Rodman Taber
1920-2013
DICLOSURES

BAXTER LUNG ADVISORY BOARD
Premise:

Increasing availability of information, of all types, is driving transparency and is changing the relationship between surgeons and their patients.
1. Running concurrent Operating Rooms and disclosure of the roles of residents, fellows, physician-extenders and other attending physicians
2. Disclosure of relationships with Industry
3. The employed physician—employer vs. patient
4. Disclosure of medical errors
Four basic Principles of Medical Ethics

- Autonomy
- Beneficence
- Non maleficence
- Justice
Respect for Autonomy
Nonmaleficence

First

Do No Harm
“Relieving suffering & providing benefits”
“Fairness in distribution of risks, benefits and costs”
Physician-patient relationship

Fildes, 1891
• Veracity...truth-telling and comprehensive, accurate and objective transmission of information
• Privacy & Confidentiality
• Fidelity...loyalty, putting the patients first

Beauchamps & Childress, Principles of Biomedical Ethics, 2007
Case 1: The Boston Globe—Running multiple OR’s
• Terminology: concurrent, simultaneous, overlapping
• How often does this happen? Does it affect outcome? What are our own rules
• Legal/Billing requirements for surgeon’s presence
• Ethical Issues:
  • Consent
  • Patient expectations
  • Physician-patient relationship/obligations
“A primary attending surgeon’s involvement in concurrent or simultaneous surgeries on two different patients in two different rooms is not appropriate”

American College of Surgeons Statement on Principles
In general, the patient’s primary attending surgeon should be in the operating suite or be immediately available for the entire surgical procedure...when the attending surgeon is not present or immediately available, another attending surgeon should be assigned as being immediately available.
Case 2:

A surgeon implants an innovative device to have a therapeutic benefit. The surgeon routinely uses a specific manufacturer’s device (but there are several alternatives). All goes well but a month later the patient utilizes the Sunshine Act and notes that the surgeon received $50,000 that year for “consulting”. The surgeon had disclosed this relationship to his hospital and medical school (but not to the patient). The patient complains that this should have been disclosed as it was material to his decision regarding which surgeon, hospital, and device to use.
Should the surgeon have disclosed his consulting relationship to the patient?

A. Yes
B. No
• Is it now the surgeon’s responsibility to disclose such relationships…or the patient’s responsibility to search them out?

• At what point are payments from industry material to the patient’s decision process

• At what point, if ever, is the surgeon’s duty to the patient compromised by his/her relationship with industry

• Is this different than any other potential conflict of interest?

• What oversight exists for the use of new (novel) devices?
Open Payments

Open Payments is a federal program, required by the Affordable Care Act, that collects information about the payments drug and device companies make to physicians and teaching hospitals for things like travel, research, gifts, speaking fees, and meals. It also includes ownership interests that physicians or their immediate family members have in these companies. This data is then made available to the public each year on this website. Learn more about Open Payments.

Search & Explore Open Payments Data
- Use the search tool to look up doctors, hospitals, or companies.
- Download the data sets.
- Interact with all the data sets.

Physicians and Teaching Hospitals
- Learn how to register to review (and dispute) your financial data.
- Step by step guides available.
- Already registered? Login here.

Applicable Manufacturers and Group Purchasing Organizations
- Learn How to register.
- Already registered? Login here.
- Attend helpful events to learn more about Open Payments.

View the Data
View Summary Data
Search the Data
Create Charts and Graphs with the Data Explorer

2017 Physician Fee Schedule
The Open Payments Program is soliciting feedback in the 2017 proposed Physician Fee Schedule. See page 81 FR 46395 of the proposed rule.

We will discuss the proposal live on August 2 at 1:30 p.m. EST. See our Events page or view the presentation.

