

American College of Emergency Physicians
Procedures for Addressing Charges of Ethical Violations and Other Misconduct

Guiding Principle: Ethics charges and other disciplinary charges are important and will be addressed in accordance with College policy.

A. Complaint Received

A complaint may be initiated by an ACEP member, chapter, committee, or section. No others have standing to present a complaint.

1. Must be in writing and signed by the complainant;
2. Must specify in reasonable detail the alleged violation by an ACEP member of ACEP Bylaws, current ACEP “Principles of Ethics for Emergency Physicians,” other current ACEP ethics policies, or other conduct believed by the complainant to warrant censure, suspension, or expulsion;
3. Must state that the complainant has personal, first-hand knowledge or actual documentation of the alleged violation, and all documentation must accompany the complaint. Complainant is responsible for ensuring that the documentation does not provide information that can be used to identify a particular patient, including but not limited to, the patient’s name, address, social security number, patient identification number, or any identifying information related to members of the patient’s family;
4. Must state that the complainant is willing to have his or her name disclosed to the ACEP Executive Director, the Ethics Committee, the Bylaws Committee, the Board of Directors, and to the respondent should the complaint be forwarded to the respondent;
5. Must be submitted to the ACEP Executive Director.

B. Executive Director

1. Sends a written acknowledgement to the complainant confirming the complainant’s intent to file a complaint and identifying the elements that must be addressed in an ethics complaint.
2. Confirms receipt of an acknowledgement signed by the complainant specifying an intent to file an ethics complaint and to be bound by the “Procedures for Addressing Charges of Ethical Violations and Other Misconduct.”
3. Notifies the ACEP President and the chair of the Ethics Committee or the Bylaws Committee, as appropriate, that a complaint has been filed and forwards to each of them a copy of the complaint.
4.
 - a. Determines, in consultation with the ACEP President and the chair of the Ethics and/or Bylaws Committee, that the complaint is frivolous, inconsequential, or does not allege an actionable violation of a policy or principle included in the *Code of Ethics for Emergency Physicians* or of ACEP Bylaws, or other conduct warranting censure, suspension, or expulsion. If so, the Executive Director dismisses the complaint and will notify the complainant of this determination, or
 - b. Determines, in consultation with the Ethics Committee chair, that the complaint alleges conduct that may constitute a violation of a policy or principle included in the *Code of Ethics for Emergency Physicians*, and if so, forwards the complaint and the response together, as soon as both are received, to each member of the Ethics Committee, or, at the discretion of the chair of the Ethics Committee, to members of a subcommittee of the Ethics Committee appointed for that purpose, or
 - c. Determines, in consultation with the Bylaws Committee chair, that the complaint alleges conduct that may constitute a violation of ACEP Bylaws or other conduct justifying censure, suspension, or expulsion, and forwards the complaint and response together, as soon as both are received, to each member of the Bylaws

- Committee, or at the discretion of the chair of the Bylaws Committee, to members of a subcommittee of the Bylaws Committee appointed for that purpose, or
- d. Determines that the complaint is more appropriately addressed through judicial or administrative avenues, such as in the case of pending litigation or action by state licensing boards, and ACEP should defer actions pursuant to such other avenues. If so, the Executive Director will refer the matter to the ACEP President for review. If the President also determines that the complaint is more appropriately addressed through judicial or administrative avenues, the complaint will not be considered. The Board of Directors will review the President's action at the next regularly scheduled Board meeting. The President's action can be overturned by a majority vote of the Board.
 5. Within five business days after the determinations specified in Section B.4.b. or Section B.4.c. of these Procedures, forwards the complaint to the respondent by registered U.S. mail with a copy of the document, "Procedures for Addressing Charges of Ethical Violations and Other Misconduct" and requests a written response within thirty (30) days of receipt of the documents. The communication will indicate that ACEP is providing notice of the complaint, the reasons for the review action, that no determination has yet been made on the complaint, and if the Board decides not to dismiss the complaint, the respondent has the right to request a hearing. A copy of the complaint and all supporting documentation will be included in this communication. Such notice must also include a summary of the respondent's rights in the hearing, and a list of the names of the members of the ACEP Ethics Committee or the ACEP Bylaws Committee, as appropriate, or subcommittee that will be reviewing the complaint, an ad hoc committee pursuant to Section E.5., and the Board of Directors. The respondent will have the right to raise any issues of potential conflict or reason that any individuals should recuse themselves from the review. Such recusal shall be at the discretion of the ACEP President.
 6. When a written response to a complaint is received, the Executive Director will forward that response and any further related documentation to the complainant and the Ethics Committee, the Bylaws Committee, or the subcommittee appointed to review the complaint as appropriate.

