative eye care until a patient has recovered from his or her surgical experience is integral to patient management. Rule 8 of the Academy's Code of Ethics addresses those aspects of postsurgical care of the patient that are within the unique competence of the ophthalmologist and that are therefore "integral to patient management" in completing the surgical/medical process. It does not govern aspects of postoperative care such as refractions and dispensing of spectacles that persons other than physicians are authorized by applicable law to provide.

The primary goal of Rule 8 is to ensure that the patient is adequately served throughout the vulnerable period following surgery. The fundamental provision of the rule is that the operating ophthalmologist provide those aspects of postoperative care that are "within the unique competence of the ophthalmologist." Unique competence of the ophthalmologist includes services that nonphysicians are not permitted by law to perform, but it does not include services that physicians or nonphysicians are legally entitled and professionally trained, experienced, and qualified to perform. It states a preference for continuity of care, except when there are good reasons to deviate from this practice. In general, a patient is best served by having postoperative care provided by the physician who best knows his or her condition, the specifics of the surgical procedure, and the possible complications associated with the procedure and the patient. Reasons for departing from this provision would still have to be consistent with the other rules of the Code of Ethics, such as Rules 9 and 11.

There are, however, valid reasons and circumstances that may warrant a departure from the preferred practice of the operating surgeon providing postoperative care, particularly when referral is made to ophthalmologists or other physicians. It must be noted that because state statutes generally do not define which procedures may be performed only by particular medical specialists such as ophthalmologists, it may not be apparent which procedures are "within the unique competence of the ophthalmologist" as distinguished

from other physicians. Nonophthalmologist physicians (i.e., MD/DO) routinely can and do provide postoperative care following certain types of minor ophthalmologic surgery (such as following chalazion excision) without substantial risks to patients. Rule 8 does not restrict such provision of postoperative care by other physicians, since under state law it is not "within the unique competence of ophthalmologists." The Academy's Code of Ethics does not define scope of practice; it merely refers to applicable state law and to recognized ethical principles of good medical practice. However, these principles do constrain the judgment of the ophthalmologist somewhat. For example, an ophthalmologist may refer a patient for postoperative care to another licensed practitioner only if it is believed that the physician is competent.

The second key provision embodied in Rule 8 is that if the ophthalmologist cannot personally provide the postoperative care, the ophthalmologist must arrange *before* surgery (except in emergencies) for postoperative care to be provided by another qualified professional who is acceptable to the patient. Once again, the rule is not absolute; it establishes a preference that such care be provided by another ophthalmologist. Because ophthalmologists have special training and competence in medical and surgical care of the eyes, it is usually in the patient's best interests that such care be provided by an ophthalmologist. Here, as in all questions under the Code of Ethics, an issue in doubt should be "resolved by the determination that the best interests of patients are served" (Principle 1). If arrangements cannot be made that are appropriate and acceptable to the patient, the ophthalmologist should not perform the surgery (except in emergencies).

The third key provision in Rule 8 is that flexibility is permitted to allow different postoperative care arrangements in emergencies or when no competent ophthalmologist is available. Finally, the rule requires that the patient be informed prior to surgery how the postoperative care arrangements will affect the fees for services.

The following three cases raise issues about the provision of postoperative care so that the patients' welfare and rights are the primary considerations. The four surgeons, all Fellows of the American Academy of Ophthalmology, are concerned about how Rule 8 applies to their particular situations.

First Inquiry

Facts - Dr. A intends to perform glaucoma surgery at a hospital where he has privileges on a patient who lives in Dr. A's community. Dr. A proposes to turn over all postoperative examination and treatment to a younger colleague in clinical practice with him. Dr. A wishes to turn over this responsibility because he has a busy schedule and because he believes that his young colleague, whom he believes to be competent, would benefit from the experience.

Resolution - Dr. A's decision on whether he or his colleague should provide postoperative care must be made on the basis of what is best for the patient and not simply on the basis of what is most convenient for Dr. A. The rule does not establish an unrealistic standard. All ophthalmologists must deal with schedules that can pose conflicts and unforeseen contingencies that can arise. In some circumstances, it may be preferable to refer to a competent colleague who can devote the necessary time and attention to the case postoperatively rather than to an experienced but overburdened ophthalmologist. Rule 8 would not condemn Dr. A's conduct, as long as his primary motivation in not handling the postoperative care is the best interests of the patient. However, if an ophthalmologist routinely takes surgical responsibility for patients and then refers postoperative care to colleagues, within or outside of his or her practice, serious questions might be raised about whether he or she is pursuing the patients' best interests and whether this practice violates Rule 8. This is a necessary component of Rule 2, which requires informed consent prior to

any procedure.

