

SECTION XIV – RELIEF OF VIOLATIONS (*continued*)

P. Relevant Material

Hearings are not subject to formal rules of evidence or civil procedure. However, the committee shall make every effort to insure the respondent has the opportunity to submit any relevant material. The committee has the authority to accept material from any source and the responsibility to determine the weight to be accorded to all evidence. A verbatim transcript shall be made of any formal hearing; the cost of the transcript will be borne by the Board. Copies of the transcript will be provided to the respondent upon request at his/her expense. Though respondents are not entitled to a continuance, and the Committee does not have any procedure in place to perform or to make available continuances, a respondent may be granted a continuance upon showing good cause, such as illness, at the discretion of the committee.

Q. Decision of the Committee

The committee shall reach a decision within thirty (30) working days after the conclusion of any hearing. If the respondent waives the right for a hearing the Committee with approval of the President, ABCDSM legal counsel and the Executive Director will make a decision. If the complaint is upheld, the Committee with approval of the President, ABCDSM legal counsel and the Executive Director shall decide the appropriate discipline within this same time period. The discipline imposed by the committee shall be in accordance with the Code of Ethics as set forth in Section XIV-V.

R. Notification

Within thirty (30) working days after a Committee decision, the respondent shall be notified of the decision by certified mail, return receipt requested. Where the complaint is upheld, the notification to the respondent shall include the sections of the Code of Ethics violated, any discipline imposed, and the procedure for appeal of the decision. Remedies imposed by the Committee shall not take effect prior to the expiration of thirty (30) working days following the notice of decision of the Committee.

S. Appeal of the Decision of the Ethics Committee

The Appeals Committee shall consist of five members; three Officers or Directors of the Board as appointed by the President, the ABCDSM legal counsel and the Executive Director. One member of this five-member committee shall be designated as Chairman. Any member of an Appeals Committee residing in the same state or a contiguous state as the respondent shall be disqualified from hearing the appeals and will be replaced by another Officer or Director, appointed by the President. The respondent may also request removal of a Diplomat for cause. The decision on such a request will be made by the President of the Board.

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T. Appeals Procedure

1. If a remedy is imposed by the Ethics committee, the respondent has the right to appeal the decision to the Board. The complainants may not appeal.
2. Appeal of a decision shall not be valid unless the Board headquarters receives a written notice of appeal from the respondent within thirty (30) working days of the date the Ethics committee's notice of its decision. The notice of appeal shall contain a succinct statement of the alleged errors and the reason why the decision of the committee is claimed to be incorrect.
3. After receipt of a notice of appeal, there should be no communication between the Ethics Committee and the Appeals Committee except for the reply statement, unless the Appeals Committee remands the case to the Ethics Committee.
4. Within ninety (90) days after the receipt of the respondent's notice of appeal, the Appeals Committee as appointed by the President shall consider the complete record of the case, the record of the committee's proceedings, the respondent's statements submitted with the notice of appeal, and any brief or reply statement filed. The Appeals Committee, in consultation with the Board President, shall then make a determination as to whether a hearing shall be held.
5. If a hearing is to be held, a date shall be set after the Appeals Committee makes the determination to hold a hearing. The respondent shall receive written notice of the time and place of the hearing by certified mail, return receipt requested, no later than thirty (30) working days prior to the date of the hearing. Such notice shall inform the respondent of a right to present material to the Appeals Committee and to appear with or without a representative. A representative must file a notice of appearance no later than ten (10) working days prior to the date of the hearing.
6. The appeal shall be limited to consideration only of the errors alleged by the Ethics Committee. The submission of materials to the Appeals Committee other than the brief and any material considered by the Ethics Committee is not favored. The Appeals Committee, at its discretion and for good cause shown, may consider additional materials submitted to the Board by the respondent.