C. Bylaws Committee [within sixty (60) days of the forwarding of the complaint/response specified in Section B.4.c. above]

1. Reviews the written record of any complaint which alleges a violation of the ACEP Bylaws and the accompanying response.
2. Determines the need to solicit in writing additional information from the parties, third parties, or experts regarding the complaint and makes all reasonable efforts to investigate and obtain all facts necessary to review the complaint.
3. Discusses the complaint and response by telephone conference call;
4. Considers whether:
 - a. Current ACEP Bylaws apply.
 - b. Alleged behavior constitutes a violation of current ACEP Bylaws.
 - c. Alleged conduct warrants censure, suspension, or expulsion.
5. Proceeds to develop its recommendation based solely on the written record.
6. The Bylaws Committee will deliver its report and minority reports, if any, to the ACEP Executive Director for transmittal to the Board of Directors. In its report, the Bylaws Committee shall recommend that the Board of Directors:
 - a. Dismiss the complaint; or
 - b. Take disciplinary action, the specifics of which shall be included in the committee's report.

7. At the discretion of the chair of the Bylaws Committee, these functions may be carried out by a subcommittee of three or more members of the Bylaws Committee. Such subcommittee and its chair shall be appointed by the Bylaws Committee chair and may seek counsel from other consultants with particular expertise relevant to the matter under consideration. In the event that a subcommittee is appointed, its report and recommendations shall be delivered to the Board of Directors.

D. Ethics Committee [within sixty (60) days of the forwarding of the complaint/response specified in Section B.4.b. above]

1. Discusses the complaint and response by telephone conference call;
2. Considers whether:
 - a. Current ACEP “Principles of Ethics for Emergency Physicians” or other current ACEP ethics policies apply.
 - b. Alleged behavior constitutes a violation of current ACEP “Principles of Ethics for Emergency Physicians” or other current ACEP ethics policies.
 - c. Alleged conduct warrants censure, suspension, or expulsion.
3. Determines the need to solicit in writing additional information from the parties, third parties, or experts regarding the complaint.
4. Proceeds to develop its recommendation based solely on the written record.
5. Develops a report regarding the complaint and recommendation for action. Minority reports may also be presented.
6. The Ethics Committee will deliver its report and minority reports, if any, to the ACEP Executive Director for transmittal to the Board of Directors. In its report, the Ethics Committee shall recommend that the Board of Directors:
 - a. Dismiss the complaint;
 - b. Take disciplinary action, the specifics of which shall be included in the committee's report; or
 - c. Gather additional information regarding the complaint and the advisability of disciplinary action. The methods of gathering additional information, and any further consideration of the complaint, shall be the Board’s responsibility and at its discretion and may include conducting a hearing.
7. At the discretion of the chair of the Ethics Committee, these functions may be carried out by a subcommittee of five or more members of the Ethics Committee. Such subcommittee and its chair shall be appointed by the Ethics Committee chair and may seek counsel from other consultants with particular expertise relevant to the matter under consideration. In the event that a subcommittee is appointed, its report and recommendations shall be delivered to the Board of Directors.

