

Opinion on Ethics and Professionalism

Second or Additional Medical Opinions in Orthopaedic Surgery

An AAOS Opinion on Ethics and Professionalism is an official AAOS statement dealing with an ethical issue, which offers aspirational advice on how an orthopaedic surgeon can best deal with a particular situation or circumstance. Developed through a consensus process by the AAOS Ethics Committee, an Opinion on Ethics and Professionalism is not a product of a systematic review. An AAOS Opinion on Ethics and Professionalism is adopted by a two-thirds vote of the AAOS Board of Directors present and voting.

Issues raised

What are the ethical obligations involved in relationships between orthopaedic surgeons with respect to providing second or additional medical opinions? What different types of second or additional medical opinions exist?

Background

People ultimately control their own personal health care decisions, although their choices may be severely limited by circumstance. Many people have their choice limited because of their insurance coverage or costs. The physician also has a contractual obligation in undertaking the care of a patient, while the patient is the ultimate owner of the contract and has a right to participate in all decisions affecting his or her care.

Many people find medical decision-making difficult, particularly in regard to advanced technologies and new drugs and treatments. There has also been increased publicity in recent years in regard to medical errors and “malpractice”. For these reasons, and also the pressures to contain costs, there has been increasing interest on the part of patients and insurers alike in obtaining a “second opinion” from a different physician.

Patients have sought independent second or additional opinions in the past, but the frequency of doing so has increased greatly in the past decade. There has been an exponential increase in the amount of medical information of varying quality readily available to the lay community. This contributes to an undercurrent of skepticism and distrust and encourages the seeking of additional medical opinions. Compounding this is confusion about the medical decision-making process in the lay and health care communities. One result is that both patients and physicians have on occasion experienced anxiety, frustration, anger, and intimidation.

There are many questions about the ethics of seeking and providing second or additional medical opinions. Some actions have resulted in accusations of impropriety and unethical behavior. While unethical behavior has occasionally occurred, many times the conflict has arisen from a lack of proper communication and mutual respect between the treating physician

and the physician from whom the patient has sought additional information. This conflict raises the specter of “turf,” greed, and dishonesty and, if visible in the public forum, does much to discredit the profession.

Definitions

Distinct types of interactions exist involving the gathering of additional medical opinions to which different ethical rules apply. They include:

- Consultations with a colleague, initiated by the treating physician, on behalf of and with the implicit consent of the patient, to gain additional diagnostic insight or confirmation in order to continue providing a comprehensive treatment plan for the patient;
- Referrals to a colleague, initiated by the treating physician, on behalf of and with the consent of the patient, to share the care of the patient in the performance of a specified service. A referral might be temporary or permanent; this decision should be made between the two physicians at the time of the referral.
- Transfers, initiated by the treating physician, to transfer all care of the patient to another physician. There are legal requirements for the treating physician in transferring a patient. The consent of the patient is required.
- Withdrawals, initiated by the treating physician, to discharge a patient from his or her care. There are legal requirements for the treating physician who is withdrawing services from a patient. In addition, the *Academy’s Code of Medical Ethics and Professionalism for Orthopaedic Surgeons* provides that “unless discharged by the patient, the orthopaedic surgeon may discontinue services only after giving adequate notice to the patient so that the patient can secure alternative care.”
- Second opinions, initiated by the patient, with or without the knowledge of the treating physician, seeking additional information and opinions regarding treatment options.
- Second opinions, initiated by a third party payer or the insurance company of the insured prior to giving authorization to the physician to perform the procedure. In most health insurance contracts, patients must comply with this requirement to receive the full benefit of their contract. The choice of which provider will provide the additional opinion is the sole decision of the insurer.
- Independent medical examinations, which are consultative examinations requested and utilized by third-party payers or insurers such as workers’ compensation, disability determination, automobile insurance carriers, and self-insured employers, for determination of benefits. These may be used to establish causation, compensability, extent of injury, or other issues affecting the determination or issuance of benefits.

The patient has complete freedom to seek additional medical opinions by initiating a consultation with another physician concerning his or her care plan or by dismissing the treating physician and transferring all care to another health care professional. The patient’s course of action is entirely within the patient’s prerogative.

Ethical considerations

The patient has the ultimate decision-making authority in seeking second or additional medical opinions and referrals. Although a patient may have surrendered a certain degree of free choice by accepting insurance coverage with certain limitations, the choice ultimately remains with the patient.

The physician has an ethical obligation to honor and support this free exercise of choice. If a patient indicates a desire to obtain an additional opinion, *for any reason*, the physician must provide upon request copies of all records, including x-rays, under his or her control at reasonable cost because this is in the patient's best interest. There can be no ethical justification for harming a patient's interest by increasing stress by withholding, distorting, or concealing pertinent information.

The American Academy of Orthopaedic Surgeons recommends that orthopaedic surgeons observe the following guidelines regarding second or additional medical opinions and referrals:

1. Any illegal action is unethical. For example, it would be illegal as well as unethical for the orthopaedic surgeon providing the second or additional medical opinion to slander the referring physician if the slanderous information is known or can be proven to be false.
2. In accepting a patient for consultation, it is ethical for the consulting orthopaedic surgeon to render an opinion and return the patient to the treating physician for continuing care. The consulting orthopaedic surgeon should communicate with the patient as well as the referring physician about the opinion.

