



College Manual Amendment

RESOLUTION: 15(20)

SUBMITTED BY: Ethics Committee
Board of Directors

SUBJECT: Procedures for Addressing Charges of Ethical Violations and Other Misconduct

PURPOSE: Amend by substitution the *Procedures for Addressing Charges of Ethical Violations and Other Misconduct* to create a more efficient complaint review process and clarify procedural issues.

FISCAL IMPACT: Budgeted committee and staff resources to update the College Manual and to review ethics complaints and other disciplinary charges.

1 WHEREAS, The review of complaints regarding ethical violations or other matters requires adequate due
2 process to ensure it is fair to both the complainant and respondent; and
3

4 WHEREAS, A review by legal counsel, the ACEP Board of Directors, and a subcommittee comprised of
5 members of the Ethics Committee, Bylaws Committee and the Medical-Legal Committee determined that a more
6 efficient complaint review process is needed based upon the increasing number of ethics complaints filed annually;
7 and
8

9 WHEREAS, The ACEP Board of Directors approved a revision to the *Procedures for Addressing Charges of*
10 *Ethical Violations and Other Misconduct* at its meeting in June 2020; and
11

12 WHEREAS, Approval by the ACEP Council is required to include the revised document in the College
13 Manual; therefore be it
14

15 RESOLVED, That the College Manual be amended by substitution of the *Procedures for Addressing Charges*
16 *of Ethical Violations and Other Misconduct* to read:
17

18 **Procedures for Addressing Charges of Ethical Violations and Other Misconduct**

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20 Guiding Principle: Ethics charges and other disciplinary charges are important and will be addressed in
21 accordance with College policy.
22

23 **A. Definitions**

- 24
25 **1. ACEP means the American College of Emergency Physicians.**
26 **2. Code of Ethics means the Code of Ethics for Emergency Physicians.**
27 **3. Procedures means the Procedures for Addressing Charges of Ethical Violations and Other**
28 **Misconduct.**
29 **4. Ethics Complaint Review Panel consists of three (3) members of the Ethics Committee and two**
30 **(2) members of the Medical-Legal Committee – in matters requiring the expertise of a different**
31 **committee, the President may appoint two (2) members of the relevant committee to replace the**
32 **standing members of the Medical-Legal Committee.**
33 **5. Bylaws Committee refers to the Bylaws Committee or appointed subcommittee.**
34 **6. Board Hearing Panel conducts all hearings and consists of the ACEP Vice-President, Chair of the**
35 **Board, and Board Liaison to the Ethics Committee.**

7. ACEP review bodies are the Ethics Complaint Review Panel, the Bylaws Committee, the Board Hearing Panel and the ACEP Board of Directors.

A. B. 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 an alleged violation by an ACEP member of **an ACEP policy as it existed at the time of the alleged violation, including ACEP Bylaws, ~~current~~ ACEP “Principles- Code 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 allege a violation that occurred within ~~twelve (12)~~ **ten (10)** years prior to the submission of the complaint, **is not the subject of pending litigation, and any rights of appeal have been exhausted or have expired;**
4. Must state that the complainant has personal, first-hand knowledge or actual documentation of the alleged violation; substantiating 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;
5. 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,~~ **any additional ACEP review body listed in these Procedures,** and ~~to~~ the respondent should the complaint be forwarded to the respondent; **and**
6. Must be submitted to the ACEP Executive Director.

B. C. Executive Director

1.
 - a. **If any elements of the complaint have not been met, returns the complaint and supporting documentation to complainant, identifying the elements that must be addressed in an ethics complaint.**
 - b. **If all elements of the complaint have been met, sends ~~1. Sends~~ a written acknowledgement to the complainant confirming ~~the~~ complainant’s intent to file a complaint. Includes a copy of ACEP’s Procedures providing and identifying the elements guidelines and timetables that ~~must will~~ be addressed followed in this matter. Requests complainant sign acknowledgement specifying intent to file an ethics complaint and to be bound by the Procedures.**
2. Confirms receipt of an acknowledgement signed by the complainant specifying intent to file an ethics complaint and to be bound by the ~~“Procedures for Addressing Charges of Ethical Violations and Other Misconduct” (“Procedures”)~~ **Procedures.**
3. Notifies the ACEP President and the ~~e~~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 ~~e~~Chair of the Ethics ~~and/or~~ **Committee, the** Bylaws Committee, **or other committee designee,** 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 **ACEP President and the Chair of the** Ethics Committee ~~chair,~~ **or other committee designee,** 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~~ **after** 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~~ **Complaint Review Panel,** or