E. Board of Directors

1. Receives the report of the Ethics Committee or Bylaws Committee, including minority reports, if any, and receives the complaint and response.
2. May request further information in writing from the complainant and/or respondent.
3. Decides to:
 - a. Dismiss the complaint; or
 - b. Render a decision to impose disciplinary action based on the written record.
4. If the Board determines to impose disciplinary action pursuant to Section E.3.b., the respondent will be provided with notification of the Board’s determination and the option of:
 - a. A hearing; or
 - b. The imposition of the Board decision based solely on the written record.

5. The decision to impose disciplinary action shall require a two-thirds vote of Directors voting at a meeting in which a quorum is present pursuant to ACEP Bylaws. Directors entitled to vote include members of the Board who have been present for the entire discussion of the complaint, either in person or by conference call, with no conflict of interest or other reason to recuse themselves from participation. If a majority of Board members have recused themselves from consideration of an ethics complaint, the Board shall delegate the decisions regarding disciplinary action to an ad hoc committee composed of nine (9) members. This ad hoc committee shall be composed of all those Board members who have not recused themselves, if any, plus independent third parties who are ACEP members. Should the chair of the Board receive notification of recusal from consideration of an ethics complaint from a majority of Board members, the chair shall request those Board members who have not recused themselves to submit nominations of independent third parties who are ACEP members to serve on an ad hoc committee to act on that ethics complaint. At the next meeting of the Board, the Board members who have not recused themselves shall elect from those nominees, by majority vote, the required number of independent third party members of the ad hoc committee. Should all Board members recuse themselves, the chair shall appoint a committee of seven (7) independent third parties who are ACEP members without conflicts in this matter who will select the members of the ad hoc committee. The ad hoc committee shall proceed as follows:
 - a. The decision to take disciplinary action shall require a two-thirds vote of the ad hoc committee.
 - b. If the ad hoc committee votes to impose disciplinary action based on the written record, the respondent will be notified of this determination and the option of:
 - i. A hearing conducted by the ad hoc committee, or
 - ii. The imposition of the ad hoc committee decision based solely on the written record.
 - c. If the respondent requests a hearing, the ad hoc committee shall follow the hearing procedures described in Section G below.
 - d. Within thirty (30) days after the hearing concludes, the ad hoc committee shall render a decision. An affirmative vote of two-thirds of the ad hoc committee shall be required to take disciplinary action against the respondent.
 - e. If the respondent does not request a hearing, the ad hoc committee will report to the Board its decision to impose disciplinary action based on the written record. This decision will be final and will be implemented by the Board.

F. Right of Respondent to Request a Hearing

If the Board chooses the option described in Section E.3.b., or an ad hoc committee pursuant to Section E.5. chooses the option described in Section E.5.b. ii., the Executive Director will send to the respondent a written notice by registered U.S. mail of the right to request a hearing or to have the Board or the ad hoc committee decide based solely on the written complaint. This notice will list the respondent's hearing rights as set forth in Section G. below. The respondent's request for a hearing must be submitted in writing to the Executive Director within thirty (30) business days of receipt of the notice of right to a hearing. In the event of no response, the ACEP President may determine the manner of proceeding.

G. Hearing Procedures

1. If the respondent requests a hearing, the complainant and respondent will be notified in writing by registered U.S. mail by the Executive Director within ten (10) business days of such request. Such notice will include a list of witnesses, if any, that the Board, its

subcommittee, or an ad hoc committee pursuant to Section E.5., intends to call in the hearing.