It is unethical for the consulting orthopaedic surgeon to solicit care of the patient. However, at the *sole* discretion of the patient, the patient ethically may choose to terminate his or her relationship with his or her treating physician and then enter into another treatment relationship with the consulting orthopaedic surgeon. It is ethical for the consulting orthopaedic surgeon to accept the patient under these circumstances, although some orthopaedic surgeons choose not to accept the patient because of their personal view that a conflict of interest situation might be created.

3. When treating a patient referred by a colleague, the accepting orthopaedic surgeon ethically should return the patient to the referring physician after the index care has been rendered unless prior arrangements have been made with consent of both the referring physician and the patient to transfer the patient's care permanently. In a referral, professional courtesy dictates that some type of direct communication be given to the referring physician.
4. In the specific case where orthopaedic surgeons agree to render "second" medical opinions for a third party who then directs patients to them, the assumption of that patient's care may be prohibited expressly by the terms of the physician's arrangement with the insurance company. If the patient independently is seeking an additional medical opinion, the orthopaedic surgeons may render an opinion and advise the patient of a proposed treatment plan, provided the contract permits such action. The physician must be aware of the provisions of his/her agreement with the third party.
5. As an extension of patient autonomy, patients have an ethical right to prompt and complete access to their medical record information unless the physician

is bound by a contract with the patient's third party payer. As a corollary, orthopaedic surgeons who proffer second or additional medical opinions at the treating physician's or patient's request also have the right to complete access to this information. In general, the physician (or the physician's clinic or group practice) legally "owns" the patient's medical records that he or she maintains. However, this ownership is subject to the patient's right of privacy and, in legal proceedings, the physician-patient privilege. It is also subject to the patients' right in most states to obtain copies of those records or to have copies transferred to another person.

It is in the patient's best medical interests for orthopaedic surgeons to cooperate fully, consistent with HIPAA guidelines, in providing upon request copies of a patient's medical records, including physician notes, prescriptions, charts, reports, laboratory results, technical information used to assess the patient's health condition, letters, photographs, x-rays, and diagnostic imaging. This is true whether the patient is referred by one orthopaedic surgeon to another for a consultation or if the patient elects to see another orthopaedic surgeon for continuing treatment.

6. The orthopaedic surgeon is bound legally and ethically to give his or her best medical opinion, regardless of whether the orthopaedist is the treating physician or the physician who is asked to render a second or additional medical opinion. The best interest of the patient should clearly remain the guiding principal.

Ultimately, patients independently may choose their treating physicians, request transfers of their care, and dismiss their physician at their own discretion.

References:

Applicable provisions of the *AAOS Standards of Professionalism on Professional Relationships*

Mandatory Standard 2: "An orthopaedic surgeon shall maintain fairness, respect, and appropriate confidentiality in relationships with colleagues and other health care professionals. An orthopaedic surgeon shall communicate in a manner that enhances the profession."

Mandatory Standard 3: "An orthopaedic surgeon shall conduct himself or herself in a professional manner in interactions with colleagues or other health care professionals."

Mandatory Standard 4: "An orthopaedic surgeon shall work collaboratively with colleagues and other health care providers to reduce medical errors, increase patient safety, and optimize the outcomes of patient care."

Mandatory Standard 5: "An orthopaedic surgeon who transfers care of a patient to another physician or other health care provider shall facilitate the transfer of care for the welfare of the patient and cooperate with those receiving the patient."

Applicable provisions of the *Principles of Medical Ethics and Professionalism in Orthopaedic Surgery*

"1. The orthopaedic profession exists for the primary purpose of caring for the patient. The physician-patient relationship is the central focus of all ethical concerns. The orthopaedic surgeon should be dedicated to providing competent medical service with compassion and respect."

Applicable provisions of the *Code of Medical Ethics and Professionalism for the Orthopaedic Surgeon*

“I. B The physician-patient relationship has a contractual basis and is based on confidentiality, trust, and honesty. Both the patient and the orthopaedic surgeon are free to enter or discontinue the relationship within any existing constraints of a contract with a third party.”

“I. D. The orthopaedic surgeon may choose whom he or she will serve. An orthopaedic surgeon should render services to the best of his or her ability. Having undertaken the care of a patient, the orthopaedic surgeon may not neglect that person. Unless discharged by the patient, the orthopaedic surgeon may discontinue services only after giving adequate notice to the patient so that the patient can secure alternative care.”

“VII. A. An orthopaedic surgeon should practice only within the scope of his or her education, training and experience.”

“VII. D. When a patient submits a proper request for records, the patient is entitled to a copy of such records as they pertain to that individual. Charges should be commensurate with the services provided to reproduce the medical records.”

Other references:

American Medical Association Council on Ethical and Judicial Affairs: *Code of Medical Ethics*. Chicago, IL, 2014-2015 edition.

Opinion 3.04 Referral of Patients. Issued prior to April 1977.

<http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion304.page>

Opinion 7.01 Records of Physicians: Availability of Information to Other Physicians. Issued prior to

April 1977. <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion701.page>

Opinion 7.02 Record of Physicians: Information and Patients. Issued prior to April 1977; updated June 1994. <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion702.page>

Opinion 8.12 Patient Information. Issued March 1981; updated June 1994.

<http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion702.page>

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