



## DISCIPLINARY ACTION POLICY

**A. Introduction.** A member of the Academy may be subject to discipline if the member's conduct conflicts with the standards and principles of the Academy. Without limiting the generality of the foregoing, the following shall be considered as conduct for which disciplinary action may be justified:

- Conviction of any crime relating to or arising out of the practice of medicine, including acts involving moral turpitude. This excludes malpractice.
- Limitation or termination of any right associated with the practice of medicine, including the imposition of any requirement for surveillance, supervision, or review, by reason of violation of a medical practice act, statute or governmental regulation, or disciplinary action by any medical licensing authority.
- Unlawful financial dealings related to the practice of medicine, including but not limited to, fee splitting or the payment or acceptance of kickbacks.
- Unprofessional conduct including, but not limited to, conduct that is in violation of the American Academy of Neurology's Code of Professional Conduct.
- The use of false or deliberately misleading advertisements, testimonials, or other instruments of misinformation related to the practice of medicine.
- Research misconduct, as defined by 42 C.F.R. Part 93.103, during an Academy-led research project funded by the United States Public Health Service. Allegations of research misconduct are reviewed in accordance with this Disciplinary Action Policy and the Academy's Research Misconduct Policy. This applies only to allegations of research misconduct that occurred within six years of the date the Academy or Health and Human Services ("HHS") received the allegation, subject to the subsequent use, health or safety of the public, and grandfather exceptions in 42 C.F.R. Part 93.105(b).

### **B. Definitions.**

- **Complaint:** A written charge submitted by a complainant, accusing a member of conduct that conflicts with the standards and principles of the Academy.
- **Complainant:** The person who brings a complaint against a member of the Academy. The complainant does not have to be a member of the Academy.
- **Ex Parte Communication:** Unsolicited communication by the respondent with Fair Hearing Committee members, witnesses, or any complainant, outside of the disciplinary proceedings.
- **Formal Complaint:** A written charge submitted by the Grievance Committee to the Fair Hearing Panel, accusing a member of conduct that conflicts with the standards and principles of the Academy.
- **Formal Rules of Evidence:** the Federal Rules of Evidence.

- Hearing: A proceeding held for the purpose of examining evidence and deciding issues of fact.
- Respondent: The member against whom a complaint has been submitted.
- Service of Notice: The formal delivery of notice.

**C. Grievance Committee.** The Grievance Committee shall receive written and signed allegations against members from all sources. Allegations concerning expert witness testimony shall have a time of filing limitation of two years from the date the testimony was given or the date of the disposition of the case, whichever is later. Allegations concerning independent medical examinations shall have a time of filing limitation of two years from date of receipt of letter from the independent medical examiner. The Committee shall review the allegations to determine if there is credible evidence to support the filing of formal charges against the member for possible disciplinary action. If its final findings fail to substantiate the allegations, the matter will be dismissed.

The complainant shall be responsible for the costs associated with the initial complaint to the Grievance Committee, including but not limited to, costs of obtaining, copying and mailing records or scans, but excluding costs associated with Grievance Committee meetings. If the Committee determines that the complaint warrants further review and action, the Academy shall be responsible for the costs incurred in the further review of the complaint.

The Grievance Committee may notify the respondent of the complaint during the Committee's review if the Committee believes that correspondence with the respondent concerning the allegations in the complaint will assist the Committee in its deliberations.

If the Grievance Committee determines that the evidence warrants the filing of a formal complaint against the respondent, the Committee shall submit to the chair of the Fair Hearing Panel Committee a written formal complaint and the accumulated evidence describing the respondent's alleged violations.

A member or representative of the Grievance Committee shall present the complaint and supporting evidence to the Fair Hearing Panel.

If a respondent resigns from the Academy pursuant to Minnesota Statute § 317A.409, any disciplinary proceedings against the former respondent will be suspended. However, if the former respondent successfully reapplies for membership, the disciplinary proceedings will be reinstated unless dismissed by the Board of Directors.

