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AAO Ethics Committee
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Disclosure

I have no financial interests
or relationships to disclose.

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Ethically Co-Managing Postoperative Care:
Understanding the Comprehensive Co-Management Guidelines

An Ophthalmologist's Fiduciary Responsibility

- Professional decision making must serve the patient's best interests
- An issue of medical ethics is generally resolved by the determination that the best interests of patients are served
- Coordination of eye care between varied providers must serve the best interests of each patient

"The Doctor", Sir Luke Filde, 1891

A Brief History -
Isn't Comanagement Simply Fee Splitting?

- AMA CEJA 6.02 (1977)
  - *Payment by or to a physician solely for the referral of a patient is fee splitting and is unethical*
- CPT 54/55 modifiers
  - 1983: HCFA adopts AMA's CPT
  - 1986: OBRA: OD among "physicians"
  - Presumed intent: Exceptional cases
- Potential for abuse
  - Routine arrangements
  - Rationale unrelated to patient care
  - As inducement or condition for referral

Comprehensive Guidelines for the Co-Management of Ophthalmic Postoperative Care

- The Guidelines provide direction on *co-management* and *transfer of care*
  - Sharing pre- and postop responsibilities with non-surgeon providers, and
  - Ethical and legal reimbursement

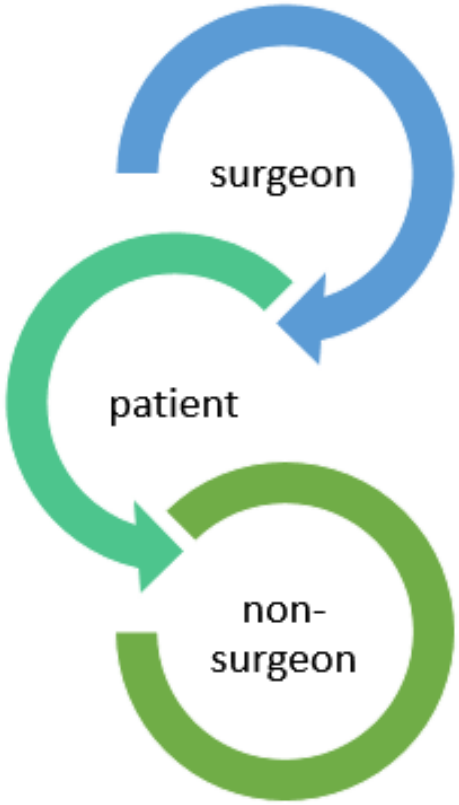
- *Note:* the Guidelines are not an Ethics Committee document
- *Note:* the Guidelines refer to federal and state regulations

Comprehensive Guidelines (replaced the Joint Position Paper) published Aug 2016

Definitions

- Co-management is a relationship between an operating ophthalmologist and a non-operating practitioner:
  - for *shared postop responsibility*
  - when the patient consents
  - services are within the providers' respective scope of practice and
  - there is written agreement

Definitions



Transfer of care occurs when:

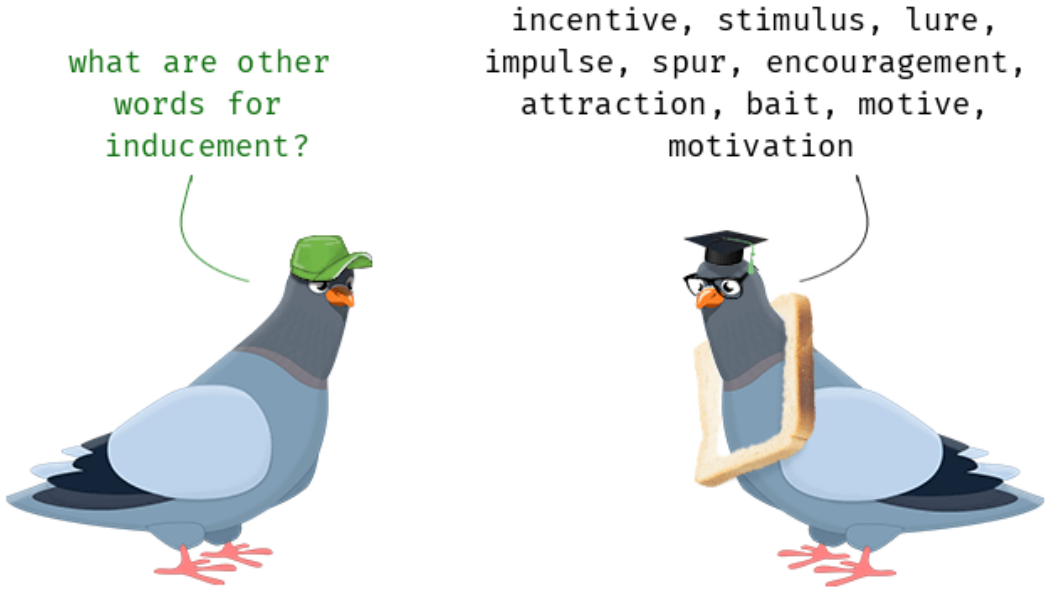
- there is *transfer of responsibility* for a patient's care from one qualified healthcare provider to another

