



## Code of Ethics of the American Academy of Ophthalmology

### Preamble

The Code of Ethics of the American Academy of Ophthalmology applies to the American Academy of Ophthalmology and to its Fellows and Members in any class of membership and is enforceable by the American Academy of Ophthalmology.

### A. Principles Of Ethics

The Principles of Ethics form the first part of this Code of Ethics. They are aspirational and inspirational model standards of exemplary professional conduct for all Fellows or Members of the Academy in any class of membership. They serve as goals for which Academy Fellows and Members should constantly strive. The Principles of Ethics are not enforceable.

**1. Ethics in Ophthalmology.** Ethics address conduct and relate to what behavior is appropriate or inappropriate, as reasonably determined by the entity setting the ethical standards. An issue of ethics in ophthalmology is resolved by determining what best serves the interest(s) of patients.

**2. An Ophthalmologist's Responsibility.** It is the responsibility of an ophthalmologist to always act in the best interest of the patient.

**3. Providing Ophthalmological Services.** Ophthalmological services must be provided with compassion, respect for human dignity, honesty and integrity.

**4. Competence of the Ophthalmologist.** An ophthalmologist must maintain competence. Competence can never be totally comprehensive, and therefore must be supplemented by other colleagues when indicated. Competence involves technical ability, cognitive knowledge, and ethical concerns for the patient. Competence includes having adequate and proper knowledge to make a professionally appropriate and acceptable decision regarding the patient's management.

**5. Communication with the Patient.** Open communication with the patient is essential. Patient confidences must be safeguarded within the constraints of the law.

**6. Fees for Ophthalmological Services.** Fees for ophthalmological services must not exploit patients or others who pay for the services.

**7. Corrective Action.** If a member has a reasonable basis for believing that another person has deviated from professionally accepted standards in a manner that adversely affects patient care or from the Rules of Ethics, the member should attempt to prevent the continuation of this conduct. This is best done by communicating directly with the other person. When that action is ineffective or is not feasible, the member has a responsibility to refer the matter to the appropriate authorities and to cooperate with those authorities in their professional and legal efforts to prevent the continuation of the conduct.

**8. Professional Integrity in Research.** It is the responsibility of the ophthalmologist to maintain integrity in clinical and basic research. Professional relations with industry regarding research should advance the best interests of patients and the profession.

**9. Community Responsibility.** The honored ideals of the medical profession imply that the responsibility of the ophthalmologist extends not only to the individual but also to society as a whole. Activities that

have the purpose of improving the health and well-being of the patient and/or the community in a cost-effective way deserve the interest, support, and participation of the ophthalmologist.

**10. Healthcare Inequities.** Ophthalmologists should be aware of disparities in ophthalmic care within the communities they serve in the United States and internationally. Ophthalmologists should assist patients in need to secure access to appropriate ophthalmic care.

**11. Professional Civility.** Ophthalmologists should demonstrate courtesy, civility, inclusion, and respect to persons, groups, and organizations in professional communications of all types especially when discourse involves disagreement of opinion or disparate points of view.

## **B. Rules of Ethics**

The Rules of Ethics form the second part of this Code of Ethics. They are mandatory and descriptive standards of minimally-acceptable professional conduct for all Fellows or Members of the Academy in any class of membership. The Rules of Ethics are enforceable.

**1. Competence.** An ophthalmologist is a physician who is educated and trained to provide medical and surgical care of the eyes and related structures. An ophthalmologist should perform only those procedures in which the ophthalmologist is competent by virtue of specific training or experience or is assisted by one who is. An ophthalmologist must not misrepresent credentials, training, experience, ability or results.

**2. Informed Consent.** Informed consent is the process of shared decision-making between the ophthalmologist and the patient and must precede the performance of medical or surgical procedures. During the informed consent process, pertinent medical and surgical facts, and recommendations consistent with standard of care in medical/surgical practice must be presented in understandable terms to the patient or patient surrogate. Such information should include the indications, benefits, objectives, risks and possible complications of the procedure, alternatives to the procedure, and the potential consequences of no treatment. The operating ophthalmologist must personally confirm comprehension of this information with the patient or patient surrogate.

**3. Research and Innovation.** Research is conducted to provide information on which to base diagnostic, prognostic or therapeutic decisions and/or to improve understanding of pathogenesis in circumstances in which insufficient information exists. Research and innovation must be approved by appropriate review mechanisms (Institutional Review Board; IRB) and must comply with all requirements of the approved study protocol to protect patients from being subjected to or potentially affected by inappropriate or fraudulent research. In emerging areas of ophthalmic treatment where recognized guidelines do not exist, the ophthalmologist should exercise especially careful judgment and take appropriate precautions to safeguard patient welfare. Appropriate informed consent for research and innovative procedures must recognize their special nature and ramifications. The ophthalmologist must demonstrate an understanding of the purpose and goals of the research and recognize and disclose financial and non-financial conflicts of interest. Commensurate with the level of his/her involvement, the investigator must accept personal accountability for patient safety and compliance with all legal and IRB-imposed requirements.