2. The Executive Director will send a notification of the date, time, and place of the hearing and will provide the parties with information regarding the hearing process and the conduct of the hearing by registered U.S. mail to the last known address(es) of the parties.
3. The time set for the hearing will not be less than thirty (30) days nor more than nine (9) months after the date on which notice of hearing was received by the respondent.
4. The complainant and respondent each may be represented by counsel or any other person of his/her choice. Each party will bear the expense of his or her own counsel.
5. The parties have the right to have a record made of the proceedings by transcript, audiotape, or videotape at the expense of the requesting party.
6. The hearing may be conducted by the entire Board, by a subcommittee of three to five members of the Board of Directors, at the discretion of and as appointed by the chair of the Board of Directors or, if required pursuant to Section E.5., by an ad hoc committee described in Section E.5. If the hearing is conducted by a subcommittee or by an ad hoc committee that includes one or more Board members as described in Section E.5., the presiding officer of the hearing will be a Board member designated by the chair of the Board. The chair of the Board of Directors will act as the presiding officer throughout the hearing conducted by the full Board unless the chair is unable to serve or is disqualified from serving, in which case the ACEP President will designate a member of the Board of Directors to chair the hearing. If all Board members have recused themselves, the ad hoc committee members shall choose an individual from among themselves to chair the hearing. If a subcommittee of the Board or an ad hoc committee conducts the hearing, such hearing must take place with all of the parties and all the members of the subcommittee or ad hoc committee present in person. If the full Board conducts the hearing, all of the parties, and a quorum of the Board, must be present in person. Hearings may not take place by telephone conference call.
7. The parties to the complaint have the right to call, examine, and cross-examine witnesses and to present evidence that is determined to be relevant by the presiding officer, even if the evidence would not be admissible in a court of law. Respondent may submit a written statement at the close of the hearing. All witness expenses will be borne by the party who calls the witness.
8. The Board, its appointed subcommittee, or an ad hoc committee will, after having given the complainant and the respondent an opportunity to be heard, including oral arguments and the filing of any written briefs, conclude the hearing.
9. In the event that the hearing is conducted by a subcommittee of the Board or an ad hoc committee, such subcommittee or ad hoc committee will, within thirty (30) days after the hearing concludes, submit the written record of the hearing, along with the subcommittee's recommendation or the ad hoc committee's decision, to the Board of Directors. If the hearing is conducted by a subcommittee of the Board, within thirty (30) days after receiving a subcommittee report and recommendation, or, if the full Board conducts the hearing, within thirty (30) days after the hearing concludes, the Board shall render a decision. The affirmative vote of two-thirds of the Directors entitled to vote pursuant to this Section, with a quorum of Directors present pursuant to ACEP Bylaws, shall be required to take disciplinary action against the respondent. If the Board cannot achieve a two-thirds vote of entitled Directors with a quorum present, the respondent shall automatically be exonerated. Directors shall be entitled to vote if they have not recused themselves or been recused, and, in the case of a hearing conducted by the full Board, if they have attended the entire hearing. If the hearing is conducted by an ad hoc

committee pursuant to Section E.5., the decision of such ad hoc committee will be final and will be implemented by the Board.

10. The decision of the Board will be expressed in a resolution that will be included in the minutes of the meeting at which the decision occurs. Written notice of the Board's decision will be sent by registered U.S. mail to the respondent and complainant within thirty (30) days of the decision. Such decision will include a statement of the basis for the recommendation of the Ethics Committee or Bylaws Committee, as applicable, and the Board's decision.

H. Board Decision without a Hearing

If the respondent chooses the option described in Section E.4.b., that is, a Board decision based solely on the written record, the Board will implement its decision to impose disciplinary action based on the written record as described in Section E.

I. Disciplinary Action: Censure, Suspension, or Expulsion

1. Censure
 - a. Private Censure: a private letter of censure informs a member that his or her conduct is not in conformity with the College's ethical standards; it may detail the manner in which the Board expects the member to behave in the future and may explain that, while the conduct does not, at present, warrant public censure or more severe disciplinary action, the same or similar conduct in the future may warrant a more severe action. The content of a private letter of censure shall not be disclosed, but the fact that such a letter has been issued shall be disclosed.
 - b. Public Censure: a public letter of censure shall detail the manner in which the censured member has been found to violate the College's ethical standards set forth in Section A.2. above.
2. Suspension from ACEP membership shall be for a period of twelve months; the dates of commencement and completion of the suspension shall be determined by the Board of Directors. At the end of the twelve-month period of suspension, the suspended member shall be offered reinstatement. Request for reinstatement shall be processed in the same manner as that of any member whose membership has lapsed (i.e., has been cancelled for non-payment of dues).
3. Expulsion from ACEP membership shall be for a period of five years, after which the expelled member may petition the Board of Directors for readmission to membership. The decision regarding such a petition shall be entirely at the discretion of the Board of Directors.