Ultimate Responsibility

- In co-management, the operating ophthalmologist maintains ultimate responsibility for the preoperative assessment and postoperative care of the patient

Inducements for Referrals

- Decisions to co-manage or transfer a patient should never be influenced by economic considerations such as:
  - inducement
  - coercion



…Unethical and, in many jurisdictions, illegal.

Appropriate Delegation

- An operating ophthalmologist's postoperative care responsibilities may be appropriately delegated
- Ethical delegation means acting in the best interest of and maintaining your responsibility to the patient

Circumstances in Which Co-Management May Be Appropriate

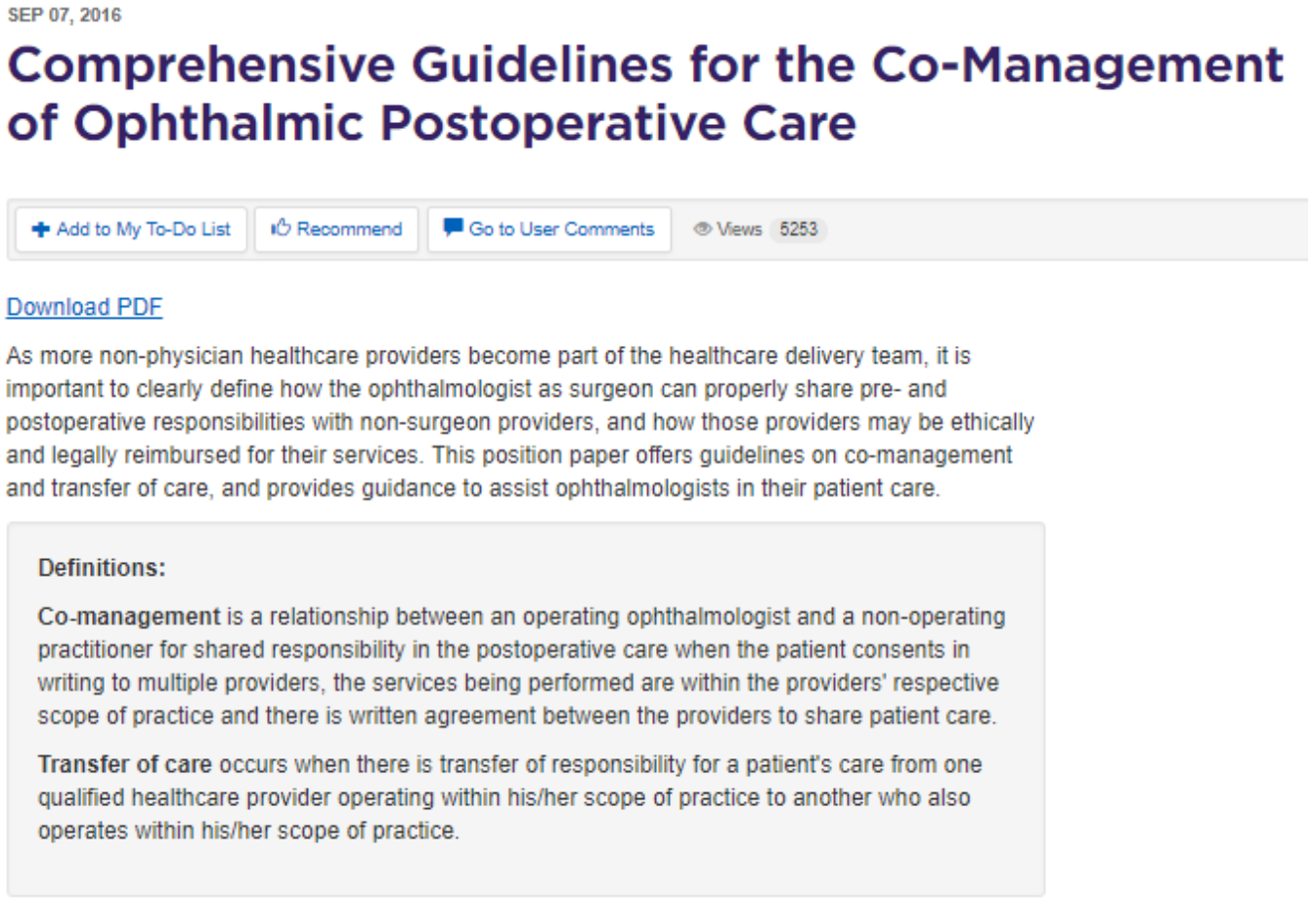
- In integrated healthcare systems
- Patient inability to return
- Operating ophthalmologist's unavailability
- Patient prerogative*
- Change in postoperative course