**4. Other Opinions.** Ophthalmologists should be cognizant of the limitations of his/her knowledge and skills and be willing to seek consultations in clinical situations where appropriate. The patient's request for additional opinion(s) should be respected.

**5. The Impaired Ophthalmologist.** An ophthalmologist who becomes temporarily or permanently impaired by illness, injury, chemical dependence, fatigue, or other conditions that affect medical judgment or performance should withdraw from those aspects of practice affected by the impairment and arrange for a qualified colleague to assume the responsibilities of ophthalmic care until the impairment has been resolved. If an impaired ophthalmologist does not appropriately withdraw, it is the duty of other ophthalmologists who know of the impairment to take action to attempt to assure correction of the situation.

**6. Pretreatment Assessment.** Treatment (including but not limited to surgery) should be recommended only after a careful consideration of the patient's physical, social, emotional and occupational needs. The ophthalmologist must evaluate and determine the need for treatment for each patient. If the pretreatment evaluation is performed by another health care provider, the ophthalmologist must ensure that the evaluation accurately documents the ophthalmic findings and the indications for treatment. Recommendation of unnecessary treatment or withholding of necessary treatment is unethical.

**7. Delegation of Services.** Delegation is the use of auxiliary health care personnel to provide eye care services for which the ophthalmologist is responsible. An ophthalmologist must not delegate to an auxiliary those aspects of eye care within the unique competence of the ophthalmologist (which do not include those permitted by law to be performed by auxiliaries). When other aspects of eye care for which the ophthalmologist is responsible are delegated to an auxiliary, the auxiliary must be qualified and adequately supervised. An ophthalmologist may make different arrangements for the delegation of eye care in special circumstances, so long as the patient's welfare and rights are the primary considerations.

**8. Postoperative Care.** The provision of postoperative eye care until the patient has recovered is integral to patient management. The operating ophthalmologist should provide those aspects of postoperative eye care within the unique competence of the ophthalmologist (which do not include those permitted by law to be performed by auxiliaries). Otherwise, the operating ophthalmologist must make arrangements before surgery for referral of the patient to another ophthalmologist, with the patient's approval and that of the other ophthalmologist. The operating ophthalmologist may make different arrangements for the provision of those aspects of postoperative eye care within the unique competence of the ophthalmologist in special circumstances, such as emergencies or when no ophthalmologist is available, so long as the patient's welfare and rights are the primary considerations. Fees should reflect postoperative eye care arrangements with advance disclosure to the patient.

**9. Medical and Surgical Procedures.** An ophthalmologist must not misrepresent the service that is performed, or the charges made for that service. An ophthalmologist must not inappropriately alter the medical record.

**10. Procedures and Materials.** Ophthalmologists should order and/or utilize only those laboratory and surgical procedures, optical devices or pharmacological agents that are in the best interest of the patient. It is unethical to prescribe or provide unnecessary services and procedures or seek compensation for those services. It is equally unethical to withhold necessary services or procedures.

**11. Commercial Relationships.** An ophthalmologist's clinical judgment and practice must not be affected by economic interest in, commitment to, or benefit from professionally-related commercial enterprises.

**12. Communications to Colleagues.** Communications to colleagues must be accurate and truthful.

**13. Communications to the Public.** Communications to the public must be accurate. They must not convey false, untrue, deceptive, or misleading information through statements, testimonials, photographs, graphics or other means. They must not omit material information without which the communications would be deceptive. Communications must not appeal to an individual's anxiety in an excessive or unfair way; and they must not create unjustified expectations of results. Communications must not promote health-related misinformation or claims that are false, deceptive, or misleading; statements based on opinion must be identified as such and must not contain material claims of safety and/or efficacy that cannot be substantiated. If communications refer to benefits or other attributes of ophthalmic procedures that involve significant risks, realistic assessments of their safety and efficacy must also be included, as well as the availability of alternatives and, where necessary to avoid deception, descriptions and/or assessments of the benefits or other attributes of those alternatives. Communications must not misrepresent an ophthalmologist's credentials, training, experience or ability, and must not contain material claims of superiority that cannot be substantiated. If a communication results from payment by an ophthalmologist, this must be disclosed unless the nature, format or medium makes it apparent.

**14. Interrelations Between Ophthalmologists.** Interrelations between ophthalmologists must be conducted in a manner that advances the best interests of the patient, including the sharing of relevant information.

**15. Conflict of Interest.** A conflict of interest exists when professional judgment concerning the well-being of the patient has a reasonable chance of being influenced by other interests of the provider. Disclosure of a conflict of interest is required in communications to patients, the public, and colleagues.

**16. Expert Testimony.** Expert testimony should be provided in an objective manner using medical knowledge to form expert medical opinions. Nonmedical factors (such as solicitation of business from attorneys, competition with other physicians, and personal bias unrelated to professional expertise) should not bias testimony. It is unethical for a physician to accept compensation that is contingent upon the outcome of litigation. False, deceptive or misleading expert testimony is unethical. For purposes of this Rule, expert testimony shall include oral testimony provided under oath, affidavits and declarations used in court proceedings and certificates of merit signed, ratified or otherwise adopted by the physician.