The Grievance Committee shall consist of five persons, which includes the chair, appointed by the Academy's president. The Grievance Committee must include at least two fellows of the Academy. The term of appointment is two years, which may be renewed. Committee members whose terms have expired will continue to fulfill existing responsibilities to a case or cases under consideration, but will thereafter retire from the Committee. A quorum of three is required to conduct business. All five members of the Grievance Committee are voting members. The Grievance Committee, at its discretion, may request that the chair invite an expert in the field to which the case pertains, as a non-voting member to whom the same confidentiality requirements described in this Policy would apply.

**D. Fair Hearing Panel Committee.** The chair of the Fair Hearing Panel Committee shall preside over, and faithfully administer, the following "Fair Hearing Procedure" to

provide for fair and objective determination of the issues set forth in the formal written complaint issued by the Grievance Committee.

The Fair Hearing Panel is a standing committee of the Academy consisting of three persons, which includes the chair, plus one or more alternates, appointed by the Academy's president. The Fair Hearing Panel must include at least two fellows of the Academy. The term of appointment is two years, which may be renewed. Panel members whose terms have expired will continue to fulfill existing responsibilities to a case or cases under consideration, but will thereafter retire from the Panel. All three members of the Fair Hearing Panel Committee are voting members.

#### **E. Fair Hearing Procedure.**

1. Upon receipt from the Grievance Committee of a formal written complaint against the respondent, the chair of the Fair Hearing Panel Committee shall provide a copy of that complaint along with all evidence considered by the Grievance Committee to the respondent, give notice that respondent may submit a written response within 60 days after receipt of the complaint and provide the respondent with a copy of this *Disciplinary Action Policy*. The notice, including all information specified, shall be sent via any carrier that maintains confidentiality and with return receipt requested.

2. The Fair Hearing Panel shall consider the formal complaint from the Grievance Committee. The Panel may consider any evidence or testimony in addition to that described in the findings of the Grievance Committee. When the respondent files a written response to the complaint, the chair of the Fair Hearing Panel shall send the complaint, all evidence received from the Grievance Committee, and the written response from the respondent to the Fair Hearing Panel. The Panel shall meet either in person or by telephone within 45 days after receipt of the information to determine whether to further consider the complaint. The Panel, at its discretion, may request that the chair invite an expert in the field to which the case pertains, as a non-voting member to whom the same confidentiality requirements described in this Policy would apply. During any further consideration of the complaint, the Panel may invite the respondent to submit additional information to the Panel. The Panel, at its discretion, may amend the formal complaint submitted by the Grievance Committee.

3. If the Fair Hearing Panel dismisses the complaint, the respondent shall be promptly notified via any carrier that maintains confidentiality and with return receipt requested. If the Panel decides to further consider the complaint, the respondent shall be notified of the respondent's right to a hearing.

4. After service of the notice, the respondent shall have 30 days in which to request a hearing and/or to submit additional written information in response to the complaint. If the respondent does not request a hearing, the Fair Hearing Panel may, after considering any evidence submitted to it, enter a final decision on the complaint.

5. If the respondent requests a hearing, the Fair Hearing Panel shall receive copies of any additional evidentiary material and witness lists not less than fourteen days prior to the hearing. The Panel shall decide whether it will call any witnesses, and the chair shall provide the respondent with a list of witnesses, if any, expected to testify at the hearing on behalf of the Academy, along with a summary of their expected testimony prepared by the Panel. Similarly, the respondent shall provide the chair with a list of witnesses, if

any, expected to testify on behalf of the respondent, along with a summary of their expected testimony.

Ex Parte communication prior to the hearing between the respondent and the Fair Hearing Panel members, Fair Hearing Panel witnesses, or any complainant, is prohibited and shall result in suspension of respondent's membership in the Academy and reporting to the National Practitioner Data Bank.

The chair will notify the Fair Hearing Panel members and the respondent of the date, place, and time of the hearing. The hearing shall be held no sooner than 30 days from the date of that notice. The respondent is responsible for all personal costs, including respondent's attorney's fees, relating to the attendance and participation in the hearing.

At the request of any party for a good cause, the chair may postpone the date of the hearing for a reasonable period of time, but reserves the right to deny postponement.

The right to a hearing may be forfeited if the respondent fails to appear without good cause.

