AMERICAN ACADEMY OF OPHTHALMOLOGY®

ADVISORY OPINION OF THE CODE OF ETHICS

Subject: **Delegated Services**

Issues Raised: (1) How is it determined which services can be properly delegated and which cannot?
(2) What requirements apply when services are delegated?

Applicable Rules: Rule 6. Pretreatment Assessment
Rule 7. Delegation of Services
Rule 11. Commercial Relationships

Background

Rule 7 of the Code of Ethics addresses the use of auxiliary health care personnel to provide eye care services for which the ophthalmologist is responsible. Referral to other doctors of medicine or osteopathy, even junior members of a practice group, is not such "delegation" and therefore is governed by other rules from the Code of Ethics, not by Rule 7. Also, in some cases relations between ophthalmologists and opticians might be governed by other rules that do not appear relevant in this case, such as Rule 11.

First Inquiry

Facts - Dr. M, a Fellow of the Academy, has established a private practice in general ophthalmology. She employs, among others, a licensed optometrist and an unlicensed assistant. Dr. M uses the services of the optometrist to perform refractions and the assistant to plot visual fields and perform other data-gathering functions. She has personally trained the assistant and supplemented the training of the optometrist. She supervises the activities of both on a daily basis and knows both to be competent. In the same building in which Dr. M practices, a licensed optician has offices. Dr. M has no business relationship with the optician, but she has directed patients to the optician (as well as to other opticians) for filling prescriptions for spectacles, with satisfactory results. Dr. M wishes to know whether these arrangements are consistent with the Academy's Code of Ethics.

Resolution - The first provision embodied in Rule 7 is that ophthalmologists remain "responsible" for the eye care services provided by personnel under their supervision. Whatever the degree of appropriate delegation, Dr. M remains responsible for the quality of services provided by the optometrist and assistant as part of her practice. It appears from the facts presented that she has trained and does supervise both.

Rule 7 does not mandate a particular mode or degree of proper supervision. Under various state laws, supervision requirements may vary from required direct onsite supervision to appropriate standing orders and telephone consultations. An ophthalmologist must comply with such laws in addition to the requirement in the rule that the auxiliary be "qualified and adequately supervised." It appears from the facts presented that the optometrist is licensed, and in the absence of any facts to the contrary, it is assumed that Dr. M has a reasonable basis for believing that both auxiliaries are competent.

Dr. M is not responsible for the professional performance of the optician, who is not under her control. Of course, ophthalmologists should not refer patients to an optician if they believe that the optician does not provide high-quality services. But in the case presented, the optician's services have been adequate.

The next important issue raised by Rule 7 is the scope of services that may be properly delegated.

The rule makes it clear that it is ethical and appropriate to delegate certain functions, in conformity with state law and the Code of Ethics. Under applicable state law, any service that an auxiliary is licensed to perform is not within "the unique competence of the ophthalmologist", and it may be legally delegated. Under the rule, ophthalmologists "must not" delegate those tasks that are within their unique competence. Naturally, since state laws vary, practices on delegation will also vary, and the rule's reference to the "unique competence of the ophthalmologist" does not preclude this.

However, the overriding concern of Rule 7 is to ensure the best care for the patient (see also Principle 1). Therefore, ophthalmologists are not **required** to delegate at all; they may perform all services themselves. Moreover, the fact that a particular service under state law is permitted to be performed by others does not require ophthalmologists to delegate it to particular individuals, if doing so would not be in the best interests of the patient. Ophthalmologists may, but need not, delegate services, depending on their discretionary professional judgment about the individual's skills and the interests of the patient, among other factors.

Dr. M has delegated refractions to the optometrist and visual field plotting to the assistant. Under most, if not all, state laws, these tasks are not within the "unique competence" of the ophthalmologist; therefore, apart from any special local regulation, Dr. M is free to delegate such services under adequate supervision. Other tasks that frequently are permitted to be delegated to auxiliaries are taking the patient's history, visual acuity testing, measuring eye pressure, administration of topical medication, and nursing care. While some auxiliaries, such as optometrists, may perform these functions independently, when they work under the supervision of an ophthalmologist, the ophthalmologist is subject to Rule 7.