**17. Confidentiality.** An ophthalmologist shall respect the confidential physician-patient relationship and safeguard confidential information consistent with the law.

**18. Harassment and Discrimination.** Harassment and discrimination in the practice of ophthalmology are unethical. The ethical practice of ophthalmology creates and fosters an environment in which patients and all members of the health care team, including those in training, are treated with respect and tolerance. Harassment and discrimination of all types are likely to jeopardize patient care, exploit inequalities in status or power, and abuse the trust placed in us as ophthalmologists. Therefore, discrimination, harassment, or creation of a hostile working environment on the basis of personal attributes, including but not limited to sex, gender identity, sexual preference, race, disease, disability, age, or religion, is inconsistent with the ideals and principles of ethics in ophthalmology.

## **C. Administrative Procedures**

The Administrative Procedures form the third part of this Code of Ethics. They provide for the structure and operation of the Ethics Committee; they detail procedures followed by the Committee and by the Board of Trustees of the Academy in handling inquiries or challenges raised under the Rules of Ethics. All Fellows or Members of the Academy in any class of membership are required to comply with these Administrative Procedures; failure to cooperate with the Ethics Committee or the Board of Trustees in a proceeding on a challenge may be considered by the Committee and by the Board of Trustees according to the same procedures and with the same sanctions as failure to observe the Rules of Ethics.

### **1. Ethics Committee.**

**(a) The Committee.** The Board of Trustees appoints at least five (5), but not more than nine (9), ophthalmologists who are voting Fellows or Members of the Academy to serve three (3) year, staggered terms as members of the Ethics Committee. The Board of Trustees makes its appointments to the Committee from among respected ophthalmologists who will, to the extent practicable, assure that the Committee's composition is balanced as to relative age, diversity, experience, and as to the emphasis of the appointees upon practice, education, research or other endeavors within ophthalmology. Membership on the Ethics Committee may be terminated by the Board of Trustees at any time and for any reason. Vacancies on the Committee are filled by the Board of Trustees. Committee members are reimbursed for expenses. The Ethics Committee is responsible for (i) developing and implementing an educational program regarding professional ethics and the Code of Ethics of the American Academy of Ophthalmology, especially among ophthalmologists and ophthalmologists-in-training who are Fellows or Members of the Academy; (ii) responding to each inquiry regarding ethics and, if appropriate, making a recommendation to the Board of Trustees regarding action, such as the development of an advisory opinion interpreting the Rules of Ethics in this Code; (iii) investigating each challenge regarding ethics and recommending whether the Board of Trustees should make a determination that a Fellow or Member of the Academy has failed to observe

the Rules of Ethics in this Code, and recommending an appropriate sanction; (iv) serving as a resource for the American Academy of Ophthalmology, its members and its Board of Trustees regarding professional ethics and ethical issues; and (v) assessing the Principles of Ethics, Rules of Ethics and Administrative Procedures in this Code periodically and recommending any amendments to the Board of Trustees.

**(b) The Chair of the Committee.** Upon nomination by the President-Elect of the Academy, the Board of Trustees appoints one (1) member of the Ethics Committee as the Committee's Chair to serve, at the will of the Board of Trustees, as the principal administrative officer responsible for management of the promulgation, interpretation and enforcement of this Code of Ethics. The Board of Trustees appoints as the Chair a distinguished ophthalmologist who possesses recognized integrity and broad experience. The Chair of the Committee is responsible directly and exclusively to the Board of Trustees; the Chair is reimbursed for expenses and, upon the approval of the Board of Trustees, may be paid for services; and the Chair is provided, upon the approval of the Board of Trustees, with staff, legal counsel and other resources necessary to fulfill the responsibilities of administering this Code. The Chair presides at, and participates in, all meetings and hearings of the Ethics Committee, except that the Chair need not participate at hearings at which the Committee considers the possible failure of a Fellow or Member of the Academy to observe the Rules of Ethics in this Code. The Chair is responsible for ensuring that these Administrative Procedures are followed. The Chair maintains liaison with entities, both public and private, which are interested or involved in medical ethics, particularly as they relate to ophthalmology.

**(c) The Vice Chair of the Committee.** Upon nomination by the President-Elect of the Academy, the Board of Trustees appoints one (1) member of the Committee as the Committee's Vice Chair to serve, at the will of the Board of Trustees, in the place of the Chair when the Chair is unable to serve.

**(d) Meetings of the Committee.** Meetings of the Ethics Committee are called upon at least seven (7) days' written notice to Committee members, which notice includes a copy of the agenda for the meeting. A member of the Committee must decline to participate in the consideration of, or the decision in, any matter before the Committee in which the member has an unresolved conflict of interest.

**(e) Indemnification and Insurance.** All Ethics Committee members, staff, and other individuals engaged in investigations at the written request of the Chair, are indemnified and defended by the Academy against liability arising from Committee-related activities to the extent provided by the Bylaws of the Academy for Trustees, Officers, committee members, employees and agents. The Academy maintains indemnification insurance against such liability.