- 91 c. Determines, in consultation with the ACEP President and the Chair of the Bylaws Committee
92 chair, or other committee designee, that the complaint alleges conduct that may constitute a
93 violation of ACEP Bylaws or other conduct justifying censure, suspension, or expulsion, and
94 forwards the complaint and response together, as soon as after both are received, to each member
95 of the Bylaws Committee, or at the discretion of the eChair of the Bylaws Committee, to members
96 of a subcommittee of the Bylaws Committee appointed for that purpose, or
97 d. Determines that the complaint is more appropriately addressed through judicial or administrative
98 avenues, such as in the case of pending litigation or action by state licensing boards, and ACEP
99 should defer actions pursuant to such other avenues. If so, the Executive Director will refer the
100 matter to the ACEP President for review. If the President also determines that the complaint is more
101 appropriately addressed through judicial or administrative avenues, the complaint will not be
102 considered. The ~~Board of Directors~~ Ethics Complaint Review Panel or the Bylaws Committee
103 will review the President's action, ~~at the next regularly scheduled Board meeting.~~ The President's
104 action can be overturned by a majority vote of the ~~Board, or~~ applicable ACEP review body.
105 ~~e. Determines that the alleged violation is not the subject of a pending ACEP Standard of Care~~
106 ~~Review. If the alleged violation is the subject of a pending Standard of Care Review, the Standard~~
107 ~~of Care Review will be suspended pending the resolution of the complaint brought pursuant to these~~
108 ~~Procedures.~~
109 5. Within ten (10) business days after the determinations specified in Section BC.4.b. or Section BC.4.c.
110 of these *Procedures*, forwards the complaint to the respondent by certified U.S. mail USPS Certified
111 Mail with a copy of these *Procedures* and requests a written response within thirty (30) days of receipt
112 of the documents. The communication will indicate that ACEP is providing notice of the complaint, the
113 reasons for the review action, that no determination has yet been made on the complaint, and that the
114 respondent has the right to request a hearing if the Board-applicable ACEP review body decides not to
115 dismiss the complaint. A copy of the complaint and all supporting documentation provided by the
116 complainant will be included in this communication. Such notice must also include a summary of the
117 respondent's rights in the hearing, and a list of the names of the members of the ACEP Ethics
118 Committee or the ACEP Bylaws Committee, as appropriate applicable ACEP review body, including,
119 and the Board of Directors. The respondent will have the right to raise any issues of potential conflict or
120 reason that any individuals should recuse themselves from the review. Such recusal shall be at the
121 discretion of the ACEP President.
122 6. When a written response to a complaint is received, the Executive Director will forward that response
123 and any further related documentation to the complainant and the Ethics ~~Committee,~~ Complaint
124 Review Panel or the Bylaws Committee, ~~or the subcommittee~~ appointed to review the complaint, as
125 appropriate.
126

127 **D. Ethics ~~Committee~~ Complaint Review Process [within sixty (60) days of the forwarding of**
128 **the complaint/response specified in Section BC.4. eb. above]**
129

- 130 1. Reviews the written record of any complaint that alleges a violation of ~~current~~ the ACEP "Principles
131 Code of Ethics for Emergency Physicians" or other ~~current~~ ACEP ethics policies as they existed at the
132 time of the alleged violation and the accompanying response.
133 2. Discusses the complaint and response by telephone conference call;
134 3. Determines the need to solicit in writing additional information or documentation from the parties, third
135 parties, or experts regarding the complaint.
136 4. Considers whether:
137 a. ~~Current~~ Applicable version of the ACEP "Principles Code of Ethics for Emergency Physicians" or
138 other ~~current~~ ACEP ethics policies apply.
139 b. Alleged behavior constitutes a violation of ~~current~~ the applicable version of the ACEP
140 "Principles Code of Ethics for Emergency Physicians" or other ~~current~~ ACEP ethics policies.
141 c. Alleged conduct warrants censure, suspension, or expulsion.
142 ~~5. Proceeds to develop its recommendation based solely on the written record.~~
143 ~~6. Develops a report regarding the complaint and recommendation for action. Minority reports may also~~
144 ~~be presented.~~
145 ~~7.5. The Ethics Committee will deliver its report and minority reports, if any, to the Board of Directors. In~~
146 ~~its report, the Ethics Committee shall recommend that the Board of Directors~~ Decides to:

- a. Dismiss the complaint; or
- b. ~~Take~~ **Ethics Complaint Review Panel renders a decision to impose** disciplinary action, ~~the specifics of which shall be included in the committee's report,~~ **based on the written record.**

~~8. 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. The Ethics Committee chair shall appoint this subcommittee and designate one of its members to chair the subcommittee. The subcommittee may seek counsel from other consultants with particular expertise relevant to the matter under consideration. In the event that a subcommittee is appointed, it shall deliver its report and recommendations to the Board of Directors.~~

6. If the Ethics Complaint Review Panel determines to impose disciplinary action pursuant to Section D.5.b., the respondent will be provided with notification of the Ethics Complaint Review Panel's determination and the option of:

- a. A hearing; or**
- b. The imposition of the Ethics Complaint Review Panel decision based solely on the written record.**

7. If the respondent chooses the option described in Section D.6.b., that is, an Ethics Complaint Review Panel decision based solely on the written record, the Ethics Complaint Review Panel will implement its decision to impose disciplinary action based on the written record.

~~C~~**E. Bylaws Committee Complaint Review Process [within sixty (60) days of the forwarding of the complaint/response specified in Section ~~B~~C.4.b.c. above]**

1. Reviews the written record of any complaint that alleges a violation of the ACEP Bylaws **as it existed at the time of the alleged violation** and the accompanying response.
2. Discusses the complaint and response by telephone conference call.
3. Determines the need to solicit in writing additional information or documentation from the parties, third parties, or experts regarding the complaint.
4. Considers whether:
 - a. ~~Current~~ **Applicable version of the** ACEP Bylaws apply.
 - b. Alleged behavior constitutes a violation of ~~current~~ **the applicable version of the** ACEP Bylaws.
 - c. Alleged conduct warrants censure, suspension, or expulsion.

~~5. Proceeds to develop its recommendation based solely on the written record.~~

~~6. Develops a report regarding the complaint and recommendation for action. A minority reports may also be presented.~~

~~7.5. The Bylaws Committee will deliver its report and minority reports, if any, to the Board of Directors. In its report, the Bylaws Committee shall recommend that the Board of Directors~~

Decides to:

- a. Dismiss the complaint; or
- b. ~~Take~~ **Bylaws Committee renders a decision to impose** disciplinary action, ~~the specifics of which shall be included in the committee's report~~ **based solely on the written record.**

~~8. At the discretion of the chair of the Bylaws Committee, these functions may be carried out by a subcommittee of five or more members of the Bylaws Committee. The Bylaws Committee chair shall appoint this subcommittee and designate one of its members to chair the subcommittee. The subcommittee may seek counsel from other consultants with particular expertise relevant to the matter under consideration. In the event that a subcommittee is appointed, it shall deliver its report and recommendations to the Board of Directors.~~

6. If the Bylaws Committee determines to impose disciplinary action pursuant to Section E.5.b., the respondent will be provided with notification of the Bylaws Committee's determination and the option of:

- a. A hearing; or**
- b. The imposition of the Bylaws Committee's decision based solely on the written record.**

7. If the respondent chooses the option described in Section E.6.b., that is, a Bylaws Committee decision based solely on the written record, the Bylaws Committee will implement its decision to impose disciplinary action based on the written record.

