Opinion on Ethics and Professionalism

Sexual Harassment and Exploitation

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 is sexual harassment? What should an orthopaedic surgeon do to help eliminate sexual harassment and exploitation?

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

"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."

"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. The orthopaedic Surgeon also has a responsibility to seek changes in legal requirements that are contrary to the best interest of the patient.

"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."

"VII. Cooperation. Good relationships among physicians, nurses, and health care professionals are essential for good patient care. The orthopaedic surgeon should promote the development of an expert health care team that will work together harmoniously to provide optimal patient care."

"X. Societal Responsibility. The orthopaedic surgeon has a responsibility not only to the individual patient, to colleagues and orthopaedic surgeons-in-training, but also to society as a whole. Activities that have the purpose of improving both the health and well-being of the individual and/or the community in a cost-effective way deserve the interest, support, and participation of the orthopaedic surgeon."
Applicable provisions of the Code of Medical Ethics and Professionalism for Orthopaedic Surgeons

"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. 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 another orthopaedic surgeon 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.”

"V. A. Good relationships among physicians, nurses and other health care professionals are essential for good patient care. The orthopaedic surgeon should promote the development and utilization of an expert health care team that will work together harmoniously to provide optimal patient care.”

Other references

American Medical Association Council on Ethical and Judicial Affairs Current Opinions:


Background

Unwelcome sexual advances, requests for sexual favors, and other verbal or physician conduct of a sexual nature constitute sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance or creates an intimidating, hostile or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim’s supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser’s conduct must be unwelcome.
Despite years of media coverage of this topic, surveys of women in medical school, post graduate programs, and in academic medicine show the incidence of perceived gender discrimination and harassment to be unchanged. Recent articles indicate that nearly half the women experience some form of gender-based harassment, especially early in their medical careers.\textsuperscript{1 & 2}

**Legal considerations**

In recent years, the number of complaints of sexual harassment in the workplace has increased substantially as has the number of lawsuits alleging violations of state or federal law based on incidents of sexual harassment.

Legal claims of sexual harassment fall into two categories: “quid pro quo harassment,” whereby submission to or rejection of the sexual conduct is used as the basis for employment decisions; and “hostile environment harassment,” in which conduct is so pervasive that it unreasonably interferes with an individual's job performance or creates an intimidating, hostile or offensive working environment.

Perceptions of what constitutes offensive behavior sometimes differ between men and women. Men generally are less inclined than women to view sexual teasing as harassment. Recently, some courts have begun to adopt the “reasonable woman” test for sexual harassment, ruling that behavior was sexual harassment if a “reasonable woman” would view it as such.

In a case of alleged hostile environment sexual harassment, a plaintiff must prove that “the employer did not respond promptly and effectively when it was apprised of (or should have discovered) the harassment.” An internal investigation followed by appropriate disciplinary action, when warranted, has been held to constitute a proper response in a number of cases.

Employees, such as nurses and support staff, who are sexually harassed may also seek redress from the federal Equal Employment Opportunity Commission (EEOC) and its state counterparts. In the educational context, medical schools and medical trainees are often perceived as sharing an educational rather than an employment relationship. However, the EEOC has determined that interns and residents are sometimes considered to be employees of the medical schools that provide them with clinical training. As such, interns and residents may have the same legal standing as employees to file charges of sexual harassment and discrimination under Title VII of the Civil Rights Act of 1964. In addition, the Civil Rights Act of 1991 gives victims of sexual harassment, whether employees or physicians-in-training, the right to receive punitive damages of up to $300,000. Sexual harassment is also widely prohibited under state law.

**Ethical considerations**

By definition, conduct that would constitute sexual harassment is unethical. Patient care may be jeopardized in this circumstance by the creation of a sexually hostile or offensive work environment.

Orthopaedic surgeons should ensure that their actions cannot be considered sexual harassment even by the most critical observer. They should strive to stop sexually harassing behavior by others in the work environment whether they are witness to or the recipient of such activity. The orthopaedic surgeon should promptly inform the harasser that his or her behavior is inappropriate and report continuation of said behavior to the appropriate authority. The orthopaedic surgeon must ensure that the nurturing and caring health care environment does not become sexually hostile or offensive by inappropriate communications, touching or sexual favoritism.
Consensual sexual relationships between medical supervisors and trainees are generally considered unethical because of inherent inequalities in the status and power that medical supervisors wield in relation to medical trainees. Whenever a sexual relationship exists between a medical trainee and a supervisor who has professional responsibility for the trainee, the supervisory role must be eliminated if they wish to pursue their relationship.

**Policies dealing with sexual harassment and exploitation**

The American Academy of Orthopaedic Surgeons urges orthopaedic surgeons to comply with institutional sexual harassment policies and to develop and enforce such policies (or the concepts underlying these policies) in their own offices. These policies should acknowledge that both men and women are subject to sexual harassment or exploitation from members of the same or opposite gender and that mechanisms for resolving inappropriate sexual conduct must be equally stringent in all cases. Sexual harassment policies should also assure the rights of both the accuser and the accused and, to the extent possible, should protect the confidentiality of all involved. Generally, an effective sexual harassment policy will include:

- A description of the types of conduct that constitute sexual harassment;
- A strong statement that sexual harassment is unethical and unlawful and that the institution/orthopaedic surgeon will not tolerate such behavior;
- A statement of an employee’s right to complain about harassment without fear of retaliation;
- A requirement that supervisors and employees promptly report any sexually harassing conduct;
- A procedure for prompt, full and objective investigation of sexual harassment charges; and
- A statement that offenders will face disciplinary action and possible discharge.

**Recommendations**

The American Academy of Orthopaedic Surgeons urges orthopaedic surgeons to be aware of and sensitive to issues of sexual harassment and exploitation. Orthopaedic surgeons should conduct their activities professionally and should not jeopardize patient care through inappropriate sexual actions or comments. Policies should be implemented and followed to ensure that all members of the health care team may perform their professional duties without fear of sexual harassment or exploitation.

**References:**