## **2. Inquiries and Challenges.**

**(a) Preliminary Review.** The Chair preliminarily reviews each submission involving this Code of Ethics to consider whether it may be an inquiry (e.g., a request for issuance by the Board of Trustees of an advisory opinion interpreting the Rules of Ethics in this Code) or a challenge (i.e., a request for a finding by the Board of Trustees that a Fellow or Member of the Academy has failed to observe the Rules of Ethics in this Code). A submission involving this Code of Ethics, whether or not it is designated or phrased as an inquiry or challenge, may be construed by the Chair or the Committee as either an inquiry or a challenge in the light of information in the submission. Inquiries may be considered without regard to their means or form of submission. Challenges must be submitted in the format required by the Ethics Committee containing specific allegations against a Fellow or Member and de-identifying patient information consistent with relevant law(s). Such submissions will not be considered unless they are signed by their submitters. The Ethics Committee will review material submitted in writing or electronically once a signed and dated submission form is received. The requirement that a challenge be submitted in the format noted above and signed by the submitter does not apply to items that are in the public domain or those that "speak for themselves". These items include, but are not limited to, written, printed, recorded, televised, broadcast, or other audio or audiovisual materials or presentations, whether or not signed by, or contained on the letterhead of, or personally presented by a person, which describe or promote the credentials, training, experience, ability, results, or medical or surgical practice of the person. Items received by the Ethics Committee which "speak for themselves" may be considered as a challenge whether or not they are submitted in writing and signed by a submitter. Inquiries or challenges may be submitted by anyone.

**(b) Preliminary Disposition.** Upon preliminary review of a submission involving this Code of Ethics, the Chair may conclude, in the Chair's sole discretion, that the submission is not valid and actionable because it (i) pertains to acts and omissions occurring before the adoption of the Rule(s) in question, or (ii) is most appropriately raised for consideration and disposition by an entity engaged in the administration of law or the regulation of the conduct of physicians, or (iii) contains insufficient information on which to base an investigation, or (iv) is patently frivolous or (v) is inconsequential in that it does not present an issue sufficient to justify presenting the submission to the Ethics Committee for investigation, formal proceedings, and possible recommendation of a sanction to the Academy's Board of Trustees. The Chair shall give written notice of each summary disposition to the submitter (if any) and may give the same notice to the Ethics Committee. If the Chair makes a summary disposition of a submission, the Chair may, in his or her sole discretion, send a confidential written statement of his or her views or concerns to the Fellow or Member named in the challenge.

**(c) Investigation.** For each submission involving this Code of Ethics that the Chair concludes is a valid and actionable inquiry or challenge, the Chair shall present the submission to the Ethics Committee or one of its members for investigation into its specific facts or circumstances to whatever extent is necessary in order to clarify, expand or corroborate the information provided by the submitter. The Chair may either conduct an investigation personally or appoint one or more other individuals to conduct the investigation. The individual conducting the investigation (the "investigator") may be assisted in the investigation by other Ethics Committee members, by Committee staff and legal counsel and may also be assisted by any other individual (a) whose location, professional position, or expertise might be thought to facilitate the investigation, (b) whose assistance is requested by the Chair in writing, and (c) who agrees in writing to follow the Administrative Procedures of the Code of Ethics. The investigator or Committee staff shall obtain written confirmation that the submitter will (a) consent to the disclosure of his or her name to the Fellow or Member being challenged, (b) cooperate with the investigator and the Ethics Committee during the course of the investigation, and (c) testify at any hearing before the Ethics Committee concerning the matter. (If the submitter refuses to confirm these matters in writing, the investigator shall return to the Ethics Committee for guidance.) The investigator may seek preliminary information in addition to that contained in the submission if deemed necessary to verify that the submission is a valid and actionable challenge, or to clarify or corroborate information found in the challenge.

A Fellow or Member of the Academy who is the subject of a valid and actionable challenge is informed of the challenge by the investigator who shall give written notice specifying:

- (a) The factual details of the challenge with sufficient particularity to permit the Fellow or Member to respond to the challenge and prepare any necessary defense;
- (b) The specific Rule(s) of Ethics allegedly violated by the Fellow or Member together with a copy of, or link to, the Code of Ethics;
- (c) The right of the Fellow or Member to request a hearing;
- (d) The obligation to cooperate fully in the Committee's investigation by submitting all requested information within thirty (30) days, including facts supporting their version of the matter, any documents that support their position, any arguments regarding the application of the Code of Ethics to the facts, and the names and contact information of possible witnesses (including those who might be expected to give testimony unfavorable to the Fellow or Member), and
- (e) The fact that if the Fellow or Member fails to submit a timely response, the Ethics Committee may proceed to decide the matter without a hearing.