The facts presented do not disclose what other steps Dr. A plans to take to comply with Rule 8, but the rule clearly requires several actions. First, the arrangements for postoperative care must be made before surgery. Second, even if postoperative care is to be provided by another professional, Dr. A's responsibility to the patient continues, and he must consult with the other professional to the degree necessary to protect the patient's best interests. Third, the patient must be informed beforehand of the arrangements and must approve them. The elements of informed consent recognized under state law and good medical practice must be satisfied (see Rule 2). The ophthalmologist should disclose to the patient the reasons for referring the patient to another ophthalmologist for postoperative care, the qualifications of the professional who will undertake such care, and any impact this referral will have on the fees charged. The requirement of affirmative disclosure is reinforced by Rule 9, which provides that "An ophthalmologist must not misrepresent the service that is performed or the charges made for that service." Finally, if the patient does not approve of the proposed arrangement, the ophthalmologist must make a good faith attempt to suggest alternatives that the patient might approve, including deferring surgery until the operating surgeon can provide postoperative care. If no satisfactory arrangements for postoperative care can be made, the ophthalmologist should not perform the surgery except in an emergency. As part of informed consent, the physician must fully discuss with the patient the cooperative nature of postoperative care in order to obtain the optimum results.

Second Inquiry

Facts - Dr. B has scheduled strabismus surgery for a one-year-old child. The parents of the child have just been informed that they will be moving across the country within a month after the surgery as the result of a job transfer. Dr. B plans to provide the child's parents with a report on the surgery as well as a list of ophthalmologists practicing in their new community in order to help them arrange for postoperative care.

Resolution - Dr. B proposes to discharge her obligation to her patient simply by giving the patient's family a medical report and a list of ophthalmologists. Dr. B's proposed course of action clearly violates Rule 8 of the Code of Ethics. First, because strabismus surgery is almost never an emergency procedure, serious questions might be raised as to why Dr. B needs to perform the surgery now rather than refer the family to a competent ophthalmologist in the new community. Assuming that that question is resolved, it is nevertheless clear that if Dr. B proceeds, it is her obligation to arrange for postoperative care of the patient by a qualified, competent, and willing ophthalmologist in the new community. Such postoperative care includes not only the care delivered within the first few months after surgery but also extended follow-up of the child for the next few years during which the development of amblyopia must be prevented. If all reasonable efforts to do so prove futile, she may invoke the "special circumstances" provision of Rule 8 by arranging for such care by a nonophthalmologist practitioner or by an auxiliary if no preferable physician is available and if it is appropriate for that patient. In all cases, however, the ophthalmologist's duty to the patient includes identifying and obtaining the commitment of another qualified professional to share the postoperative responsibilities. Once again, except in medical emergencies, the postoperative care arrangements, including fee arrangements, must be explained to the patient beforehand and approved by the patient.

Third Inquiry

Facts - Dr. D performs laser surgery on a diabetic patient and suggested, in advance of surgery, that the patient's postoperative care be provided by a relative of Dr. D's who is an optometrist practicing in the patient's community.

Resolution - Dr. D's arrangement would be permissible only if the optometrist is legally entitled and professionally trained, experienced, and qualified to perform postoperative services needed by the patient. Moreover, even if these conditions were satisfied and this option were pursued, there could be the appearance of conflict of interest as a result of the familial relationship. This should be discussed with the patient before the surgical intervention is performed. Taking this action without considering alternatives could violate Rule 8. However, in unusual circumstances, if Dr. D tried and was unable to arrange for postoperative care by an ophthalmologist or other preferable physician, arranging for care by an optometrist satisfying the conditions noted above could be acceptable under two conditions. First, Dr. D would have to maintain appropriate communications with the optometrist and, second, the optometrist would have to be qualified by statute and licensure to perform the necessary services in his or her state.

Applicable Rules

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

"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. An ophthalmologist must not inappropriately alter the medical record."

"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."

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."

American Academy of Ophthalmology Advisory Opinions of the Code of Ethics, Delegated Services, Employment and Referral Relationships Between Ophthalmologists and Other Health Care Providers, Communications to the Public and Informed Consent.

The Joint Position Paper of the American Academy of Ophthalmology and the American Society of Cataract and Refractive Surgery, Ophthalmic Postoperative Care.

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