*Patient Prerogative

- The patient requests co-management or transfer of care to:

Essential Conditions for Co-Management and Transfers of Care

- Any delegation of a surgeon's postoperative responsibilities to another non-operating practitioner and any payments to either party must be in line with guidelines.
- *Routine co-management or transfer of care referral arrangements are not appropriate.*



SEP 07, 2016

Comprehensive Guidelines for the Co-Management of Ophthalmic Postoperative Care

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As more non-physician healthcare providers become part of the healthcare delivery team, it is important to clearly define how the ophthalmologist as surgeon can properly share pre- and postoperative responsibilities with non-surgeon providers, and how those providers may be ethically and legally reimbursed for their services. This position paper offers guidelines on co-management and transfer of care, and provides guidance to assist ophthalmologists in their patient care.

Definitions:

Co-management is a relationship between an operating ophthalmologist and a non-operating practitioner for shared responsibility in the postoperative care when the patient consents in writing to multiple providers, the services being performed are within the providers' respective scope of practice and there is written agreement between the providers to share patient care.

Transfer of care occurs when there is transfer of responsibility for a patient's care from one qualified healthcare provider operating within his/her scope of practice to another who also operates within his/her scope of practice.

Patient-Specific Protocols

- Co-management and transfer of care arrangements may be directed by:
  - **Patient request**
  - **Operating ophthalmologist**
    - Medically stable patient
    - Clinically appropriate.
  - **Non-operating practitioner**
    - Accepts care of patient
    - Qualified and licensed by state

Criteria for Co-management and Transfer of Care Arrangements

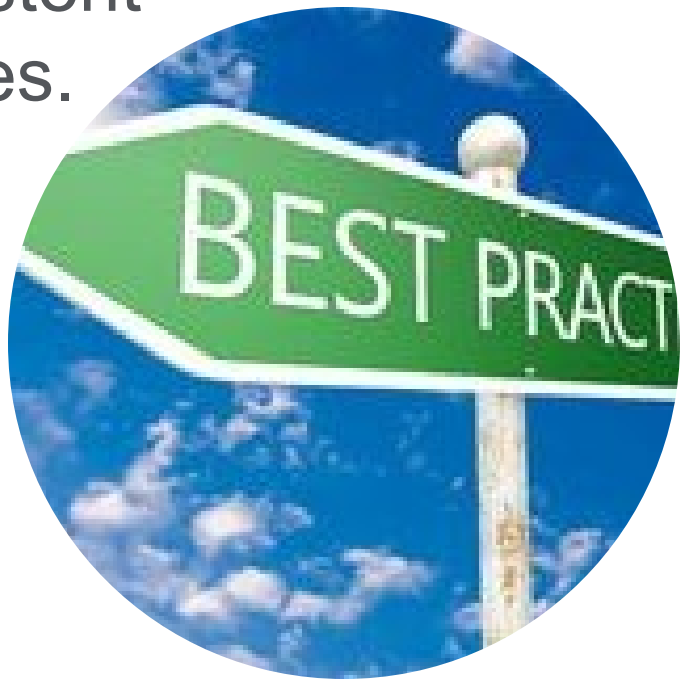
- No agreement for automatic referral back to the non-operating practitioner
- Arrangement must comply with all applicable federal and state laws and regulations
- The operating ophthalmologist (or surrogate ophthalmologist) is available upon request from patient or non-operating practitioner to provide emergent care
- Transfer of care or co-management is documented in the medical record
- All relevant clinical information is exchanged between the operating ophthalmologist and the non-operating practitioner