At any time after providing the notice described above and after receiving the challenged Fellow's or Member's reply, the investigator may conduct any investigation of the matter to the extent deemed appropriate in order to gather, clarify, expand or corroborate facts and information necessary to analyze the merits of the challenge and to prepare for any hearing. The investigator may request signed written statements or affidavits from witnesses. Investigations involving challenges are conducted in confidence, with all written communications to the submitter and challenged Fellow or Member sealed and marked "Personal and Confidential." Communications will be sent via any carrier that maintains

confidentiality and provides documentation of delivery. All written communications to the Ethics Committee from a challenged Fellow or Member must be signed by the challenged individual even if written on his or her behalf by legal counsel or other representative. Investigations are conducted objectively and without prejudgment. An investigation may be directed toward any aspect of a challenge which is relevant or potentially relevant and may lead to allegations of potential Rule violations other than those identified by the submitter. Upon completion of the investigation, the investigator shall assemble the investigation file, including all information submitted by the challenged Fellow or Member and shall submit the file to the Chair. If the Chair determines that additional investigation is necessary, the Chair, the investigator, the Committee's staff or legal counsel, or some combination of these, will attempt to obtain the additional information, to possibly include one (1) or more site visits or informal interviews with the challenged Fellow or Member.

### **3. Proceedings on Inquiries.**

**(a) Hearing on an Inquiry.** In the course of an investigation involving an inquiry, the Committee may conduct a public administrative hearing to receive the views of those who are interested in, or may be affected by, issuance by the Board of Trustees of an advisory opinion interpreting the Rules of Ethics in this Code. Thirty (30) days' written notice of the hearing is given to the Fellows and Members of the Academy and to others who, in the opinion of the Committee, may be interested in, or affected by, issuance of an advisory opinion. The notice may include a tentative proposed advisory opinion. The hearing is conducted by the Committee with any three (3) or more Committee members participating. The Chair of the Committee serves as the Hearing Officer to preside at the hearing and assure that these Administrative Procedures are followed. The Hearing Officer may issue an appropriate procedural or evidentiary ruling in the course of the hearing and may be assisted by legal counsel. The Hearing Officer presents at the hearing the issues raised by the inquiry, the results of the investigation up to the time of the hearing, and any tentative proposed Committee recommendation to the Board of Trustees for an advisory opinion. Information is offered through witnesses who may be assisted by legal counsel and are subject to questioning by the Committee. Any information may be considered which is relevant or potentially relevant. A transcript or audio recording of the hearing is made. The official record of the hearing becomes part of the investigation of the inquiry.

**(b) Recommendation on an Inquiry.** Upon completion of an investigation involving an inquiry, the Ethics Committee may develop an advisory opinion which is submitted to the Board of Trustees for approval.

**(c) Advisory Opinion.** The Board of Trustees issues an advisory opinion interpreting the Rules of Ethics in this Code (i) upon the recommendation of the Ethics Committee arising from an inquiry or (ii) upon the recommendation of the Committee arising from its own initiative. A representative of the Committee presents to the Board of Trustees, the recommendations of the Committee. Once issued by the Board of Trustees, the advisory opinion is promulgated by publication to the Fellows and Members of the Academy. Advisory opinions are made available to the Fellows and Members of the Academy on the Academy's web site.

### **4. Proceedings on Challenges.**

#### **(a) Hearing on a Challenge.**

**1. Notice of the Hearing.** In the course of an investigation involving a challenge, the Committee conducts a private adjudicative hearing if one is requested by the Fellow or Member of the Academy who is the subject of the challenge (the "challenged Fellow or Member") or at the Committee's own initiative. The challenged Fellow or Member shall be given at least thirty (30) days written notice of (i) the date, time and location of the hearing, (ii) the name and contact information of each witness who is expected to testify in support of the challenge, (iii) the subject matter on which each witness will testify, and (iv) a copy of each affidavit signed by a witness in support of the challenge. Within fifteen (15) days after the date of that written notice, the Fellow or Member shall give to the Chair written notice of (i) the name and contact information of each witness that the Fellow or Member expects to call in opposition to the challenge, (ii) the subject matter on which each witness will testify, and (iii) a copy of each affidavit signed by a witness in opposition to the challenge. If a witness has not been timely identified, or the subject matter of his or her testimony has not been timely disclosed, or a copy of his or her signed affidavit has not been timely provided, all as required by this paragraph, the witness may be

permitted to testify or the affidavit may be received, if at all, only to the extent and only as to the matters, if any, specified by the Hearing Officer, in the Hearing Officer's sole discretion.