The Data is Out!
The third year of Open Payments data is now available. Check out the data dashboard to see an overview of the data, or dive right in and use the search tool here. Click here to see a copy of the announcement for the 2015 Open Payments program data.
Industry to physician payments

American College of Surgeons—Surgical Forum October 2015 (JACS 221:4(1), S64, 2015)

Total payouts to physicians ~$1.7B a year

Over 5 months (Aug-Dec 2013)
- Approximately \( \frac{1}{2} \) of physicians received nothing
- General surgeons (N=11,000): median payment $100; mean payment $1200 Largest payment to a surgeon ~$250,000
- Of (general) surgical specialties, cardiothoracic surgeons had the highest payments reported to Physician Payment Sunshine Act database—twice the amount of general surgeons
These principles lead to the following conclusions: (1) a physician must disclose personal interests unrelated to the patient's health, whether research or economic, that may affect the physician's professional judgment; and (2) a physician's failure to disclose such interests may give rise to a cause of action for performing medical procedures without informed consent or breach of fiduciary duty.

Supreme Court of CA: 51 Cal. 3d 120; 271 Cal. Rptr. 146; 793 P.2d 479
Case 3: The Employed Physician
75 year old man undergoes mechanical AVR...not discharged on appropriate anticoagulation ...has a stroke from which he gradually recovers.

Should he be told that stroke was from inadequate anticoagulation?

A. Yes...by the attending surgeon
B. Yes...by someone other than the attending surgeon
C. No
Medical Errors

- 44,000-100,000 deaths each year
- 1,000,000 excess injuries each year

IOM 2000
“The patient has no more right to all the truth than he has to all the medicine in the physician’s saddlebag...he should only get so much as he needs”

- Oliver Wendell Holmes...Dean of Harvard Medical School (1846-53)

AMA’s principles of Medical Ethics (1957)...a physician must report an accident, injury, or bad result stemming from his or her treatment

- Often interpreted to mean reporting to supervisor, hospital, QA Committee, etc— but not patient

1991 American College of Physicians Ethics Manual...“physicians should disclose to patients information about procedural and judgment errors...if such information affects care of the patient”

1994...AMA Council on Ethical and Judicial Affairs: “physician is ethically required to inform patients of all facts necessary to ensure understanding of what has occurred” (in context of medical error)
Practical issues

- Deciding whether to make a disclosure
  - Major vs. minor;
  - Obvious or hidden error
  - Adverse outcome or “near miss”
- Timing of disclosure
- Who should make the disclosure
- How to make the disclosure…ie; What to say
  - Apology is the expected social response to an error and is prerequisite to making amends and being forgiven (Lazare, JAMA, 2006)
- What about disclosure of errors by other physicians
Early Disclosure, Apology & Resolution

- University of Michigan
- Stanford…”PEARL” program
- CARe…BIDMC and others (Mass initiative)
Results: 50% reduction in claims and costs/claim
OpenNotes
A New Medicine With Clear Benefits

TRUST BETTER RECALL
IN CONTROL OF
HEALTH CARE
PARTNER

BETTER PREPARED
SHARED DECISION
MAKING
BETTER QUESTIONS

“TRUST IN CONTROL OF HEALTH CARE PARTNER”

If consumers are to become truly active partners in their own health care, they should be able to retrieve their personal medical information readily, including their doctors’ notes.

— Tom Delbanco, MD and Jan Walker, RN, MBA, Co-Directors, OpenNotes

99% OF PATIENTS SAID THEY WANT TO SEE THEIR DOCTOR VISIT NOTES

“My fears: Longer notes, more questions and messages from patients. In reality, it was not a big deal.”
— Participating OpenNotes Physician

SHARING VISIT NOTES WITH MY PATIENTS IS A GOOD IDEA

88% OF DOCTORS PARTICIPATING IN THE STUDY

Consumers Choose Transparency

4 OUT OF 5 PATIENTS SAID HAVING ACCESS TO OPEN MEDICAL NOTES WOULD BE A “SOMETHING” OR “VERY IMPORTANT” FACTOR IN CHOOSING A HEALTH PLAN OR A DOCTOR/PROVIDER.

"My fears: Longer notes, more questions and messages from patients. In reality, it was not a big deal."
— Participating OpenNotes Physician

SHARING VISIT NOTES WITH MY PATIENTS IS A GOOD IDEA

88% OF DOCTORS PARTICIPATING IN THE STUDY
If we put ourselves in the shoes of our patients, we will probably make the right decision.
THANK YOU!

Carmel, CA; Christmas 2014