J. Disclosure

1. Nature of Disciplinary Action
 - a. Private censure: the content of a private letter of censure shall not be disclosed, but the fact that such a letter has been issued shall be disclosed. The name of the respondent shall be disclosed, but the conduct that resulted in censure shall not be disclosed.
 - b. Public censure: both the fact of issuance, and the content, of a public letter of censure shall be disclosed.
 - c. Suspension: the dates of suspension, including whether or not the member was reinstated at the end of the period of suspension, along with a synopsis of the findings of fact that led to suspension, shall be disclosed. ACEP is also required to report the suspension of membership and a description of the conduct that led to suspension to the Boards of Medical Examiners in the states in which the physician is licensed, which may result in a report of such action to the National Practitioner Data Bank.

- d. Expulsion: the date of expulsion, along with a synopsis of the findings of fact that led to expulsion, shall be disclosed. If the five-year period has elapsed, the disclosure shall indicate whether the former member petitioned for reinstatement and, if so, the Board's decision on such petition. ACEP is also required to report the expulsion from membership and a description of the conduct that led to expulsion to the Boards of Medical Examiners in the states in which the physician is licensed which may result in a report of such action to the National Practitioner Data Bank.
2. Scope and Manner of Disclosure
 - a. Any member may transmit to the Executive Director a request for information regarding disciplinary actions taken by the College. Such letter shall specify the name of the member or former member who is the subject of the request. The Executive Director shall disclose, in writing, the relevant information as described in Section J.1.
 - b. The Board of Directors will publicize in an appropriate ACEP publication the names of members receiving public censure, suspension, or expulsion. If any person makes a request for information about disciplinary actions against a member who has received public censure, suspension, or expulsion, the Executive Director may refer that person to the published announcement of that disciplinary action in an ACEP publication.

K. Ground Rules

1. All proceedings are confidential until a final decision on the complaint is rendered by the Board of Directors or an ad hoc committee pursuant to Section E.5., at which time the decision will be available upon request by ACEP members, to the extent specified in Section J. Files of these proceedings, including written submissions and hearing record will be kept confidential.
2. Timetable guidelines are counted by calendar days unless otherwise specified.
3. The Ethics Committee, the Bylaws Committee, the Board of Directors, their appointed subcommittees, as appropriate, or an ad hoc committee, may request further written documentation from either party to the complaint; a time to satisfy any request will be specified in the notice of such request, and these times will not count against the committee's, Board's, subcommittee's, or ad hoc committee's overall time to complete its task. However, such requests and the responses thereto shall not extend the time to deliver a recommendation or a decision to the Board beyond ninety (90) days from the date the complaint is forwarded to the appropriate committee, subcommittee, or ad hoc committee.
4. All parties to the complaint are responsible for their own costs; ACEP will pay its own administrative and committee costs.
5. If a participant in this process (such as a member of the Ethics Committee, the Bylaws Committee, or Board of Directors) is a party to the complaint, has a material reason for bias, subjectivity, or conflicts of interest in the matter, or is in direct economic competition with the respondent, that person shall, recuse himself or herself from the process except as a complaining party or respondent. Any committee member who recuses himself or herself will report this recusal promptly to the committee chair, and any Board member who recuses himself or herself will report this recusal promptly to the chair of the Board.
6. Once the Board has made a decision or implemented a decision of an ad hoc committee pursuant to Section E.5. on a complaint, it will not consider additional allegations against the same respondent based on the same or similar facts.

7. The Board's decision or the decision of an ad hoc committee pursuant to Section E.5. to impose an adverse action must be based on a reasonable belief that the action is warranted by the facts presented or discovered in the course of the disciplinary process.
8. If a respondent fails to respond to a complaint, to notice of the right to request a hearing, or to a request for information, the Board or an ad hoc committee pursuant to Section E.5. may make a decision on the complaint solely on the basis of the information it has received.

Approved September 2010