- ~~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.~~
- ~~6. 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.~~

~~F. Ad Hoc Committee~~

- ~~1. If a majority of Board members have recused themselves from consideration of a complaint, the Board shall delegate the decisions regarding disciplinary action to an Ad Hoc Committee composed of nine (9) members.~~
- ~~2. 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 nine (9) members of the ad hoc committee.~~
- ~~3. The Ad Hoc Committee:
 - ~~a. Receives the report of the Ethics Committee or Bylaws Committee, including minority reports, if any, and receives the complaint and response.~~
 - ~~b. May request further information in writing from the complainant and/or respondent.~~
 - ~~c. Decides to:
 - ~~i. Dismiss the complaint; or~~
 - ~~ii. Render a decision to impose disciplinary action based on the written record.~~~~
 - ~~d. If the Ad Hoc Committee determines to impose disciplinary action pursuant to Section F.3.c.ii., the respondent will be provided with notification of the Ad Hoc Committee's 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.~~~~
 - ~~e. If the respondent requests a hearing, the Ad Hoc Committee shall follow the hearing procedures described in Section H below.~~
 - ~~f. An affirmative vote of two-thirds of the Ad Hoc Committee shall be required to take disciplinary action against the respondent. If the Ad Hoc Committee does not achieve a two-thirds vote of its members, the respondent shall be exonerated.~~
 - ~~g. 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.~~~~

G.F. Right of Respondent to Request a Hearing

If the ~~Board~~ **Ethics Complaint Review Panel or Bylaws Committee** chooses **to impose disciplinary action**, the ~~option described in Section E.3.b., or an Ad Hoc Committee chooses the option described in Section F.3.cii., the~~ Executive Director will send to the respondent a written notice by **certified U.S. mail USPS Certified Mail** of the right to request a hearing, ~~or to have the Board or the Ad Hoc Committee impose its decision based solely on the written complaint.~~ This notice will list the respondent's hearing rights as set forth in Section **H.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 applicable ACEP review body will implement its final decision.~~

H. G. Hearing Procedures

1. If the respondent requests a hearing, the complainant and respondent will be notified in writing by ~~certified U.S. mail~~ **USPS Certified 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 pursuant to Section H.6. below, or an Ad Hoc Committee pursuant to Section F.,~~ **Hearing Panel** intends to call in the hearing.
2. The Executive Director will send a notification **by USPS Certified Mail** 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 certified U.S. mail.~~
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 their 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 F., by an Ad Hoc Committee described in Section F. 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 F., 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~~ **will take place before the Board Hearing Panel. All members of the Board Hearing Panel must be present in person, except in circumstances in which it is impossible or commercially impracticable for the parties and the Board Hearing Panel to hold an in-person hearing, at which time the Board Hearing Panel may choose to hold a virtual hearing.**
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~~ **Hearing Panel** 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 one hundred twenty (120) 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 does not achieve a two-thirds vote of entitled Directors with a quorum present, the respondent shall 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 F., the decision of such Ad Hoc Committee will be final and will be implemented by the Board.~~

~~10.9.~~ The decision of the Board ~~or Ad Hoc Committee~~ Hearing Panel 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 or Ad Hoc Committee~~ Board Hearing Panel's decision will be sent by ~~certified U.S. mail~~ USPS Certified Mail to the respondent and complainant within sixty (60) days of the decision. This written notice will include the ~~Board's or Ad Hoc Committee's~~ Board Hearing Panel's decision and a statement of the basis for that decision.

H. Notice to the Board of Directors

At the next meeting of the ACEP Board of Directors, following a final determination regarding a complaint, the Board shall be presented with an outline of the steps taken by the applicable ACEP review body in its review of the complaint. The Board shall review the Procedures used in the complaint review process but will not review the facts or merits of the case. Should the Board decide these Procedures were not followed appropriately, it will remand the case back to the reviewing committee or panel to correct the procedural error.

I. Possible Disciplinary Action: ~~Censure, Suspension, or Expulsion~~ and Disclosure to ACEP Members

1. Nature of Disciplinary Action

a. Censure

~~a.~~ i. Private Censure: a private letter of censure informs a member that his or her conduct ~~is~~ does not ~~in conformity~~ conform with the College's ethical standards; it may detail the manner in which ~~the Board~~ ACEP 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~~ Upon written request by a member of ACEP, ACEP may confirm the censure; however, contents of the a private letter of censure shall will not be disclosed provided, but the fact that such a letter has been issued shall be disclosed.

~~b.~~ ii. 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.B.2.~~ A.B.2. above. The censure shall be announced in an appropriate ACEP publication. The published announcement shall also state which ACEP policy or Bylaws provision was violated by the member and shall inform ACEP members that they may request further information about the disciplinary action.

