AAOS American Academy of Orthopaedic Surgeons
American Association of Orthopaedic Surgeons

Opinion on Ethics and Professionalism

Sexual Misconduct in the Physician-Patient Relationship

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.

Issue Raised

What obligations does an orthopaedic surgeon have regarding sexual misconduct in the physician-patient relationship?

Background

Sexual misconduct exploits the physician-patient relationship. The burden of recognizing this and avoiding this exploitation is always on the physician. The prohibition of sexual contact between a patient and his or her physician extends back to the Hippocratic Oath: “In every house where I come I will enter only for the good of my patients, keeping myself far from all intentional ill-doing and all seduction and especially from the pleasure of love with women or men, be they free or slaves.” Such prohibitions were intended to improve the poor image of the physicians of the time. Physician sexual misconduct is harmful to the patient and detrimental to providing care.

The American Medical Association (AMA), the American Academy of Orthopaedic Surgeons (AAOS), and state licensing and disciplinary authorities uniformly condemn sexual contact between physicians and their patients. Publicized cases of physician assault of incompetent, unconscious or otherwise compromised patients have led states to elaborate and strengthen their rules of sexual misconduct. There has been an increasing awareness and public reaction to the existence of this problem and its harmful effects.

State medical licensure and disciplinary boards are charged with protecting public welfare, and in 2006 the Federation of State Medical Boards (FSMB) issued guidelines for state boards to use in dealing with physician sexual misconduct. These policies reflect a strict intolerance of sexual misconduct on the part of physicians and allow the state medical licensure and disciplinary board to take prompt and decisive action against any physician who commits sexual misconduct.

It is estimated that 5-10% of all physicians have had sexual contact with patients.[1] Physicians from all specialties and backgrounds are involved. Nearly all violators are males and most victims are females. It is also felt that the true extent of the problem may be underreported. Reporting systems by states do not categorize complaints or actions by type or specialty, and data is limited.

Definitions

Many states have generated detailed lists of various behaviors in order to leave little doubt about what may be considered a sexual misconduct violation. Others have very brief definitions of physician sexual misconduct.

From a legal and ethical perspective, sexual misconduct may include a spectrum of behavior. Sexual misconduct is the exploitation of the physician-patient relationship in a sexual way. It is the use of the physician's power and dominance to satisfy his or her sexual desires at the expense of the patient. Verbal or physical behavior of a sexual nature including conversation, gestures, and inappropriate touching may constitute sexual misconduct.

According to the FSMB guidelines, sexual misconduct may be categorized in two ways:

- Sexual impropriety – behavior, gestures or expressions that are sexually suggestive, seductive or disrespectful of a patient's privacy or sexually demeaning to a patient.

- Sexual violation – physical sexual contact between a physician and a patient, whether or not it was consensual and/or initiated by the patient. This would include any kind of sexual intercourse or genital contact or masturbation, and touching of any sexualized body parts for purposes other than appropriate medical related examination or treatment. Exchange of prescriptions or other professional services for sexual favors would be another example of such a violation.

Legal and Disciplinary Considerations

State licensing or disciplinary boards have a range of sanctions that may be applied to physician sexual misconduct. In cases of forced sexual contact, it is likely that the physician will lose his or her medical license. Current national tracking systems of licensing actions may lead to similar action by other states where a physician may have a license or prevent a license from being acquired elsewhere. In other situations, a physician found guilty of sexual misconduct may be allowed to retain his or her medical license on probation and be monitored by the state medical licensure or disciplinary board. Many state boards require a special evaluation of the physician and attendance at specific courses on ethics and boundary violations.

There is limited information about the incidence of state licensing actions regarding physician sexual misconduct. There is also little known about recidivism for physicians who have committed sexual misconduct and continue to practice.

In 2005, the AAOS Fellowship adopted Standards of Professionalism (SOPs) on Providing Musculoskeletal Services to Patients. Mandatory Standard 7 explicitly provides that "an orthopaedic surgeon shall maintain appropriate relations with patients." Thus, if evidence is found of physician sexual misconduct with patients which has not otherwise been acted upon by the state licensure or disciplinary body, the AAOS (through its Professional Compliance Program) may take appropriate action regarding their AAOS membership, such as reprimand, censure, suspension or expulsion from the AAOS.

Physicians found guilty of sexual misconduct may also face a variety of professional liability claims and possibly criminal charges, depending on the circumstances. There is heightened awareness and intolerance on the part of the public and professional organizations in dealing with this problem.

Reporting of Sexual Misconduct

Anyone, including physician colleagues, may report instances of suspected physician sexual misconduct to the state licensure or disciplinary boards. State boards are obligated to investigate such complaints. Often patients do not report sexual misconduct to the authorities because of feelings of shame, humiliation degradation and self-blame.

Physicians have an ethical and in most jurisdictions a legal obligation to report sexual misconduct by physician colleagues. Reporting of sexual misconduct is a required ethical standard by the AMA, AAOS and by many state licensing or disciplinary boards. Failure to report may be considered professional misconduct and subject to disciplinary action as well. However, studies reflect a significant discrepancy between awareness of misconduct and reporting.

Ethical Consideration: Patient Consent and the Physician-Patient Relationship

Ethical concerns related to physician sexual misconduct exist, even if the patient consents to the relationship or terminates the physician-patient relationship in order to then enter into a sexual relationship with his or her physician.