Financial considerations

- Co-management fees should be commensurate with service(s) provided, and separately billed by the non-operating practitioner
- Medicare/Medicaid patients: co-management arrangement should be consistent with all Medicare/Medicaid billing/coding rules
- The patient should be informed of, and consent in writing to, any financial compensation/additional fees charged as a result of the arrangement.
- For non-covered Medicare/Medicaid services, fee structures should also be commensurate with the services provided.

Patients' interests must never be compromised

- The operating ophthalmologist should consult with qualified legal counsel and other consultants to ensure that his/her co-management practices are consistent with federal and state law and best legal practices.



Code of Ethics
Applicable Principles and Rules

- *An issue of ethics in ophthalmology is resolved by the determination that the best interests of patients are served.*
- *Fees for…services must not exploit patients or others who pay for services.*
- *It is the responsibility of a ophthalmologist to act in the best interest of the patient.*

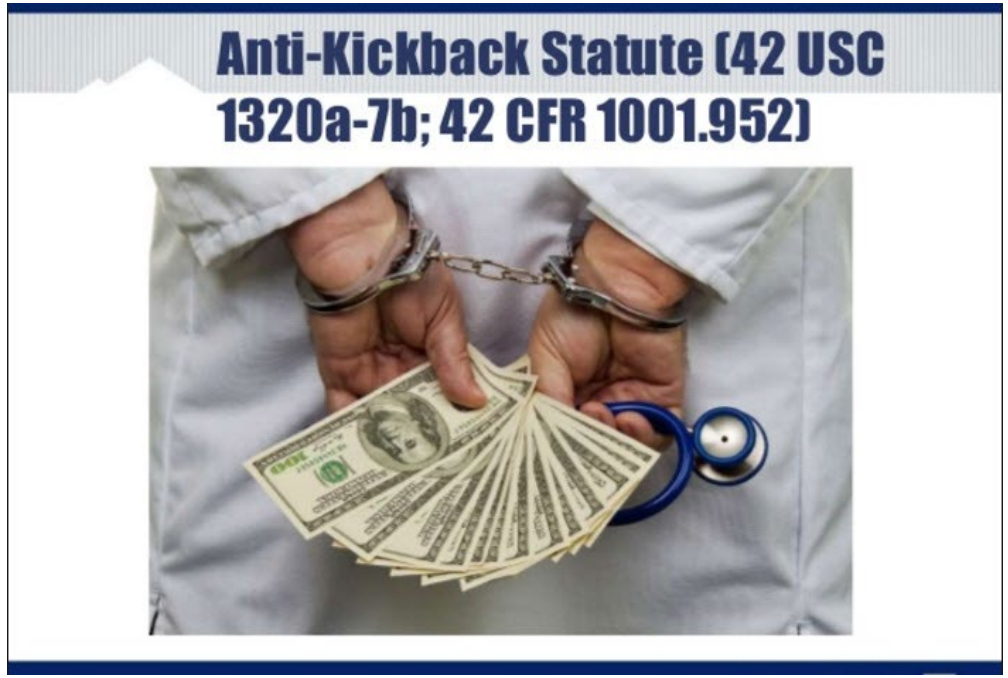
- *Rule 2: Informed Consent*
- *Rule 6: Preoperative Assessment*
- *Rule 7: Delegation of Services*
- *Rule 8: Postoperative Care*
- *Rule 11: Commercial Relationships*
- *Rule 15: Conflict of Interest*

Potential Sources of Trouble in Co-management

- Inappropriate delegation
- Inadequate consent
  - Rationale
  - Qualifications
  - Risks
  - Financial arrangements
- Problematic utilization
  - Routine arrangements
  - No valid reason
  - When the primary purpose is economic
- Inducement or condition for referrals
- Actions that harm our collective reputation

Comanagement Law

- Federal anti-kickback statutes
  - Prohibit remuneration for referrals
  - Federal insurance programs
- May include comanagement as an inducement for future referrals
- State Laws may apply to fee-splitting and services covered by private insurance



Medicare/Medicaid: Anti-Kickback Statute

- Prohibits knowingly and willfully soliciting, receiving, offering or paying any “remuneration” in return for:
  - Referring a person or purchasing, leasing, ordering any thing paid for by a Federal Health Care Program.

