Opinion on Ethics and Professionalism

The Orthopaedic Surgeon in the Managed Care Setting

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 ethical parameters exist for orthopaedic surgeons treating patients in a managed care setting?

Applicable provisions of the Code of Medical Ethics and Professionalism for Orthopaedic Surgeons

“I. A. The orthopaedic profession exists for the purpose of caring for the patient. The physician-patient relationship is the central focus of all ethical concerns.”

“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...”

“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. Both orthopaedic surgeons and patients may have contracts with managed care organizations, and these agreements may contain provisions which alter the method by which patients are discharged. If the enrollment of a physician or patient is discontinued in a managed care plan, the physician will have an ethical responsibility to assist the patient in obtaining follow-up care. In this instance, the orthopaedic surgeon will be responsible to provide medically necessary care for the patient until appropriate referrals can be arranged.”

“II. C. ...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 organization 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.”
“VI. D. The orthopaedic surgeon may enter into a contractual relationship with a group, a prepaid practice plan, or a hospital. The orthopaedic surgeon has an obligation to serve as the patient's advocate and to ensure that the patient's welfare remains the paramount concern.”

Other references

*Principles of Medical Ethics and Professionalism in Orthopaedic Surgery*, Article I, “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.”

American Medical Association, *Current Opinions* of the Council on Ethical and Judicial Affairs,

<table>
<thead>
<tr>
<th>Opinion</th>
<th>Title</th>
<th>Date and Updates</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.04</td>
<td>(“Economic Incentives and Levels of Care”) [Issued June 1986.]</td>
<td></td>
</tr>
<tr>
<td>8.021</td>
<td>(“Ethical Obligations of Medical Directors”) [Issued December 1999.]</td>
<td></td>
</tr>
<tr>
<td>8.052</td>
<td>(“Negotiating Discounts for Specialty Care”) [Issued December 1997.]</td>
<td></td>
</tr>
<tr>
<td>8.11</td>
<td>(“Neglect of Patient”) [Issued prior to April 1977. Updated June 1996.]</td>
<td></td>
</tr>
<tr>
<td>8.115</td>
<td>(“Termination of the Physician-Patient Relationship”) [Issued June 1996.]</td>
<td></td>
</tr>
<tr>
<td>8.13</td>
<td>(“Managed Care”) [Issued June 1996. Updated June 2002.]</td>
<td></td>
</tr>
</tbody>
</table>

**Definitions and Background**

Managed care is a system for delivering health care that was designed with the goal of providing efficient, cost-effective, quality care through a variety of managed care organizations ("MCOs"). In this Opinion on Ethics and Professionalism, MCOs are defined as organizations that provide specified medical services to an enrolled population. MCOs employ or contract with a limited number of approved physicians. Patients covered by MCOs must use one of these approved physicians unless there is an “opt-out” or point of service option. Similarly, MCOs may enter into agreements with particular hospitals and other facilities. Patients enrolled in MCOs must go to an approved facility for inpatient or outpatient care for their services to be covered.

MCOs typically establish certain guidelines and procedures to prevent unnecessary expenditures and to ensure quality care. These measures may include pre-admission certification, concurrent review, discharge planning, independent peer review, case management and expanded quality assurance and utilization review.

By participating in managed care arrangements, both the physician and the patient typically sign written contracts with the MCO that may place constraints on both the physician and the patient’s choices. Hence the implied “contract” of the traditional physician-patient relationship is altered by the constraints of the MCO. Established physician-patient relationships may be interrupted. This may place a strain on established ethical principles such as the physician’s freedom to accept or reject a patient, refer the patient to a colleague of one’s choice, provide the treatment he or she prefers, discuss some alternative treatments that may not be provided
in the MCO, etc. The withholding of information from patients based on the requirements of the MCO (i.e., a "gag rule") is unethical and has been ruled illegal in many states. Withholding information impacts the physicians' ability to act effectively as a patient advocate, and could potentially erode individual and public trust in medicine. Additionally, the efficiency of prompt treatment may be hampered by additional utilization review, mandatory second opinion and peer review processes.

Not every specific instance can be addressed in this Opinion on Ethics and Professionalism, but the following guidelines may be of assistance in resolving ethical dilemmas.

