

Procedural Guidelines for AAO-HNS Disciplinary Proceedings

1. Initiation of Complaint

Only Fellows or Active Members of the Academy may file a complaint with the Executive Vice President / Chief Operating Officer (EVP/CEO) charging another member with failing to maintain good professional standing. Failure to maintain good professional standing may be evidenced by, but not limited to, a violation of the Academy’s Bylaws or Code of Ethics, as amended from time to time. Such charges may be made against any class of member. All charges shall be in writing and shall specify the basis for the complaint, including, where applicable, the provision of the Academy Bylaws or Code of Ethics that has allegedly been violated or other conduct justifying disciplinary action.

2. Procedure for Processing Complaint

- (a) All complaints shall be received by the-EVP/CEO as designee of the Executive Committee (EC). The EVP/CEO shall forward a copy of each complaint to the EC and shall otherwise process the complaint in accordance with these procedures. The complaint shall also be referred to Academy legal counsel, who will review them for compliance with these guidelines and any other applicable bylaws or guidelines of the Academy. Any complaint not in compliance with the bylaws or guidelines, that could not be the basis for disciplinary action by the Academy if proven, or that involves testimony in pending litigation, will be rejected and returned to the Complainant. Complaints challenging expert witness testimony will only be reviewed for compliance with the qualifications requirements of the “Expert Witness Qualifications and Testimony” section of the Code of Ethics, as well as the “Qualifications for the Physician Expert Witness” section of the Academy’s “Statement on Qualifications and Guidelines for the Physician Expert Witness,” both of which are included in Appendix A to these Procedural Guidelines and are collectively referred to herein as the “Qualifications Guidelines.” The Academy will not review the merits of an expert witness’ testimony.
- (b) With respect to any remaining portion of the complaint, the EVP/CEO will contact the Complainant to determine whether there are any further documents or exhibits that he/she would like to submit in support of the complaint. A copy of the Academy Bylaws and these Guidelines will be sent to the Complainant. It is the Complainant's responsibility to collect and present all evidence which he/she wishes the Academy to consider in support of the complaint. Any materials submitted by Complainant, including but not limited to transcripts of testimony, will reviewed solely for the purpose of evaluating whether the expert witness’s credentials and background comply with the Qualifications Guidelines. Complainant will also be advised that the Academy’s disciplinary proceedings are confidential until the final disposition of the complaint is rendered, at which time the decision will be published in the manner set forth in Section 5.c. of these Guidelines.
- (c) The Respondent will be notified that a complaint has been lodged against him or her and the basis for the complaint, as well as the confidential nature of the proceedings. The Respondent will be furnished a full set of the documents and other materials submitted by the Complainant, including the complaint and any supporting evidence. The Respondent will then have thirty (30)

days to prepare and submit whatever written responses, documents, and/or exhibits he/she believes are appropriate. A full set of copies should also be submitted to the Complainant.

- (d) Any records submitted by Complainant or Respondent must be de-identified in accordance with the privacy regulations issued under the Health Insurance Portability and Accountability Act of 1996.
- (e) Respondent may not resign his or her membership while a complaint is pending against him or her except pursuant to the procedures established under Section 2.23 of the Academy Bylaws.
- (f) The Respondent shall be furnished with a copy of these Guidelines informing the physician of his/her rights throughout this process.

3. Preliminary Evaluation

- (a) The EVP/CEO, the President, and the Chair of the Ethics Committee, serving as the Evaluation Panel, will review the written submissions made by both sides and make a preliminary finding as to whether or not the documentary evidence submitted by Complainant and Respondent, on balance, demonstrates a violation of the Academy's Bylaws or Code of Ethics, or other conduct justifying disciplinary action. The parties will then be notified in writing of the Evaluation Panel's preliminary determination.
- (b) If the Evaluation Panel decides that a violation has not been established and that further review is not justified, the case will be dismissed.
- (c) If the Evaluation Panel makes a preliminary determination, after reviewing the documents submitted by both sides, that a violation has been established, the Panel will also propose whether Respondent should be censured, suspended for a definite time, or expelled.
- (d) Expert Witness Cases ONLY: If the Evaluation Panel makes a preliminary determination, after reviewing the documents submitted by both sides, that a violation of the Qualification Guidelines has been established, the Panel will also propose whether Respondent should receive a letter of censure. Any stronger action (suspension or expulsion) will be reserved for repeat offenders of the Qualifications Guidelines OR for offenses that also violate other provisions of the Bylaws or Code of Ethics or involve other conduct justifying disciplinary action.
- (e) The Academy shall provide Respondent with prompt notice of the Evaluation Panel's proposed decision and the reasons for that decision. The notice shall also state that the Respondent has the right to request a hearing within thirty (30) days of receipt of the notice and shall provide a summary of the Respondent's rights in the hearing.
- (f) If Respondent fails to request a hearing in a timely manner, the Evaluation Panel's decision will be submitted to the Board of Directors for final decision pursuant to Section 5, except that Respondent shall also forfeit his/her right to appear before the Board.

4. Procedures for Conducting Hearing

- (a) If the Respondent submits a timely request for a hearing, the Academy will promptly send the Respondent another notice stating the place, date, and time of the hearing, which date shall not be less than thirty (30) days and not more than six (6) months after the date of the notice. All materials will be forwarded to an Investigating Panel of Academy Fellows selected by the President and the EVP/CEO, which will conduct a hearing in accordance with the procedures set forth in this Section 4, with all the parties bearing their own expenses. The size and composition of the panel will be determined solely by the President and the EVP/CEO. Panel members shall not be economic competitors of the Complainant or Respondent.