What is “remuneration”?

- “Remuneration” means:
  - Giving any thing of value directly or indirectly, overtly or covertly, in cash or in kind.

- Thus, referring cataract patients in exchange for providing post-operative care can violate the federal Anti-Kickback Statute.

The Office of the Inspector General (OIG)

- The OIG has expressed concern about co-management based on economic concerns rather than clinical appropriateness and has refused to provide safe harbor protections for such arrangements

Case Study 1

A Routine Practice

Actual Advertisement for a Practice

- “Dr. P has been a strong proponent of cataract and cataract/glaucoma co-management since he began his training at “X” Eye Center in 1983.
- With the exception of corneal transplantation, all of Dr. P’s surgeries and procedures are routinely co-managed with the referring doctor
  - Lasers- Trabeculoplasty, YAG capsulotomy, iridotomy
  - Cataract surgery- Standard and premium IOLs
  - Glaucoma surgery- iStent, Express shunt, Ahmed valve
  - Refractive surgery- LASIK, Epi-LASIK, Visian ICL (implantable collamer lens)
  - Dry eye therapy- Intense pulsed laser (IPL)
- “Convenient and comforting for the patient”

What Do You Think?

- In his own words, Dr. P states that he is a “longstanding proponent of co-management.”
- Is Dr. P’s addressing the best interests of his patients when he declares, “This is convenient and comforting for the patient”?
- Is this a problematic arrangement?
- We know very little about Dr. P’s co-management arrangements except for his own declaration that he “routinely” co-manages. This may be enough to catch the interest of the OIG.

Case Study 2

The Traveling Surgeon

Case History

- A practitioner in a large western state wrote to say:
  - “Here in Bedford Falls, ODs routinely send their surgical patients to Dr. B who practices in Potterville which is 90 miles away. There are many ophthalmologists nearby who could see these patients. Dr. B travels here once a month to see patients in the ODs’ offices.
  - Recently, Dr. B sought privileges at the local hospital which is the only hospital nearby and is also the co-owner of the only ASC in town. The hospital denied privileges because Dr. B cannot take call since he does not live in the area.
  - Additionally, the hospital concluded that there were sufficient ophthalmic resources in the community….”

The submitter continues…

- "…The physician co-owners of the ASC voted to suspend their Bylaws requiring hospital privileges in order to grant Dr. B privileges…Dr. B is now operating on patients…. is not providing or available for postop care locally.
- Local ophthalmologists face the ethical dilemma of whether or not to provide postop emergency care that may be required.
- The concern is that this relationship and surgical model is purely financial and does not represent appropriate patient care…"

What Do You Think?

- Is this co-management or itinerant surgery?
- Itinerant surgery is defined by the OIG as:
  - …the practice by a physician (normally residing in another city) of travelling to small rural hospitals to perform surgery. ... In most of these cases, preoperative and postoperative care is performed by the patient s local attending physician rather than the itinerant surgeon. (https://oig.hhs.gov/oei/reports/oai-07-88-00850.pdf)
- Co-management is defined (in the Guidelines) as:
  - a relationship between an operating ophthalmologist and a non-operating practitioner for shared responsibility in the postoperative care , when the patient consents in writing, etc.
- This is itinerant surgery

