

Information Statement

Orthopaedic Surgeon's Role in Medical Peer Review

This Information Statement has been developed as an educational tool based on the opinion of the authors. It is not a product of a systematic review. Readers are encouraged to consider the information presented and reach their own conclusions.

Medical peer review is a process by which a professional review body considers whether a practitioner's clinical privileges or membership in a professional organization will be adversely affected by the physician's competence or professional conduct.¹ Peer review is also used as a risk management tool, with the primary goal of promoting high quality medical care and ensuring patient safety.²

The Health Care Quality Improvement Act of 1996 (HCQIA)³ set standards for medical peer review activities. If the review process complies with HCQIA standards, the review body and its members and participants are generally shielded from liability in damages under most federal and state laws. Peer review information would be considered confidential and privileged and inadmissible in court.

The American Academy of Orthopaedic Surgeons (AAOS) believes that medical peer review is an important part of physician licensing and regulation, evaluation of clinical privileges, and physician performance improvement measures. AAOS strongly supports the peer review process as a beneficial means of improving the quality of medical care and ensuring patient safety.

Orthopaedic surgeons have an obligation to actively work towards improving patient safety by complying with federal and state laws and regulations, the requirements for maintaining clinical privileges, continuing education requirements, and any board imposed maintenance of certification. These responsibilities include voluntary service as a peer reviewer for state medical and licensing boards, hospitals and professional societies.

The Federation of State Medical Boards has recommended that state medical and licensing boards use qualified physicians to serve on peer review panels, adding that the "voluntary participation of licensees as reviewers" should be encouraged.⁴

In the musculoskeletal context, the AAOS encourages orthopaedic surgeons to participate in the peer review process. The Personal Conduct section of the AAOS *Code of Medical Ethics and Professionalism for Orthopaedic Surgeons*⁵ provides:

- II.C. The orthopaedic surgeon should obey all laws, uphold the dignity and honor of the profession, and accept the profession's self-imposed discipline. Within legal and other constraints, if the orthopaedic surgeon has a reasonable basis for believing that a physician or other health care provider has been involved in any unethical or illegal activity, he or she should attempt to prevent the continuation of this activity by communicating with that person and/or identifying that person to a duly-constituted peer review authority or the appropriate regulatory agency. In addition, the orthopaedic surgeon should cooperate with peer review and other authorities in their professional and legal efforts to prevent the continuation of unethical or illegal conduct.
- II.E. Orthopaedic surgeons should promote their own physical and mental well-being by maintaining healthy lifestyles. They should be attuned to evolving mental or physical impairment, both in themselves and in their colleagues, and take or encourage necessary measures to ensure patient safety. These measures might include medical intervention, professional counseling, or, in situations where reasonable offers of assistance are declined, reporting the impairment to appropriate authorities.

More specifically, the Professional Relationships section of the code provides:

- V.B. The professional conduct of the orthopaedic surgeon may be scrutinized by local professional associations, hospitals, managed care organizations, peer review committees, and state medical and/or licensing boards. These groups merit the participation and cooperation of orthopaedic surgeons.

Similarly, the Preamble of the AAOS Standards of Professionalism (SOPs) on Orthopaedic Expert Opinion and Testimony⁶ outlines the obligation of orthopaedic surgeons to provide expert services in many formats. While acting as an expert in a peer review proceeding, an orthopaedic surgeon must provide truthful, scientifically correct and appropriate testimony consistent with the SOPs.

Orthopaedic surgeons are frequently called upon to provide oral or written medical testimony or expert medical opinions in legal or administrative proceedings. It is in the public interest for orthopaedic testimony and medical opinions to be readily available, knowledgeable and objective. As a member of the orthopaedic profession, an orthopaedic surgeon must recognize a responsibility to provide testimony and expert medical opinions that are truthful, scientifically correct and appropriate for the context of the issues being considered. All Fellows and Members of the American Academy of Orthopaedic Surgeons and the American Association of Orthopaedic Surgeons ("AAOS") are required to accept this responsibility.

These Standards of Professionalism apply to all AAOS Fellows and Members who provide oral or written expert opinions, testimony and other services to attorneys, litigants, administrative agencies or the judiciary in the context of administrative, civil or criminal matters and include but are not limited to writing expert opinions, signing certificates or affidavits of merit, reviewing medical records, and providing sworn testimony.

The AAOS encourages orthopaedic surgeons to actively participate in peer review programs, including those processes established by hospitals, state medical or licensing boards, insurance companies, and professional associations. When serving as expert reviewers, orthopaedic surgeons must adhere to the Mandatory Standards of the most current version of the SOPs on Orthopaedic Expert Opinion and Testimony and the SOPs on Professional Relationships.

The role of peer review in maintaining the quality of care and ensuring patient safety remains critically important. Orthopaedic surgeons serving in peer review capacities may find the process to be time consuming. While HCQIA and state laws generally provide protection from legal liability for such service, some orthopaedic surgeons may have concerns about potential legal or professional ramifications of such service. In general, however, regulation of the medical profession remains a function that is best performed by peers with familiarity in the medical issues raised. It is only by having qualified, fair and impartial reviewers can the actions of orthopaedic surgeons be appropriately evaluated.

The AAOS supports participation of orthopaedic surgeons in the peer review process, both as members of any oversight board and as peer reviewers. In order to achieve these goals, the AAOS believes it is important for orthopaedic surgeons to:

- ***Actively participate in the peer review process, including service on review boards and panels;***
- ***Maintain educational competency to ensure the application of the appropriate standard of care in the review of individual cases;***
- ***Educate themselves on the peer review processes within their practices, hospitals, state medical and licensing boards, insurance companies, and professional associations; and***
- ***When serving as a peer reviewer, comply with the AAOS Mandatory Standards of Professionalism on Orthopaedic Expert Opinion and Testimony and the Mandatory Standards of Professionalism on Professional Relationships.***

References:

1. Council on Ethical and Judicial Affairs: *Code of Medical Ethics*, Opinions 9.05 and 9.10. Chicago, IL, American Medical Association, ed. 2012-2013.
2. SJ Jayasankar: Medical Peer Review and Risk Management. AAOS Now, October 2008.
3. Health Care Quality Improvement Act of 1996, 42 USC §1101 et seq
4. MJ Martin: Report of the Special Committee on Evaluation of Quality of Care and Maintenance of Competence. *FSMB Journal* 1998; 85(1): 35-43.
5. American Academy of Orthopaedic Surgeons: *Code of Medical Ethics and Professionalism for Orthopaedic Surgeons*. Adopted 1988, revised 2011.
6. American Academy of Orthopaedic Surgeons: *Standards of Professionalism on Orthopaedic Expert Opinion and Testimony*. Adopted 2005, amended 2010.

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