The final sentence of Rule 7 reflects the recognition that whatever the ideal allocation of eye care functions may be, emergencies and other special circumstances may require different arrangements. However, in an emergency, for example, Dr. M would not be failing to conform to the rule's requirements of "adequate supervision" if, in her absence and after her telephone authorization, the office optometrist performed certain functions that he/she might not customarily perform, provided that Dr. M reviews the patient's condition as soon thereafter as feasible.

Second Inquiry
Facts: Dr. P has several offices in 4 adjoining states. He operates in practice A on one day, then flies to practice B the next day, and so on. His patients' pretreatment assessments are delegated to referring eye care providers, who are legally able to provide these services by virtue of their respective state laws. For example, a patient is seen by their local eye care provider who refers him to Dr. M's nearest office for cataract surgery. The local eye care provider performs a comprehensive examination including slit lamp, glare and contract sensitivity tests, and biometry. Informed consent materials are mailed to the patient in advance of the scheduled surgery from Dr. P's office. When the patient arrives in Dr. P's office on the day of surgery, his signed informed consent forms are turned in at the front desk and he is seated in a large waiting area with several other patients. Eventually, Dr. P moves through the room, greeting each patient and asking if they have any questions. Each patient is then taken into the OR suite, in turn, for their cataract surgery.

Resolution – As in the first case study, the first provision of Rule 7 is that ophthalmologists remain "responsible" for the eye care services provided by personnel under their supervision. Whatever the degree of appropriate delegation, Dr. P remains responsible for the quality of services provided by the eye care providers to whom he has delegated the preoperative assessment care of his patients.

In this scenario, Dr. P appears to have adopted an unethical practice pattern. It is ethical for an ophthalmologist to delegate the acquisition of the data required for the preoperative history and physical, however the surgical planning and synthesis of information prior to surgery must be done by the operating ophthalmologist. The surgeon must discuss the findings and recommendations with the patient in advance rather than meeting the patient moments before the surgery begins. Additionally, Dr. M appears to have dispensed with the informed consent process, in violation of Code of Ethics Rule 2, by substituting paper forms in the mail. The patient's only apparent opportunity to ask questions about the procedure of Dr. M is in the waiting area in front of the other patients scheduled for surgery on the same day.

Dr. M defends his practice by saying that he “spot checks” his delegatees’ work to assure appropriate assessments are being made and that examining each patient prior to surgery is “simply not practical”. Code of Ethics Rule 7, *Delegation of Services*, clearly approves delegation to those who are legally qualified to provide the delegated services; however, Rule 6, *Pretreatment Assessment*, does not allow for “spot checking, but requires oversight on the part of the operating ophthalmologist. Ophthalmologists are responsible for verifying the findings of the examining eye care provider before proceeding with surgery or treatment.

Applicable Rules:

“*Rule 2. Informed Consent.* The performance of medical or surgical procedures shall be preceded by appropriate informed consent. When obtaining informed consent, pertinent medical facts and recommendations consistent with good medical practice must be presented in understandable terms to the patient or to the person responsible for the patient. Such information should include alternative modes of treatment, the objectives, risks, and possible complications of such a treatment, and the consequences of no treatment. The operating ophthalmologist must personally confirm with the patient or patient surrogate their (his or her) comprehension of this information.”

“Rule 6. Pretreatment Assessment. Treatment (including but not limited to surgery) shall be recommended only after a careful consideration of the patient's physical, social, emotional and occupational needs. The ophthalmologist must evaluate and determine the need for treatment for each patient. If the pretreatment evaluation is performed by another health care provider, the ophthalmologist must 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 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 interest of the patient is served.”

American Academy of Ophthalmology Advisory Opinions of the Code of Ethics, *Postoperative Care* and *Employment and Referral Relationships between Ophthalmologists and Other Health Care Providers*.

American Academy of Ophthalmology Policy Statement of the Code of Ethics, *Pretreatment Assessment.*

Approved by: Board of Directors, June 1984
Revised and Approved by: Board of Directors, June 1992
Revised and Approved by: Board of Directors, October 1996

Revised and Approved by: Board of Trustees, June 2000
Reaffirmed: Board of Trustees, Feb 2003
Reaffirmed: Board of Trustees, June 2006
Revised and Approved by: Board of Trustees, May 2012
Revised and Approved by: Board of Trustees, June 2018

P.O. Box 7424 / San Francisco, CA 94120 / 415.561.8500