**2. Hearing Format and Procedures.** The hearing is conducted by a Hearing Panel, with any three (3) or more Committee members participating, other than the investigator and any other Committee member who assisted substantially in the investigation of the challenge, any Committee member whose professional activities are conducted at a location in the approximate area of that of the challenged Fellow or Member, or who, in that Committee member's discretionary judgment, may not be impartial for any reason. The Chair of the Ethics Committee may be one (1) of the three (3) or more members of the Hearing Panel unless the Chair is disqualified by reason of circumstances described in the preceding sentence. The Hearing Panel elect from their number a Hearing Officer to preside at the hearing. The Hearing Officer shall be assisted by the Ethics Committee's staff and legal counsel and shall assure that these Administrative Procedures are followed. The Hearing Officer may issue any appropriate procedural or evidentiary rulings in the course of the hearing. The Hearing Panel shall not be bound by technical rules of evidence which are usually applicable in legal proceedings, but it may receive and consider any evidence (to include documentary evidence and testimony of witnesses in-person, virtually, or by telephonic examination) it deems to be appropriate and relevant or potentially relevant. The Hearing Panel may receive a person's signed affidavit or declaration in lieu of in-person or virtual testimony at the hearing or through telephonic examination, unless the Hearing Officer concludes, in his or her sole discretion, that substantial prejudice would result therefrom. The Chief Investigator, or a person or persons designated by the Hearing Officer, shall summarize for the Hearing Panel the results of the investigation up to the date of the hearing which are believed to support a finding that the challenged Fellow or Member has failed to observe the Rules of Ethics, and may make such other introductory factual remarks as the Hearing Officer or the Hearing Officer's designate deems appropriate. The Hearing Officer shall present the facts indicating that the challenged Fellow or Member has failed to observe the Rules of Ethics, including documentary evidence and the testimony of witnesses. Those witnesses shall be available in-person, virtually, or by telephone for questioning by the members of the Hearing Panel and its legal counsel and by the challenged Fellow or Member or his or her legal counsel or other representative. The challenged Fellow or Member subject to the challenge may be assisted at the hearing, at their sole cost and expense, by legal counsel or other representative. The challenged Fellow or Member or legal counsel or other representative may present documentary evidence and the testimony of witnesses in the Fellow's or Member's defense. Those witnesses shall be available in-person, by telephone, or secure online virtual conference for questioning by the challenged Fellow or Member or legal counsel or other representative and by the members of the Hearing Panel and its legal counsel. The challenged Fellow or Member shall be given 60 minutes to make a presentation to the Hearing Panel; all witness and counsel presentations are included in this 60-minute time frame, unless there is good cause to lengthen this time frame and all parties are in agreement. Any information may be considered which is relevant or potentially relevant. The challenged Fellow or Member may submit a written statement at the close of the hearing. A recording of the hearing is made as the Hearing Officer directs, and the recording shall be transcribed, as required. If the challenged Fellow or Member requests a transcription, they shall bear the expense. If transcribed at the request of the Hearing officer, the transcription shall become part of the record of the investigation of the challenge. The hearing is closed to all persons except the Hearing Panel, the Chief Investigator, the challenged Fellow or Member, their respective witnesses (when testifying and at other times as determined by the Hearing Officer) and legal counsel or, in the case of the Fellow or Member, other representative, Ethics Committee staff, and legal counsel and official reporter, if any. The Hearing Panel may delay the vote (as to the determination of hearing) to allow time to consider the official transcript or other recording of the hearing. Unauthorized oral or written communications with any member of the Ethics Committee or with any member of the Academy's Board of Trustees prior to the final resolution of a challenge (including the completion of any appeal) are strictly forbidden. Any such unauthorized communications by the challenged Fellow or Member, or by the submitter of the challenge, either directly or by proxy, shall be considered as non-cooperation with the Ethics Committee and shall be subject to the same sanctions as the failure to observe the Rules of Ethics.

**3. Forfeiture of Right to a Hearing.** The challenged Fellow's or Member's right to the hearing will be forfeited upon failure to appear without good cause. If either the submitter or the challenged Fellow or Member declines or fails to appear at a duly scheduled hearing, the hearing may still proceed, and the Hearing Panel members shall consider any material submitted previously by the absent party.

**(b) Recommendation on a Challenge.** Upon completion of an investigation involving a challenge, the



Ethics Committee recommends whether the Board of Trustees should make a determination that the Fellow or Member of the Academy who is the subject of the challenge has failed to observe the Rules of Ethics in this Code. When the Committee recommends a determination by the Board of Trustees of non-observance, the Committee also recommends imposition of an appropriate sanction. The recommendation is presented by a representative of the Committee to the Board of Trustees along with the record of the Committee's investigation. A copy of the recommendation and a statement of the basis for the recommendation shall be provided to the Fellow or Member. If the Committee recommends against a determination of non-observance, the challenge is dismissed, with notice to the Fellow or Member of the Academy who is the subject of the challenge and to the submitter of the challenge, and a summary report is made to the Board of Trustees. In the sole discretion of the Committee and with the written consent of the Fellow or Member who was the subject of the challenge, the Committee may recommend to the Board of Trustees that the fact of the dismissal of the challenge (and, in appropriate cases, the reasons for the dismissal) be publicized, and the Board of Trustees may, in its sole discretion, determine the nature, extent and manner of such publicity.