Ethical considerations

1. **Prior to joining a managed care organization (MCO), the orthopaedic surgeon should be fully familiar with the MCO’s utilization guidelines and reimbursement policies to ultimately ensure that the patient’s welfare remains the paramount concern.** *(Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, Paragraph VI. D.)*

   By understanding all of the guidelines and policies prior to joining the MCO, the orthopaedic surgeon will be able to provide care for patients and should not be surprised by any unknown aspects of the MCO. Specifically, the orthopaedic surgeon should not be disappointed by the MCO’s use of utilization guidelines to evaluate his/her diagnosis and treatment of patients. If a capitation plan exists, the physician should evaluate it prior to joining to ensure that the quality of patient care is not threatened. In addition, the orthopaedic surgeon will receive remuneration for his/her services in an amount he/she has knowledge of prior to providing those services. By understanding all of these aspects of the MCO, the orthopaedic surgeon can concentrate on patient care and work in a constructive manner within the MCO.

2. **In a managed care setting, as in all medical situations, the orthopaedic surgeon has a legal and ethical obligation to “ensure that the patient’s welfare remains the paramount concern.”** *(Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, Paragraph VI. D.)*

   In all that physicians do, they should act in the best interests of their patients. The orthopaedic surgeon should advocate for medically necessary patient care. As managed care plans proliferate, it is possible that orthopaedic surgeons who contract with MCOs may encounter subtle or direct incentives to reduce the level of medically necessary care provided to enrolled patients.

   It is possible that health insurance enrollment agreements between the patient and the MCO may limit the services that an orthopaedic surgeon may provide without additional cost to that patient. The MCO has the obligation to inform its enrollees regarding the terms and conditions of their coverage; if the MCO limits medical services which the physician may provide, the MCO has the obligation to inform the enrolled patient of these limitations. The enrolled patient has the obligation to understand what is covered by his or her managed care plan. However, the orthopaedic surgeon should be aware that some patients do not understand the terms and conditions of their health insurance enrollment agreements. The physician has the obligation to inform the patient of the diagnosis and the patient’s treatment options and, if required by the physician’s service agreement with the MCO, to certify that the medical services proposed are medically necessary.
A situation may occur in which an orthopaedic surgeon believes care is medically necessary for an enrolled patient and the MCO does not authorize it. The orthopaedic surgeon should inform the enrolled patient of this circumstance so that he or she might appeal through the MCO’s appellate process. The orthopaedic surgeon has an obligation to provide medical information to assist in the enrolled patient’s appeal and to participate in a more active role, if necessary. If the MCO’s appeal mechanism has been used and the MCO’s utilization review committee, upon review, does not determine that the proposed care is medically necessary, the orthopaedic surgeon should document this decision in the medical record.

It is ethical for the orthopaedic surgeon to “enter into a contractual relationship with a group, a prepaid practice plan, or a hospital.” (Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, Paragraph VI. D.) The service agreement between the physician and the MCO must allow the orthopaedic surgeon to act in a manner which is ethical and which is in the best interest of the enrolled patient.

The orthopaedic surgeon should understand the services he or she will be required to provide under his or her service agreement with the MCO. It is unethical for the physician to enter into an agreement with the MCO that prohibits the provision of medically necessary care.

3. Having joined the managed care organization, the orthopaedic surgeon should interact in a professional manner, so that the patient’s psychological and physical welfare continues to remain of paramount concern (Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, Paragraph VI. D).

The orthopaedic surgeon should remember that patients who are being treated for a medical illness are physically and psychologically susceptible to unprofessional comments from their physician. While it is reasonable for the orthopaedic surgeon to explain to his/her patients the diagnostic and treatment limitations of the MCO, criticizing the MCO in front of the patient does not help the patient feel comfortable in a time of stress. Furthermore, such open criticism may weaken the doctor-patient relationship. While physicians are tempted to use patients as allies to improve managed care scenarios, in reality, when physicians attempt to do so in the physician-patient treating relationship, it is usually unsuccessful and frustrating to the patient.

A more appropriate way for the orthopaedic surgeon to deal with utilization or treatment issues regarding a particular patient is to go directly to the MCO’s Medical Director or Administrator and voice concerns that a particular aspect of the utilization process is not providing adequate care for this patient.

More effective changes in MCO policies can occur if the orthopaedic surgeon works within the system. If such change is not likely to occur, the orthopaedic surgeon should rise above the conflict and maintain a professional approach to the problem. The orthopaedic surgeon has an ethical obligation to educate the MCO and its employees about musculoskeletal patient care. If done in a professional way, this is often very beneficial to the MCO and the care that its physicians provide patients. Such general education should include educating other health care professionals and include an appreciation for research projects related to outcome and other topics.