Case Study 3

Hello, nice to meet you…

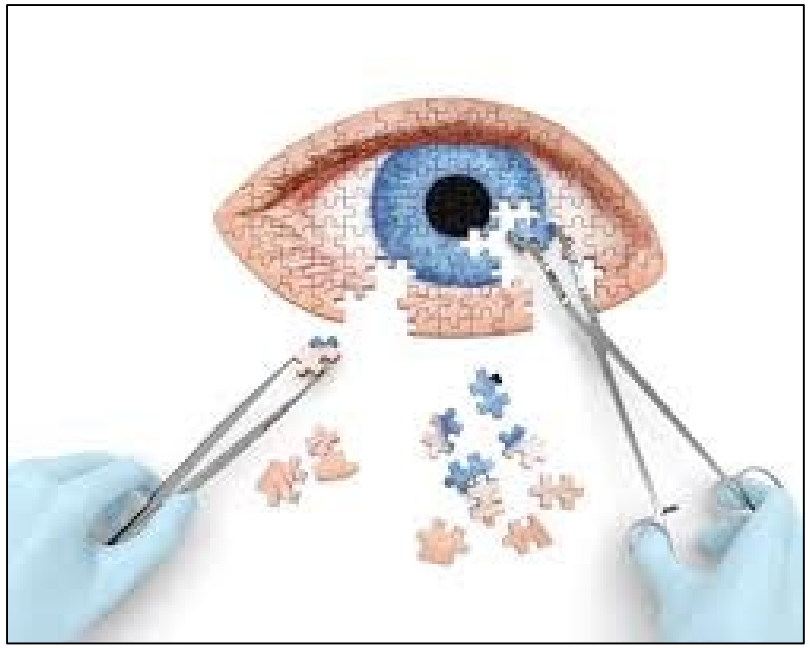
Case History

- Pts in a large city are evaluated by their OD and referred to a surgical center in another state for cataract surgery
- Surgeon's employed OD sends all patients print consent info with a note to "Call with questions"
- Day of surgery in Ophthalmologist's waiting room:
  - 20+ other patients, all with name tags on chest
  - Valium and retrobulbar blocks administered
  - Surgeon circulates around the room…
    "Hello, nice to meet you. Do you have any questions?"

Surgical Experience

- Prior to surgery, the MD ask patients, “ May we pray?”
- The submitting patient uneasy about saying no; “The doc had a scalpel in his hand…”
- The patient had an uneventful surgery, good outcome
  - POD-1 patient seen by surgery center OD
  - Travels home, subsequent postop by local OD

Patient Complains to the Ethics Committee



- Patient had:
  - No concerns about the quality of the surgical or perioperative care
  - No concerns about multiple parties being involved in care
  - No concerns about lack of information about who would be providing what services

Communication with the Member

- Ethics Committee expressed concerns for delegation of *all* perioperative care and *all* informed consent
- Ophthalmologist's response:
  - Postop procedures in compliance with Rule 8, arrangements made prior to surgery
  - Surgeon "spot checks" all delegated patient care, satisfies Rules 6 and 7
  - Full confidence in OD's abilities and qualifications
  - Good outcomes justify practices
  - First interaction w/patients "not convenient" except DOS

What Do You think?

- Is this co-management?
- Was the delegation of this patient's care appropriately handled?
  - Is preoperative assessment adequate?
  - Is “spot checking” adequate for optimal safety?
  - Is the consent process adequate?
  - Was interstate care necessary?
  - Is it appropriate for the surgeon to meet his patients at the OR door and after sedation?
  - Do good surgical outcomes justify this routine?

AAO Resources

- *Guidelines for the Avoidance of Inadvertent Anticompetitive Conduct*, AAO Policy Statement
  - https://www.aao.org/about/policies/guidelines-avoidance-inadvertent-anti-competitive-conduct
- Comprehensive Guidelines for the Co-Management of Ophthalmic Postoperative Care
  - https://www.aao.org/ethics-detail/guidelines-comanagement-postoperative-care
- Be smart, utilize AAO and other resources to educate yourself before entering into any co-management arrangement.

