



AUSTRALIAN ORTHOPAEDIC ASSOCIATION

# CODE OF CONDUCT FOR MEMBERS OF THE AOA

## **A. ETHICAL CONDUCT**

### **The Doctor-Patient Relationship**

1. The basis of the relationship between a doctor and his patient is that of confidence and mutual respect. The doctor should show respect for the patient's trust and give advice or take action which he or she considers to be in the patient's best interest.
2. The doctor should carry out an adequate examination into the condition with which the patient presents and keep records.
3. The doctor should strive in the interests of the patients to improve his or her own knowledge and skill.
4. The doctor should refrain from disclosing without the consent of the patient (unless with statutory sanction) to any third party, information which he or she has learnt in the professional relationship with the patient.

### **Notices**

1. Notices of commencement or resumption of practice, changes of address and similar matters may be published in the lay press or in circulars to the medical profession. They should not contain claims of particular expertise but may refer to the specialty practised and/or approved special interest.

### **Medical Certification**

1. Doctors should never antedate nor postdate certificates, reports and other documents of like character signed by them in their professional capacity. Such documents should not be issued without care and responsibility for the statement of fact or opinion expressed. A medical certificate may be exhibited as evidence in a Court of Law and for this as well as for other reasons, it is important that the statement should be correct. No document should be written about any illness or injury if the patient has not been examined by the doctor for that illness or injury.
2. No certificate nor report should be given by a doctor regarding a patient under his or her care to a third party without the consent of the patient or a patient's representative.
3. Medical certificates should be restricted to matters which involve medical knowledge and judgement.

### **The Doctor and Colleagues**

1. Whenever doctors are simultaneously concerned with a patient, each is under certain ethical obligations and should be expected to observe certain ethical rules of conduct.

### **Examination and Consultation: further opinions**

1. A doctor should arrange consultation with a colleague whenever the patient or child-patient's parents desire it, provided that the best interests of the patient are served. The doctor suffers no loss of dignity nor prestige in seeking further opinion and he or she may then share the responsibility of the case with the consultant.
2. There are certain rules which should be followed:
  - (i) The doctor consulted should co-operate with the referring practitioner in the formulation of diagnosis, prognosis and treatment but not take over the treatment unless specifically requested to do so by the referring doctor.
  - (ii) An attending doctor should request a consultation in obscure or difficult cases, and acquiesce in any reasonable request for a consultation by the patient or his or her representative.
  - (iii) The attending doctor may nominate the doctor to be consulted and should advise the patient but he or she should not refuse a referral to an appropriately qualified doctor selected by the patient or the patient's representative.
  - (iv) Arrangements for consultation should be made or initiated by the attending doctor.
  - (v) Communication between the referring doctor and the consultant should be prompt and conveyed in writing at least in summary form. Except in emergency, no further treatment nor additional investigation should be carried out by the consultant without prior consultation with the attending doctor.
  - (vi) The doctor consulted should not take over the care of the patient seen in consultation unless specifically requested. It is his or her duty to avoid any word or action which might disturb the confidence of the patient in the attending doctor.
  - (vii) The attending doctor should carefully avoid any remarks or suggestions which would seem to disparage the skill or judgement of the practitioner consulted. Should the doctor consulted and the attending doctor hold divergent views, the patient should be advised to choose one or other of these suggested alternatives or obtain further professional advice.
  - (viii) Any doctor referring a case for consultation should be paid the courtesy of notification or discussion before the patient is further referred by the consultant.

### **Workers Compensation Insurance Practice**

1. The rule regarding professional confidence applies equally well to an injured worker as to any other patient. Certificates or reports should not be given to an employer or insurer without the express sanction of the worker.
2. A specialist called in consultation by another doctor has the same obligation as his colleague in regard to the confidence of the latter's patient. He should not furnish information to an employer or an insurer without receiving the patient's consent.

3. A doctor who is requested to examine on behalf of an employer or insurer an insured worker under the care of another doctor must observe the usual ethics. He or she must always act and behave in a polite and courteous manner when examining another doctor's patient. He or she must respect at all times the professionalism of a colleague. He or she must not make any comments to the patient which criticise the treatment given, nor must he or she express without the concurrence of the treating doctor, any opinion as to aetiology, diagnosis or prognosis of the case. His or her report on the patient should be furnished to the employer or insurer. Should an interpreter be present, courtesy and politeness should be directed to and through the interpreter.