- (b) The Respondent shall be given a list of witnesses (if any) expected to testify at the hearing on behalf of the Complainant or at the request of the Investigating Panel.
- (c) A court reporter will transcribe the proceedings.
- (d) The Respondent has the right to the following:
- to representation by an attorney or other person of the physician's choice;
 - to obtain a copy of the transcript of the proceedings upon payment of any reasonable charges associated with the preparation thereof;
 - to call, examine, and cross-examine witnesses;
 - to present evidence determined to be relevant by the chair of the Investigating Panel, regardless of its admissibility in a court of law;
 - to submit a written statement at the close of the hearing;
 - upon completion of the hearing, to receive the written recommendation of the Investigating Panel, including a statement of the basis for the recommendations.
- (e) If any party declines or fails to appear at a duly scheduled hearing, the Investigating Panel may still proceed, and shall consider the previously submitted material furnished by the absent party. The Chair of the Investigating Panel may reschedule the hearing date if good cause is shown.
- (f) All parties are advised that no new matters, evidence or witnesses may be introduced in the hearing by either the Complainant or Respondent if they have not been previously disclosed in the documents supporting and denying the charges. The hearing will be conducted by the chair of the Investigating Panel with assistance from the Academy's legal counsel. The strict rules of evidence will not be followed. The chair shall have the authority to impose reasonable limitations on the time available for both direct testimony and cross examination. The hearing shall be closed to all except members of the Investigating Panel, complainant, respondent, witnesses, legal counsel, and the court reporter.
- (g) At the conclusion of the hearing, the Investigating Panel shall convene in private (with the presence of Academy legal counsel) and shall determine by majority vote of the members who attended the hearing, which of the following recommendations, shall be adopted:
- The charges are not sustained and no further action shall be taken; or
 - The charges are sustained and one or more of the following occur:
 - The Respondent be censured; or
 - Suspended for a definite time; or
 - Expelled.
- (h) Expert Witness Cases ONLY: At the conclusion of the hearing, the Investigating Panel shall convene in private (with the presence of Academy legal counsel) and shall determine by majority vote of the members who attended the hearing, which of the following recommendations, shall be adopted:
- The charges are not sustained and no further action shall be taken; or

- The charges are sustained and one or more of the following occur:
 - The Respondent be censured; or
 - Any stronger action (suspension for a definite time or expulsion) will be reserved for repeat offenders of the Qualifications Guidelines OR for offenses that also violate other provisions of the Bylaws or Code of Ethics, or involve other conduct justifying disciplinary action.

- (i) The Investigating Panel need not reach a final recommendation immediately, but may wait until it has had the opportunity to review the transcript of the proceedings. Committee members may not discuss the merits of the case with any party prior to the formal hearing, and may only consider evidence or testimony introduced in conjunction with the hearing, although they may rely upon their own expertise and experience as physicians in evaluating the testimony of witnesses or issues raised.

- (j) The Investigating Panel's recommendations shall be reduced to writing and forwarded to the Board of Directors, the Complainant, and the Respondent within 30 days of the conclusion of the hearing. Complainant and Respondent agree not to distribute the writing to any third party.

5. Final Decision

- (a) The Respondent will be advised in writing of the date of the Board of Directors meeting, at which time the recommendations of the Investigating Panel will be presented, and the Respondent shall have an opportunity to make any statement he or she desires before the Board makes a final decision. Such notice shall be provided at least 30 days prior to the date of the meeting. The President may also make a statement and explain and define findings to the Board of Directors, no new evidence or witnesses may be presented to or considered by the Board. The Board may set reasonable limitations on the length of the oral presentations.

- (b) At the conclusion of the hearing, the Board shall adopt, modify, or reject the recommendation of the Investigating Panel. Censure or suspension shall require an affirmative vote of at least two-thirds (2/3) of the voting Directors present. Expulsion shall require an affirmative vote of at least three-fourths (3/4) of the voting Directors present. The Board's decision must be based on a reasonable belief that the action is warranted by the facts presented in the documents and the Investigating Panel hearing. Within thirty (30) days of the Board meeting, the Academy will provide the Complainant and Respondent with written notice of the Board's decision, including a statement of the reasons for such decision.

- (c) Where appropriate, the Academy shall report its decision to the National Practitioner Data Bank and the relevant state medical licensing bodies. The decision may also be reported to the American Board of Otolaryngology and/or state or local otolaryngology societies if the circumstances so warrant. The Academy may also publish a notice of its decision in the *Academy Bulletin*, on the Academy website, and through other appropriate media.

- (d) The Academy will report any adverse action taken against a resident or fellow member to their Program Director.

6. Application for Reinstatement

- a) All Members who are suspended, expelled, or resigned while under investigation, may submit a written application for reinstatement after one year of suspension or expulsion. Reinstatement is not automatic and is granted at the discretion of the Board of Directors, contingent upon meeting all other requirements of being an AAO-HNS member at time of reapplication. Reinstatement applications will be heard by the Board of Directors pursuant to the same procedures as provided for in Section 5 herein. Among other things, the Board will consider whether the applicant's misconduct that provided the basis for the disciplinary action against him or her by the Academy has ceased; the likelihood of a recurrence of such misconduct; and any related legal or licensure actions have been taken against the applicant since the Academy took disciplinary action against him or her.

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