**(c) Determination of Non-Observance.** The Board of Trustees makes the determination, upon the recommendation of the Ethics Committee arising from a challenge and following an investigation, whether a Fellow or Member of the Academy has failed to observe the Rules of Ethics in this Code and imposes an appropriate sanction. The Board of Trustees may accept, reject or modify the Committee's recommendation, either with respect to the determination of non-observance or with respect to the sanction. If the Board of Trustees makes a determination of non-observance, this determination and the imposition of a sanction are promulgated by written notice to the affected Fellow or Member of the Academy and to the submitter of the challenge, if the submitter agrees in advance and in writing to maintain in confidence whatever portion of the information is not made public by the Board of Trustees. Additional publication occurs only to the extent provided in the sanctions themselves. If the Board of Trustees does not make a determination of non-observance, the challenge is dismissed, with notice to the affected Fellow or Member and to the submitter of the challenge.

**(d) Alternative Disposition.** At any time before the Ethics Committee submits its recommendation to the Board of Trustees as to a determination that a Fellow or Member of the Academy has failed to observe the Rules of Ethics in this Code, the Ethics Committee, in its sole discretion, may offer the Fellow or Member an opportunity to submit a proposed alternative disposition of the matter in whole or in part upon terms and conditions suggested by the Ethics Committee. The terms and conditions may include sanctions and restrictions which are the same as, different from, or more or less restrictive than the sanctions contained in the following lettered paragraph, but shall in all cases include a written assurance by the Fellow or Member that the possible non-observance has ceased and will not recur. The decision of the Ethics Committee on whether to extend such an opportunity is based upon its investigation of the challenge and upon its assessment of the nature, severity, and likelihood of recurrence of the possible non-observance when considered in terms of the best interests of the patients of the challenged Fellow or Member. If an opportunity to submit a proposed alternative disposition is offered by the Ethics Committee, the alternative disposition will be considered only if (i) it is accepted by the challenged Fellow or Member in the manner specified in the offer, and (ii) the challenged Fellow or Member submits the proposed alternative disposition within thirty (30) days of the date of the Ethics Committee's offer. If the Fellow or Member timely submits a proposed alternative disposition that is accepted by the Board of Trustees and Ethics Committee, the alternative disposition of the challenge occurs automatically upon the Academy's receipt of acceptance of the offer, all on the terms and conditions specified in the offer. Written notice of the alternative disposition shall be given to the submitter of the challenge, only if the submitter agrees in advance and in writing to maintain the information in confidence.

**(e) Sanctions.** Any of the following sanctions may be imposed by the Board of Trustees upon a Fellow or Member of the Academy who, the Board of Trustees has determined, has failed to observe the Rules of Ethics in this Code, although the sanction applied must reasonably relate to the nature and severity of the non-observance, focusing upon reformation of the conduct of the Fellow or Member and deterrence of similar conduct by others:

- (i) Reprimand to the Fellow or Member of the Academy, with publication of the determination and with or without publication (at the discretion of the Board of Trustees) of the Fellow's or Member's name;
- (ii) Suspension of the Fellow or Member from the Academy for a designated period, with publication of the determination and with or without publication (at the discretion

of the Board of Trustees) of the Fellow's or Member's name; or  
(iii) Termination of the Academy membership of the Fellow or Member, with publication of the determination and of the Fellow's or Member's name.

In addition to and not in limitation of the foregoing, in any case in which the Board of Trustees determines that a Fellow or Member has failed to observe the Rules of Ethics, the Board of Trustees may impose the further sanction that the Fellow or Member shall not be entitled to sponsor, present, or participate in a lecture, poster, film, instruction course, panel, or exhibit booth at any meeting or program of or sponsored by the Academy (A) for a period of up to five (5) calendar years from and after the effective date a sanction described in clause (i) or (ii) of this paragraph 4(e) is imposed for the first time upon the Fellow or Member, or (B) at any time from and after the effective date a sanction described in clause (i) or (ii) of this paragraph 4(e) is imposed for a second time upon the Fellow or Member, or (C) at any time from and after the effective date a sanction described in clause (iii) of this paragraph 4(e) is imposed upon the Fellow or Member.

Fellows or Members of the Academy who are suspended remain subject to the Code of Ethics during the period of suspension and are deprived of all benefits of membership during the period of suspension, except continued participation in Academy insurance programs. If the Fellow or Member is suspended with publication of the Fellow's or Member's name or terminated, and the appeal (if any) sustains the determination on which the sanction is based, the Board of Trustees may authorize the Ethics Committee to communicate the determination and transfer a summary or the entire record of the proceeding on the challenge to an entity engaged in the administration of law or a governmental program or the regulation of the conduct of physicians, in a proceeding that relates to the subject matter of the challenge, provided, however, that the entity is a federal or state administrative department or agency, law enforcement agency, physician licensing authority, medical quality review board, professional peer review committee, or similar entity; and the Chair of the Ethics Committee may appear if requested as a witness to that determination and record. Except in the instance of communication of the determination and transfer of the record, or in the instance of request of the record by the Fellow or Member of the Academy who was the subject of the challenge, the entire record, including the record of any appeal, is sealed by the Ethics Committee and the Board of Trustees and no part of it is communicated by the members of the Board of Trustees, the members of any appellate body, the members of the Ethics Committee, the staff or any others who assisted in the proceeding on the challenge, to any third parties. Fellows or Members of the Academy whose membership has been terminated as provided in this paragraph 4(e) may not reapply for membership in any class.

