

The Patenting of Surgical Procedures

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Progress in neurological surgery depends on the timely and continual development of surgical technique. The tradition within the neurosurgical community has been and continues to be one of free dissemination of information through colloquia, peer reviewed and referenced journals, and continuing education making available newly tested clinical advances.

The question of patenting surgical procedures has recently been raised by a number of surgical societies in response to attempts by some surgeons to gain exclusive rights to new surgical techniques. A medical process patent is to be distinguished from a product patent in that the medical process patent involves no new patentable equipment or instrumentation but rather can be defined in terms of a "pre-process or procedure" carried out with existing equipment or instrumentation.

The American Association of Neurological Surgeons discourages further pursuing or issuing of patents for surgical procedures and supports legislative measure to prohibit medical process patents for the following reasons:

1. Patenting surgical procedures has the potential for restricting the availability of high quality care to patients in need.
2. Process patents restrict physician and patient autonomy as well as medical judgment as to appropriate treatment in the fact of legal restriction.
3. Enforcement of patent infringement will breach patient confidentiality.
4. The patent process is purely for the benefit and economic protection of the inventor. Since "primacy of the patient's well-being" is the ethical gold standard for the profession of medicine (Pellegrino, JAMA, June 1, 1994), the patenting of surgical procedures is at odds with the ethical aim of medical care.
5. Enforcement mechanisms for surgical patent safekeeping are not to place undue burden on the practicing neurosurgeon and cause delay or waiving of potentially beneficial procedures for patients.