~~2.~~ b. Suspension from ACEP membership shall be for a period of twelve (12) months; the dates of commencement and completion of the suspension shall be determined by the ~~Board of Directors~~ ACEP President. At the end of the twelve- (12) month period of suspension, the suspended member ~~shall be offered~~ may request 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). The suspension shall be announced in an appropriate ACEP publication. The published announcement shall also state which ACEP policy or Bylaws provision was violated by the member and shall inform ACEP members that they may request further information about the disciplinary action. ACEP is also required to report the suspension from membership and a description of the conduct that led to the suspension to

the Board 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.

3. c. Expulsion from ACEP membership shall be for a period of five (5) 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. The expulsion

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~~ announced in an appropriate ACEP publication. The published announcement shall be disclosed. The name of the respondent shall be disclosed, but the conduct that resulted in censure shall not be disclosed, also state which ACEP policy or Bylaws provision was violated by
- 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 statement of the basis for the 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~~ and shall inform ACEP members that they may result in a report of such request further information about the disciplinary action, to the National Practitioner Data Bank.
- d. ~~Expulsion: the date of expulsion, along with a statement of the basis for the 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. ~~Disclosure to ACEP members~~ Members: Any ACEP member may transmit ~~to the Executive Director~~ a request for information to the Executive Director 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~~ I.1.
- b. Public Disclosure to Non-Members: ~~If a non-member~~ The Board of Directors shall publicize in an appropriate ACEP publication the names of members receiving public censure, suspension, or expulsion. This published announcement shall also state which ACEP bylaw or policy was violated by the member and shall inform ACEP members that they may request further information about the disciplinary action. 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 shall refer that person to the published announcement of that disciplinary action in an ACEP publication. No further information shall be provided.

K.J. 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 F.~~ applicable ACEP review body, at which time the decision will be available upon request by ACEP members, to the extent specified in Section ~~J~~ I. 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~~ Complaint Review Panel, the Bylaws Committee, or the ~~Board of Directors,~~ their appointed subcommittees, as appropriate, or an Ad Hoc Committee Hearing Panel, 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.~~ **ACEP review body's overall time to complete its task.**

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~~ **Complaint Review Panel**, the Bylaws Committee, or ~~the Board of Directors~~ **Hearing Panel**) 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 shall report this recusal promptly to the committee chair, and any Board member who recuses himself or herself shall report this recusal promptly to the chair of the Board.~~ **at which time the ACEP President will appoint a replacement.**
6. Once the ~~Board~~ **Ethics Complaint Review Panel or the Bylaws Committee** has made a decision ~~or implemented a decision of an Ad Hoc Committee pursuant to Section F.~~ on a complaint, it will not consider additional allegations against the same respondent based on the same or similar facts.
7. The ~~Board's~~ **Ethics Complaint Review Panel or the Bylaws Committee's** decision ~~or the decision of an Ad Hoc Committee pursuant to Section F.~~ 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 a notice of the right to request a hearing, or to a request for information, the ~~Board or an Ad Hoc~~ **Ethics Complaint Review Panel, the Bylaws Committee,** ~~pursuant to Section F.~~ **or the Board Hearing Panel** may make a decision on the complaint solely on the basis of the information it has received.
- ~~9. If a complaint alleges a violation that is the subject of a pending ACEP Standard of Care Review, the Standard of Care Review will be suspended pending the resolution of the complaint brought pursuant to these Procedures.~~
- ~~10.~~ **9.** If a respondent seeks to voluntarily resign his/her ACEP membership after ACEP has received a complaint against that respondent, that request for resignation will not be accepted by ACEP until the complaint has been resolved. For the purposes of this provision, non-payment of ACEP member dues will be interpreted as a request for resignation.

Background

This resolution amends by substitution the *Procedures for Addressing Charges of Ethical Violations and Other Misconduct* to create a more efficient complaint review process and clarify procedural issues. A companion Bylaws resolution has also been submitted.