### **Change of Medical Attendant**

1. A patient does have the right to change his or her doctor. Any change however, should only be brought about in a seemly fashion. The general principle is that no doctor should do anything to try to detach the patient from his or her usual medical attendant. Provided a doctor has not seen the patient in consultation at the request of the usual medical attendant, and provided further that the patient is not under treatment, the doctor is free to attend the patient.
2. An initial consultation by a specialist should not take place without referral preferably by the patient's own general practitioner. When this is not practicable, the specialist should at least communicate, preferably by letter, with the patient's usual medical attendant.
3. The doctor may withdraw from treating a patient if he or she feels it is in the interest of the patient.

### **The Doctor and Commercial Undertakings**

1. A general ethical principle is that a doctor should not associate himself or herself with commerce in such a way as to let it influence or appear to influence his or her attitude towards the treatment of patients.
2. A doctor having a financial interest in the sale of drugs, prostheses, or appliances that he or she may recommend to a patient should disclose his or her interest when recommending that article.
3. A doctor should not receive any money in connection with services rendered to a patient other than acceptance of a proper professional fee.
4. The relationship between AOA members and the orthopaedic industry must be proper at all times. This relationship must be, and be seen to be, above reproach.
5. AOA members recognise that they are acting as agents for patients when making decisions about equipment and implants. They must not let commercial persuasion influence their judgement.
6. The role of the AOA as having the paramount responsibility for orthopaedic education, research and training is recognised. The orthopaedic industry should, wherever possible, direct financial support through the AOA so that the benefit is universally available.

### **Communications with the Public and the Media, inclusive of Internet Use**

1. The Association does not support advertising whether direct or indirect which has as its main object the promotion of:
  - (a) a particular doctor or medical practice,
  - (b) the use of particular techniques employed by a particular doctor or medical practice.
2. The Association allows advertising by members where the purpose of advertising is:
  - (a) to disseminate information about advances in medical science and therapeutics,
  - (b) to provide specific information in relation to the type of services offered by the member.
3. In general terms, a member may advertise the availability of professional services if such advertising:-
  - (a) is not false,
  - (b) is not misleading nor deceptive, nor likely to mislead or deceive,
  - (c) not vulgar nor sensational nor in poor taste,
  - (d) does not claim nor suggest that a medical practitioner is superior to other medical practitioners,
  - (e) does not contain any testimonials or endorsements relating to a medical practitioner,
  - (f) is not undesirable, unprofessional or likely to bring the profession into disrepute,
  - (g) recognises the legal restraints in terms of dangerous goods and services.
4. An advertisement shall be regarded as false, misleading or deceptive, amongst other things, if:
  - (a) it contains a material misrepresentation of fact including a misrepresentation by omission,
  - (b) it is likely to create an unjustified expectation.
5. An advertisement shall be regarded as undesirable and unprofessional if it:
  - (a) promotes contact with any entrepreneurial or commercial group, directly or indirectly
  - (b) invites persons or bodies not being patients of the member to contact the member for advice or treatment following a particular event.
6. The Association may at any time request a member to cease or end any form of advertising which breaches the guidelines.

### **Brochures or Pamphlets (including Internet Sites)**

1. Members wishing to use personalised brochures or pamphlets should ensure that:
  - (a) they conform to guidelines stated above,
  - (b) they do not contain lengthy descriptions of the member's experience or lengthy details of the member's curriculum vitae. Such details which appear should be brief and non-laudatory,
  - (c) distribution is carefully controlled and restricted to referred patients and referring medical practitioners. Bulk distribution would be regarded as undesirable advertising.
2. Brochures should be perceived as a means for providing practice information to patients and not as an advertising or promotional statement.

### **Media Exposure**

1. Members who are approached by the media for interview should if possible seek the advice of the Association.
2. In media interviews the member, in his professional capacity, may:
  - (a) be identified by name, town or suburb,
  - (b) give particulars of academic qualifications and publications written or edited by him in the fields of practice of the member directly relative to the subject matter of the interviews.
3. The member shall not:
  - (a) identify a patient without the patient's consent,
  - (b) make public media statements for promotional purposes which discuss the member's own facilities or approach to treatment or any individual patient's care or treatment.
4. No correspondence should be entered into by a doctor with the public on matters arising out of media interviews, other than replying to specific letters requesting information privately.
5. Caution is necessary in public discussions of theories and treatment of disease, owing to the misleading interpretation that may be put upon these by an uninformed audience .
6. Members communicating with the media should reserve the right to request anonymity.