U. Decision of the Appeals Committee

1. The Appeals Committee, after consultation with the Board President, shall render its decision after the conclusion of a hearing or examination of all records and/or new material, and the new written request by the respondent.
2. The Appeals Committee may reverse or uphold the findings of the Ethics Committee. The Appeals Committee may also remand any issues of the case to the Ethics Committee if the Appeals Committee finds that there have been substantive errors, which deprived the respondent of any right,

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U. Decision of the Appeals Committee (*continued*)

including the right to a fair hearing, or the discipline is considered inappropriate. The Appeals Committee may also remand this issue to the Ethics Committee.

3. The decision of the Appeals Committee shall be final and not subject to further review or appeal within the Board.

V. Remedies to Ethics Code Violations

When applicable, the Ethics Committee or the Appeals Committee may impose any of the following remedies:

1. Censure: A Formal statement in writing expressing disapproval or criticism of the respondent's actions or conduct is sent to the respondent and kept in the file of the respondent at the Board's headquarters.
2. Probation: A period of time, of a stated length, in which a Diplomate is under probation. The Diplomate is expected to provide evidence to the Ethics Committee that the actions or circumstances that brought him/her in violation of the Code of Ethics have been corrected by the end of the probation period.
3. Suspension: Denial of all rights and privileges as a Diplomate for a stated period of time. A copy of the notice of suspension will be placed in the confidential files of the Board's headquarters for a prescribed length of time.
4. Expulsion: Loss of Diplomate Status and denial of all rights and privileges accorded Diplomates for a stated period of time. An expelled Diplomate may, after the expiration of five (5) years, submit a new application for Diplomate status.

VI. Record of Ethics Code Remedies

1. No record of any actual complaint or remedy action shall be entered into Diplomate files except for the imposition of censure, probation, suspension, or expulsion.
2. A record of any remedy imposed pursuant to the violation of the Code of Ethics may be provided to any licensing, regulatory, or disciplinary authorities upon the discretion of the Ethics Committee.
3. The complainant shall be informed that the matter has been resolved. Both complainants and respondents shall be advised when no violation of the Code has been found. The final decision of the Ethics Committee shall be provided to a complainant who is a Diplomate.

SECTION IX - AMENDING THE CODE

This Code of Ethics may be amended by the Ethics Committee when necessary with the approval of the Officers and Directors.

CREDITS AND SOURCES

1. American College of Physicians. *Guidelines for the Physician Expert Witness*.
2. Counsel of Medical Specialties Society. (1989). *Statement on Qualifications and Guidelines for the Physician Expert Witness*.
3. Katz, *The Fallacy of the Impartial Expert Revisited*. Bulletin of the American Academy of Psychiatry and the Law. 1992: 02(2), 141-52.
4. Bone & Rosenow. *ACCP Guidelines for Expert Witness*. Chest, 1990: 98(4), 1006.
5. American Sleep Disorders Association (ASDA). *Guidelines for Expert Witness Qualifications and Testimony*. Adopted July 10, 1993.
6. American Association of Oral and Maxillofacial Surgeons. *Code of Ethics*.
7. American Medical Association. *Code of Ethics and Opinions Based on Code of Ethics*.
8. American Dental Association. *Code of Ethics and Interpretations of Dental Association Code of Ethics*.
9. Craig Foster, D.D.S., J.D., Sacramento, California. Individual correspondence and philosophy of code of ethics; Ethics Committee member.
10. Charles Garabadian, D.D.S., Seneca, South Carolina. Individual correspondence and philosophy of important items in a code of ethics, Ethics Committee member.
11. Ira Klemons, D.D.S., Ph.D., South Amboy, New Jersey. Personal correspondence and philosophy of code of ethics pertaining to American Academy of Craniofacial Pain.
12. Gerald Murphy, D.D.S., Grand Island, Nebraska. Individual correspondence and philosophy of areas of importance in a code of ethics.
13. Jack Cherin, D.M.D., Virginia Beach, VA. Individual correspondence and philosophy of a code of ethics for the American Academy of Craniofacial Pain, and Chairman of the Code of Ethics committee, Chief Author.
14. *Guidelines for Expert Witness, Qualifications and Testimony of the American Academy of Craniofacial Pain*.
15. Ethics document updated September 2014
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