In 1997, ACEP established procedures by which its members may initiate complaints against fellow members for violations of ACEP's *Code of Ethics for Emergency Physicians* ("Code of Ethics"). These procedures have been revised several times, most recently in 2013. In accordance with the *Procedures for Addressing Charges of Ethical Violations and Other Misconduct* (the "Procedures"), the current structure for review of ethics complaints is:

1. ACEP's President, Chair of the Ethics Committee, and its Executive Director conduct an initial review of a filed complaint, with input from the General Counsel. This review is limited to providing a determination as to whether the complaint is frivolous, inconsequential, or does not allege an actionable violation of a policy or principle included in ACEP's *Code of Ethics* or Bylaws or if it should move forward for additional review by ACEP's Ethics Committee or subcommittee.¹
2. Should the case proceed to a formal review, a subcommittee of the Ethics Committee examines the complaint and response of the accused. It then provides the Board of Directors with a written recommendation to either dismiss the complaint or take disciplinary action.

¹ The *Procedures* also provide an opportunity for members to file complaints regarding violations of ACEP's Bylaws; however, no complaint of this nature has ever been filed. As such, a discussion regarding complaints alleging violations of ACEP's Bylaws have been omitted from this memo.

3. The Board of Directors reviews the complaint, response, and any additional information it deemed relevant. At its next meeting, the Board deliberates the ethics case and renders a determination to dismiss the complaint or impose disciplinary action.
4. If the respondent requests a hearing after receipt of notice regarding disciplinary action taken against him or her, an in-person hearing is held before the Board of Directors or a subcommittee of the Board.

Following establishment of the *Procedures*, 20 cases have been decided by the Board of Directors, 4 of which have resulted in hearings. The frequency of complaints varies annually; however, on average 1-2 cases are reviewed per year. During the 2017-18 fiscal year, the Board reviewed 3 cases, one of which required a hearing.

A 2017 survey of Ethics Committee members who have served on the complaint subcommittee revealed that each member spends an average of 8-12 hours reviewing case documents, as well as participating in a 90-120-minute conference call to deliberate the facts of the case and vote on a recommendation to the Board of Directors. This does not include additional hours required of the Chair of the subcommittee to collaborate with staff in drafting the recommendation, as well as participate in the Board deliberations and possible hearing.

The Board of Directors also spends a commensurate amount of time reviewing documents and preparing for ethics complaint deliberations. Should the respondent request a hearing in the case, a Board member will likely spend several hours refamiliarizing him/herself with the facts of the case. At Board meetings, deliberations and hearings can take up to 3 hours.

Because of the burden these responsibilities place on the Board and Ethics Committee, the committee was requested to develop an alternative process by which ethics complaints could be adjudicated in a manner that still provides adequate due process to the parties as required under the Health Care Quality and Improvement Act. After studying review processes used by other medical societies, researching ACEP's legal responsibilities, and discussing the needs of the College, the following revised process is proposed:

Step 1. A broad review of the complaint by the ACEP President, Chair of the Ethics Committee, Chair of the Bylaws Committee, or other committee designee and ACEP's Executive Director, with input from the General Counsel, to determine if the complaint alleges conduct that constitutes a violation of the *Code of Ethics* or other ACEP ethics policies, or of the ACEP Bylaws.

Step 2. The Ethics Complaint Review Panel or the Bylaws Committee will review the complaint and response from the parties and make its determination, which will be forwarded to the parties.

Step 3. Should a hearing be requested, a Board Hearing Panel consisting of the ACEP Vice-President, Chair of the Board, and Board Liaison to the Ethics Committee will conduct the hearing and render its decision.

Step 4. At the next Board meeting following a final determination from the applicable ACEP review body, the Board will review the case for procedural matters only. It will not review the facts or merits of the case.

It is important that the Board maintain oversight of the process; however, this streamlined version should substantially reduce the amount of time and preparation required of the Board, as its role will be limited solely to ensuring the reviewing body acted in compliance with the *Procedures*. Several medical specialty societies, such as the American Academy of Otolaryngology and the Society of Thoracic Surgeons, engage in similarly structured reviews.