Ultimately, if negotiations with the MCO do not affect reasonable changes, then it is reasonable for the orthopaedic surgeon to consider resigning from the MCO rather than continuing to be in a state of conflict.
If a conflict does exist between the physician’s opinion and the MCO’s opinion, the physician should remember that the patient’s welfare is of paramount importance.

4. **It is ethical for the orthopaedic surgeon to consider cost as one factor in determining appropriateness of care** (Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, Paragraph IX. A).

The orthopaedic surgeon has the ethical responsibility to consider the health of the public, particularly with regard to allocation of medical resources in society. Therefore, it is ethically appropriate for the orthopaedic surgeon to consider cost as one factor in choosing between equivalent but alternative forms of treatment, particularly in those cases with multiple treatment options.

When health care plans establish contracts for orthopaedic devices, the orthopaedic surgeon is obligated to advocate for devices/implants that meet the medical needs of his or her patients. The orthopaedic surgeon should:

- Be knowledgeable about implant and device selection;
- Be involved in the decision making process;
- Establish mechanisms for ongoing peer review;
- Notify proper authorities if inappropriate influences on implant selection are perceived;
- Advocate for changes to the device/implant list that would benefit the patient;
- Keep abreast of evidence-based medicine; and
- Choose quality improvement rather than cost containment as the determinant if exclusions to the device/implant list must be made.

Receiving a financial return for services can encourage some physicians to overtreat. Conversely, a system that uses a capitated reimbursement plan may encourage physicians to undertreat. The orthopaedic surgeon’s personal economic consideration should not influence his/her decision-making in patient care. Patients should be informed of financial incentives that could impact the level or type of care they receive. Physicians should avoid reimbursement systems that, if disclosed to patients, could negatively affect the patient-physician relationship.

5. **The orthopaedic surgeon has the legal and ethical responsibility to practice only within the scope of his or her personal education, training and experience** (Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, Paragraph VII. A).

The MCO should allow the orthopaedic surgeon to practice within the scope of his or her education, training and experience. If the physician enters into an agreement with an MCO to provide a broad spectrum of care that he/she is not adequately trained to provide, the physician should look elsewhere for appropriate alternate care within the MCO or elsewhere to treat the patient. The orthopaedic surgeon’s service agreement with the MCO should include a mechanism to allow appropriate referrals to other physicians.

6. **Having undertaken the care of the patient, the orthopaedic surgeon has a legal and ethical responsibility to continue providing appropriate patient care within limits established by the MCO** (Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, Paragraph, I. D).
The relationship between the orthopaedic surgeon and the patient is the central focus of all ethical concerns. Consequently, a difficult situation is created when care for a patient in a MCO is interrupted either by the patient’s change in insurance or by a change in the physician's service agreement with the MCO. If the patient is no longer qualified to be treated in the MCO, there should be provisions regarding transferring of care such that the orthopaedic surgeon can complete the patient’s current treatment program with the least interruption.

Prior to the lapsing of the physician’s service agreement with the MCO, the orthopaedic surgeon should give adequate written notice to the patient regarding the termination of the relationship and attempt to minimize disruption in the transfer of the care of the patient to another physician. The orthopaedic surgeon should make available the patient's medical records upon request.

7. The orthopaedic surgeon has the ethical obligation to report recognized unethical activities of gatekeepers, specialists and other health care professionals (Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, Paragraph II. C).

If the MCO utilizes a gatekeeper who declines to refer and enroll patients for medically appropriate care or who refers and enrolls patients inappropriately, substandard care may result. Although the primary responsibility for monitoring the performance of the physicians within the MCO rests with the MCO itself, the orthopaedic surgeon, as part of the MCO, should report unethical and/or substandard patient care. It is important for the orthopaedic surgeon to carefully weigh the advantages and disadvantages of involving the patient in discussions of the activities of other physicians that the orthopaedic surgeon feels are unethical.

8. The orthopaedic surgeon has the ethical obligation to educate managed care organizations and their employees and agents about musculoskeletal concerns. (Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, Paragraph IX. A.)

The Code of Medical Ethics and Professionalism for Orthopaedic Surgeons provides that “the honored ideals of the medical professional imply that the responsibility of the orthopaedic surgeon extends not only to the individual but also to society as a whole.” (Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, Paragraph IX.) Individuals and society will both benefit when orthopaedic surgeons discuss with MCOs, their employees, affiliated physicians and other health care professionals their unique concerns about the musculoskeletal system and its care. This may enhance the quality of care being provided by MCOs. This discussion might also emphasize the need for managed care systems to support the education of health care professionals and the conduct of research, for without either the quality of musculoskeletal care, and indeed all medical care, will be diminished over the long term.