A patient cannot give meaningful consent to sexual contact with his or her physician due to the position of trust and the disparity of power in the patient-physician relationship. Sexual or romantic attraction between physicians and patients is common, and most physicians will acknowledge having such feelings. This may be a problem especially when the attraction may have come before or after the physician-patient relationship. While such attractions may seem natural and normal, they do not override the concerns of unequal power, vulnerability and potential for exploitation that come with a sexual relationship between the physician and the patient.

The patient must be able to trust that the physician will work only for the patient's welfare. The needs or interests of the physician must not become a consideration in decisions about the patient's medical care. Sexual involvement with a patient affects or obscures the physician's medical judgment and is inevitably harmful to the patient. Accordingly, sexual relationships between patients and physicians are uniformly considered unethical and a form of professional misconduct. A consenting sexual relationship does not relieve the physician of the ethical and legal prohibition against such relationships.

Termination of a physician-patient relationship so that a sexual relationship may then be entered into may not always resolve this problem. If a physician finds there is a sexual or romantic attraction to a patient, there is an obligation to discontinue the patient relationship if the attraction cannot be appropriately controlled. However, [~~great~~] care must be taken when ending a physician-patient professional relationship and continuing with a romantic or sexual one. These latter cases may be unduly influenced by the previous trust, knowledge, influence, or emotions derived from the professional relationship. One is open then to the same considerations of sexual misconduct.

Some professional groups and state licensing or disciplinary boards provide designated time limits following the termination of the physician-patient relationship before the treating physician may ethically enter into a sexual relationship with a former patient. There is not agreement on such standards. Some feel that such relationships with former patients are always unethical. The relevant consideration is the potential for the misuse of physician power and exploitation of patient emotions derived from the former relationship. The ethical propriety of a sexual relationship between a physician and a former patient depends substantially on the nature and context of the former relationship.

Recommendations

The American Academy of Orthopaedic Surgeons condemns sexual misconduct by orthopaedic surgeons and other physicians. AAOS believes orthopaedic surgeons should educate themselves about the issues of sexual misconduct in patient care and that orthopaedic surgeons who become aware of alleged sexual misconduct by colleague physicians should report it timely and appropriately. By doing so, orthopaedic surgeons will foster professional interactions with patients that are free of inappropriate sexual actions and comments.

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References:

Applicable provisions of the *AAOS Standards of Professionalism on Providing Musculoskeletal Services to Patients*

> Mandatory Standard 1: "An orthopaedic surgeon shall, while caring for and treating a patient, regard his or her responsibility to the patient as paramount."
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> Mandatory Standard 3: "An orthopaedic surgeon shall serve as the patient's advocate for treatment needs and exercise all reasonable means to ensure that the most appropriate care is provided to the patient."
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> Mandatory Standard 5: "An orthopaedic surgeon shall maintain appropriate relations with patients."

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

> **"I. Physician-Patient Relationship.** 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."
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> **"II. Integrity.** The orthopaedic surgeon should maintain a reputation for truth and honesty with patients and colleagues, and should strive to expose through the appropriate review process those physicians who are deficient in character or competence or who engage in fraud or deception."
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> **"III. Legalities and Honor.** The orthopaedic surgeon must obey the law, uphold the dignity and honor of the profession, and accept the profession's self- imposed discipline."
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> **"V**. **Confidentiality.** The orthopaedic surgeon should respect the rights of patients, of colleagues, and of other health professionals and must safeguard patient confidences within the constraints of the law."

Applicable Provisions of the *Code of Medical Ethics and Professionalism for Orthopaedic Surgeons*

> "I. A. 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."
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> "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. An orthopaedist has an obligation to render care only for those conditions that he or she is competent to treat."
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> "II. A. The orthopaedic surgeon should maintain a reputation for truth and honesty. In all professional conduct, the orthopaedic surgeon is expected to provide competent and compassionate patient care, exercise appropriate respect for other health care professionals, and maintain the patient's best interests as paramount."

"II. B. The orthopaedic surgeon should conduct himself or herself morally and ethically, so as to merit the confidence of patients entrusted to the orthopaedic surgeon's care, rendering to each a full measure of service and devotion."

"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."

Other references:

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

Opinion 8.14 Sexual Misconduct in the Practice of Medicine. Issued December 1989; Updated March 1992 based on the report *Sexual Misconduct in the Practice of Medicine,* adopted December 1990 (*JAMA*. 1991;266:2741-2745). http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion814.page

Opinion 8.145 Sexual or Romantic Relationships between Physicians and Key Third Parties. Issued December 1998 based on the report *Sexual or Romantic Relations between Physicians and Key Third Parties,* adopted June 1998. http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion8145.page

Federation of State Medical Boards, "Addressing Sexual Boundaries: Guidelines for State Medical Boards." 2006.
http://www.fsmb.org/Media/Default/PDF/FSMB/Advocacy/GRPOL_Sexual%20Boundaries.pdf

Washington State Medical Quality Assurance Commission, "Sexual Misconduct and Abuse Rules." 2005.
http://www.doh.wa.gov/portals/1/Documents/Pubs/657108.pdf

Sansone RA, Sansone LA: Crossing the line: Sexual boundary violations by physicians. *Psychiatry (Edgmont),* 2009 Jun: 6(6):45-8. (This study suggests that physician sexual misconduct, as measured in confidential surveys, may be more common than data from disciplinary boards suggest.)

Footnote:

[1]American Medical Association: CEJA Report A-I-90 *Sexual Misconduct in the Practice of Medicine,* adopted December 1990 (*JAMA*. 1991;266:2741-2745).

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