The Board of Directors submitted a similar resolution to the 2019 Council for consideration. Upon review by the Bylaws Committee and prior to the 2019 Council meeting, concerns were raised that the revised *Procedures* may be in conflict with the Bylaws because the Bylaws currently state that only the Board of Directors has the power to impose disciplinary action on a member. The Bylaws Committee recommended adding a provision to the Bylaws allowing a "designated body appointed by the Board of Directors" to review ethics complaints and make determinations regarding disciplinary action against members. As such, the resolution was withdrawn.

from the 2019 Council meeting based on these recommendations. A subcommittee was then assigned, comprised of members of the Ethics Committee, Bylaws Committee, and the Medical-Legal Committee to revise the *Procedures* and draft revisions to the Bylaws to address this issue. The Bylaws amendment is submitted as Resolution 14(20) Ethics Procedures.

ACEP Strategic Plan Reference

Goal 2 – Enhance Membership Value and Membership Engagement

Objective A – Improve the practice environment and member well-being.

Fiscal Impact

Budgeted committee and staff resources to update the College Manual and to review ethics complaints and other disciplinary charges.

Prior Council Action

Resolution 12(13) Procedures for Addressing Charges of Ethical Violations and Other Misconduct adopted. Amended by substitution the ethics procedures in the College Manual. The changes addressed the timeliness of filing allegations, clarifications of aspects of the process, ensuring that deadlines are reasonable in light of process and review requirements, a respondent's membership status during the pendency of an ethics complaint, and clarifications of the scope and disclosure of disciplinary actions.

Resolution 11(10) Procedures for Addressing Charges of Ethical Violations and Other Misconduct adopted. The resolution amended by substitution the ethics procedures in the College Manual. The changes addressed issues relating to deadlines and provided mechanisms in the event that the number of Board recusals impacts the Board's ability to act on ethics complaints.

Resolution 14(07) Procedures for Addressing Charges of Ethical Violations and Other Misconduct adopted. The resolution amended by substitution the ethics procedures in the College Manual. The changes addressed issues relating to due process and the hearing procedures.

Resolution 35(04) Procedures for Addressing Ethics and Other Disciplinary Charges adopted. The resolution amended by substitution the ethics procedures in the College Manual. The changes related to the categories of sanctions and clarifying when disclosure of such sanctions may be appropriate or necessary.

Amended Resolution 1(01) Procedures for Addressing Ethics and Other Disciplinary Charges adopted. The resolution amended by substitution the ethics procedures in the College Manual. The changes included enhancements related to communications, responsibilities, timelines, and voting.

Resolution 5(99) College Manual adopted that included the "Procedures for Addressing Ethics and Other Disciplinary Charges." The resolution established the College Manual and defined the method for amending it.

Prior Board Action

June 2020, reviewed the proposed changes to the "Procedures for Addressing Charges of Ethical Violations and Other Misconduct" and approved submitting College Manual and Bylaws resolutions to the 2020 Council.

June 2019, reviewed the proposed changes to the "Procedures for Addressing Charges of Ethical Violations and Other Misconduct" and approved submitting a College Manual resolution to the 2019 Council.

December 2018, discussed revising the Procedures for Addressing Charges of Ethical Violations and Other Misconduct" to create a more efficient review process.

Resolution 12(13) Procedures for Addressing Charges of Ethical Violations and Other Misconduct adopted.

June 2013, reviewed the proposed changes to the “Procedures for Addressing Charges of Ethical Violations and Other Misconduct” and approved submitting a College Manual resolution to the 2013 Council.

Resolution 11(10) Procedures for Addressing Charges of Ethical Violations and Other Misconduct adopted.

April 2010, reviewed the proposed changes to the “Procedures for Addressing Ethics and Other Disciplinary Charges” and approved submitting a College Manual resolution to the 2010 Council.

Resolution 14(07) Procedures for Addressing Charges of Ethical Violations and Other Misconduct adopted.

June 2007, reviewed the proposed changes to the “Procedures for Addressing Ethics and Other Disciplinary Charges” and requested additional changes to be reviewed and approved by the Board. Approved submitting a College Manual resolution to the 2007 Council.

Resolution 35(04) Procedures for Addressing Ethics and Other Disciplinary Charges adopted.

Amended Resolution 1(01) Procedures for Addressing Ethics and Other Disciplinary Charges adopted.

Resolution 5(99) College Manual adopted.

August 1998 Procedures for Addressing Ethics Charges adopted.

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