### **Lectures to Lay Groups**

1. It is permissible for members to address non-medical audiences provided that such appearances are not for the purposes of obtaining and promoting personal professional advantage.
2. There are no specific guidelines relating to lectures to medical groups.

## **B. GUIDELINES REGARDING INTERACTIONS BETWEEN ORTHOPAEDIC SURGEONS AND MEDICAL DEVICE SUPPLIERS**

### **Preamble**

Medical Device Suppliers (MDSs) is a term applied to the makers of orthopaedic implants, devices, consumables and technologies and is used here to include the parent company, its distributors, franchisees and agents. This document is concerned with MDSs who supply chargeable items, used in the treatment of patients, the selection of which is determined by AOA members.

### **Principles of the relationships between the AOA and Medical Device Suppliers**

- 1) The primary responsibility of AOA members is the welfare of their patients. No commercial consideration or personal benefit should override that responsibility.
- 2) There is a secondary responsibility of all parties to husband and respect the resources of the community.
- 3) All dealings between AOA members and commercial organisations active in the orthopaedic field should be open to public scrutiny, insofar as this does not breach patient privacy or any other aspect of Australian law.
- 4) An AOA member should accept material benefits from MDSs only if these are commensurate with the value of services that the surgeon provides.
- 5) No direct benefits should be derived by an AOA member for the implantation of prostheses, utilisation of items, pharmacological agents or the adoption of techniques. This embargo includes benefits in the form of shares, options, research support, support for travel and the like. Under no circumstances should an AOA member enter into an agreement which links the number of implants used clinically with personal or institutional remuneration or material benefit.
- 6) Individual AOA members must not endorse any products or technologies.
- 7) AOA members who receive royalties from implant usage must declare the fact to patients under their care, who are in receipt of those implants.
- 8) AOA members must not accept personal promotion or advertising from MDSs.

The AOA recognises that a genuine commercial relationship may exist between AOA members and MDSs in a number of situations and that payment to or subsidy of the AOA member may be appropriate in such cases. Situations in which payment of an AOA member may be appropriate include:

#### **i) *Bona fide* consultancies.**

Such consultancies should be covered by a legally binding contract which explicitly defines the expectations of the commercial organisation and be subject to an annual report.

#### **ii) Evaluations of product.**

Such evaluations should be covered by a legally binding contact which explicitly defines the parameters to be appraised or measured and be subject to a formal report. They should conform to NHMRC guidelines including authorisation by the relevant Institutional Ethics Committee. The product must be *supplied to the evaluator by the company without charge*.

Payment for simple auditing of outcomes should involve no more than a repayment of costs incurred (secretarial and database management).

#### **iii) Membership of sponsored faculties at scientific and clinical meetings.**

Faculty members invited to present at *bona fide* scientific or clinical meetings may receive one business class airfare or its equivalent, hotel expenses for the duration of

the meeting and a *per diem* allowance to defray costs.

**iv) Teaching and training.**

Teaching and training of medical undergraduates and medical personnel is regarded as part of the Hippocratic tradition and should be provided by all surgeons without charge. If the AOA member is asked to travel away from their home base then the same conditions should apply as in (iii).

**v) Research**

All research projects (as opposed to audit based projects) should have prior approval by the appropriate institutional ethics committee and conform to the guidelines of Australian National Health and Medical Research Council. Payment should be to the institution and disbursements should be administered by the institution.

**vi) Attendance at Industry Organised Meetings**

AOA members should not accept payment or subsidy to attend Industry organised meetings, except as set out under Section (iii) above.

**vii) Social activities**

Social interactions between AOA members and commercial organisation must be measured, frugal and in good taste.

**viii) Meeting accreditation**

Industry run meetings, workshops and courses will not be accredited for AOA CPD points unless the organising company has signed a declaration that it conforms to the policy on interactions between AOA members and the orthopaedic industry detailed above.

**C. UNSATISFACTORY BEHAVIOUR**

1. Unsatisfactory behaviour will be referred to the AOA Professional Conduct and Standards Committee. Adverse findings may result in suspension, or termination, of membership of the AOA.