Office of the OIG

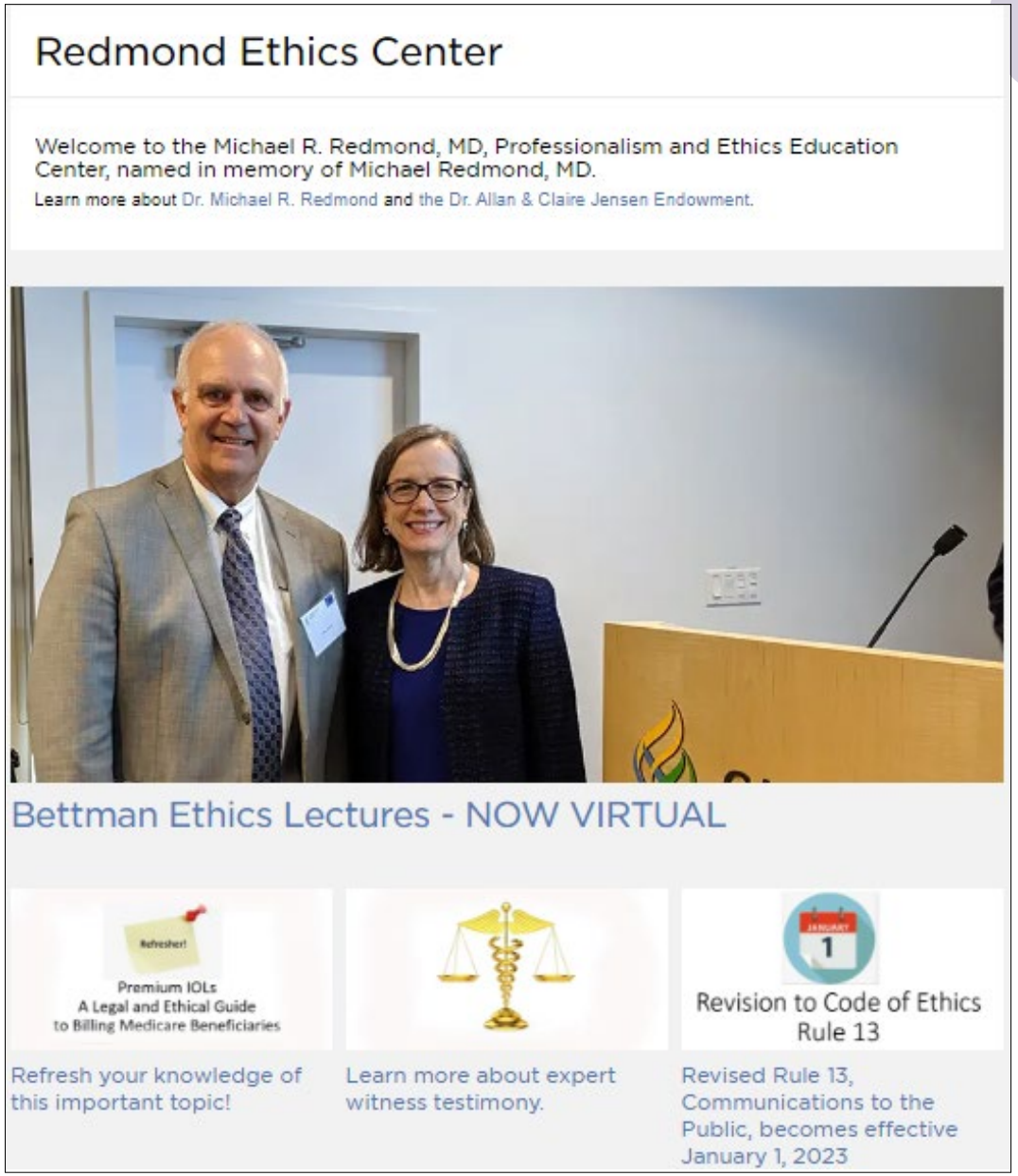
- Ophthalmologists are encouraged to review the HHS Office of Inspector General's Advisory Opinion on a proposed co-management arrangement between an ophthalmology group and optometrists external to that group. See AO 11-14 (2011) at:
- http://oig.hhs.gov/fraud/docs/advisoryopinions/2011/AdvOpn11-14.pdf

Ethics Resources

The Redmond Ethics Center

http://www.aao.org/clinical-education/redmond-ethics-center

General ethics questions: ethics@aao.org



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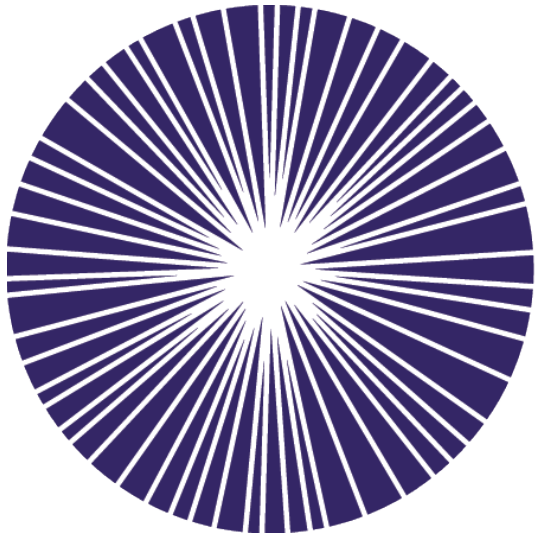

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