Fellows or Members of the Academy who are suspended may petition the Board of Trustees for reinstatement of membership and assumption of full membership benefits at the end of the period of suspension. Although there is no required format, petitions for reinstatement of membership should include:

- (a) An understanding of the reasons for the sanction,
- (b) An understanding of why the action leading to the sanction was felt to warrant the sanction imposed; and
- (c) Detailed information demonstrating that the Fellow's or Member's non-observance of the Code of Ethics will not recur.

Letters of recommendation from individuals who are knowledgeable about the person's sanction imposed, and current character and behavior, including efforts at rehabilitation, are advised. If a letter of recommendation is not on original letterhead or is not duly notarized, the Board of Trustees shall have the discretion to ignore that letter of recommendation.

If the Board of Trustees denies a petition for reinstatement of membership, the decision is not subject to a hearing or to an appeal.

**(f) Appeal.** Within thirty (30) days of receipt of notice of a determination by the Board of Trustees that a Fellow or Member of the Academy has failed to observe the Rules of Ethics in this Code and of imposition of a sanction, the affected Fellow or Member may submit to the Board in writing a request for an appeal. The written appeal (not to exceed ten (10) double spaced, typewritten pages) shall set forth the reason(s) why the Fellow or Member believes that the Ethics Committee erred in its decision. This submission shall not contain new factual material or raise substantial new arguments that are not part of the record of the Ethics Committee's proceeding. The Ethics Committee, or a person designated by the Ethics Committee, shall present the recommendations of the Ethics Committee and the record of the investigation to the Board of Trustees. The Board of Trustees establishes an appellate body consisting of at least three (3), but not more than five (5), ophthalmologists who are Voting Fellows or Members of the Academy, who did not participate in the Ethics Committee's investigation or in the Board of Trustees' determination, and who declare no actual or potential conflicts of interest with the subject matter of the investigation or the Fellow or Member who is the subject of the challenge. The appellate body conducts and completes the appeal within ninety (90) days after receipt of the request for an appeal. The purpose of the appeal is to provide an objective review of the original challenge, the investigation and recommendation of the Ethics Committee, and the determination of the Ethics Committee, and the determination of the Board of Trustees, but not, however, the sanction imposed. The appeal is limited to a review of the Ethics Committee and the Board of Trustees' application of the Rules of Ethics in this Code to the facts established in the investigation of the challenge and to a review of the procedures followed to ascertain whether they were consistent with those detailed in these Administrative Procedures. An appeal may not take into consideration any matters not included as part of the record of the Ethics Committee's investigation and the Board of Trustees' determination. The appeal consists of a review by the appellate body of the entire record of the proceeding on the challenge and written appellate submission of the Fellow or Member of the Academy who was the subject of the challenge and of the Board of Trustees. Written appellate submissions and any reply submissions may be made by authorized representatives of the Fellow or Member and of the Board of Trustees. Submissions are made according to whatever schedule is established by the appellate body. The decision of the appellate body either affirms or overrules the determination of the Board of Trustees of non-observance of the Rules of Ethics in this Code by a Fellow or Member of the Academy. The decision does not address the sanction imposed by the Board of Trustees. The decision of the appellate body, including a statement of the reasons for the decision, is reported to the Board of Trustees. The decision is binding upon the Board of Trustees, the Fellow or Member who is subject of the challenge, the Ethics Committee and all other persons.

**(g) Resignation.** If a Fellow or Member of the Academy who is the subject of a challenge resigns from the Academy at any time during the pendency of the proceeding of the challenge, the Ethics Committee may request that the Board of Trustees authorize the Ethics Committee to publish the fact and date of resignation, the name and address of the Fellow or Member who resigned, and the fact that a challenge pursuant to the Code of Ethics was pending at the time of the resignation. Such publication shall not reveal the nature of the challenge. Following the Board of Trustees' decision, the challenge is dismissed without any further action by the Ethics Committee, the Board of Trustees or an appellate body established after an appeal; the entire record is sealed; and the Fellow or Member may not reapply for membership in any class. In addition, the Board of Trustees may authorize the Ethics Committee to publish the fact and date of resignation, and the fact and general nature of the challenge on which a proceeding was pending at the time of the resignation, to, and at the request of, an entity engaged in the administration of law or the regulation of the conduct of physicians, in a proceeding that relates to the subject matter of the challenge, provided, however, that entity is a law enforcement agency, physician licensing authority, medical quality review board, professional peer review committee, or similar entity.

**(h) Overriding Reporting Requirement.** Notwithstanding anything expressly or apparently to the contrary contained in this Code, the Academy shall report such information, to such agency or agencies, and in such form and manner and frequency as may from time to time be prescribed by the Health Care Quality Improvement Act of 1986 and by regulations promulgated thereunder, all as from time to time amended, as a condition to the continued availability to the Academy of the protection from liability for damages afforded by such Act.

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