



Inappropriate Fee-Splitting or Good Comanagement Contract?

Question: A corporate LASIK provider approached me about providing post-operative care for referred patients. If I agree to participate, I will receive up to 30% of the total fee paid by the patient as payment for my services. On the LASIK company's website, it states that this is a great way to make money on referrals and the contract makes it seem like a legitimate, common practice. Is it actually fee-splitting or a kickback? I've read the Comprehensive Guidelines for the Co-Management of Ophthalmic Postoperative Care and wonder if they apply in a formal contractual relationship like this.

Answer: It is important to note that the Comprehensive Guidelines for the Co-Management of Ophthalmic Postoperative Care are just that – guidelines. They offer information on co-management and transfers of care and provide guidance to assist ophthalmologists in the management of postoperative patients. They are not AAO policy; thus the Academy would not speak out against the practice of co-management or act against those who co-manage unless patients' best interests are imperiled. State and federal governments investigate and act against routine inappropriate, co-management practices that come to their attention. These arrangements, when not well-structured by knowledgeable individuals, have a relatively high degree of regulatory risk. As noted in the Guidelines, the OIG "has expressed concern about co-management based on economic considerations rather than clinical appropriateness and has refused to provide safe harbor protections for such arrangements, preferring to review cases on an individual basis."

While this practice might seem "common and legitimate" that does not necessarily equate to an ethical and/or legally defensible arrangement. As in any area of your ophthalmology practice, it behooves you to follow the best practice guidelines developed by your peers. The AAO trusts that members put the best interests of their patients first and foremost while complying with both regulatory matters and best practices.

Prior to engaging in any co-management scenario, AAO members should review pertinent Rules of the Academy's Code of Ethics, including:

- Rule 2. Informed Consent
- Rule 6. Pretreatment Assessment
- Rule 7. Delegation of Services
- Rule 8. Postoperative Care
- Rule 11. Commercial Relationships
- Rule 15. Conflict of Interest

Before entering into any contractual relationship regarding the postoperative care of patients, you should consult with qualified legal counsel to ensure that your co-management agreement with the Lasik provider is legally defensible and consistent with federal and state regulatory guidelines.

To read the guidelines, head to aao.org/ethics-detail/guidelines-comanagement-postoperative-care.

To read the Code of Ethics, visit aao.org/ethics-detail/code-of-ethics.

To submit a question, email ethics@aao.org.

¹ See 64 Fed. Reg. 63518,63548-63549.