6. The respondent shall have the following rights at the hearing:
  - a) To be represented by an attorney, or any other person of the respondent's choice.
  - b) To request a copy of the record of the proceedings at the respondent's cost.
  - c) To be present at the hearing when evidence is presented to the Fair Hearing Panel.
  - d) To submit evidence.
  - e) To call, examine and cross-examine witnesses.
  - f) To submit a written statement within five working days of the close of the hearing.
  - g) To receive a written decision of the Fair Hearing Panel that includes the reasons supporting the decision.

7. The Fair Hearing Panel shall first hear evidence in support of the complaint and then shall hear evidence against the complaint. Formal rules of evidence shall not apply in the hearing and the Panel may hear any evidence relating to the issues contained in the complaint. Any witness who gives testimony shall be subject to examination by the Panel.

The chair, after consulting with the Fair Hearing Panel members and the respondent, shall determine if observers may attend the hearing. The complainant will not be invited to attend the hearing unless the chair and the respondent agree on the terms of an invitation. Observers will not be permitted to participate in the hearing.

8. The Panel, at its discretion, may amend the formal complaint after reviewing information provided by the respondent. If the Panel amends the complaint after the hearing, the Panel shall notify the respondent within 10 days of receipt of the respondent's written post-hearing statement, or within 10 days of the close of the hearing if the respondent waives the right to file a post-hearing statement. After service of the notice, the respondent shall have 30 days in which to request a hearing or to submit additional written information in response to the complaint. If the respondent does not

request a hearing, the Fair Hearing Panel may, after considering any evidence submitted to it, enter a final decision on the complaint.

If the respondent requests a hearing, the Fair Hearing Panel shall receive copies of any additional evidentiary material and witness lists not less than fourteen days prior to the hearing. The Panel shall decide whether it will call any witnesses, and the chair of the Panel shall provide the respondent with a list of witnesses, if any, expected to testify at the hearing on behalf of the Academy, along with a summary of their expected testimony prepared by the Panel. Similarly, the respondent shall provide the chair with a list of witnesses, if any, expected to testify on behalf of the respondent, along with a summary of their expected testimony.

Ex Parte communication prior to the hearing between the respondent and the Fair Hearing Panel members, Fair Hearing Panel witnesses, or any complainant, is prohibited and shall result in suspension of respondent's membership in the Academy and reporting to the National Practitioner Data Bank.

The chair of the Panel will notify the Fair Hearing Panel members and the respondent of the date, place, and time of the hearing. The hearing shall be held no sooner than 30 days from the date of that notice. The respondent is responsible for all personal costs, including respondent's attorney's fees, relating to the attendance and participation in the hearing.

At the request of any party for a good cause, the chair may postpone the date of the hearing for a reasonable period of time, but reserves the right to deny postponement.

The right to a hearing may be forfeited if the respondent fails to appear without good cause.

The respondent shall have the following rights at the hearing:

- a) To be represented by an attorney, or any other person of the respondent's choice.
- b) To request a copy of the record of the proceedings at the respondent's cost.
- c) To be present at the hearing when evidence is presented to the Fair Hearing Panel.
- d) To submit evidence.
- e) To call, examine and cross-examine witnesses.
- f) To submit a written statement within five working days of the close of the hearing.
- g) To receive a written decision of the Fair Hearing Panel that includes the reasons supporting the decision.

The Fair Hearing Panel shall first hear evidence in support of the complaint and then shall hear evidence against the complaint. Formal rules of evidence shall not apply in the hearing and the Panel may hear any evidence relating to the issues contained in the complaint. Any witness who gives testimony shall be subject to examination by the Panel.

The chair, after consulting with the Fair Hearing Panel members and the respondent, shall determine if observers may attend the hearing. The complainant will not be invited to attend the hearing unless the vice president and the respondent agree on the terms of an invitation. Observers will not be permitted to participate in the hearing.

9. The Fair Hearing Panel shall issue a written decision within 10 days after the receipt of the respondent's written statement, or within 10 days of the close of the hearing if the respondent waives the right to file a post-hearing statement. The decision of the Panel shall state whether there was credible evidence presented at the hearing that was sufficient to support the complaint in whole or in part and, if so, the recommended disciplinary action. The recommended disciplinary action may be designed to correct a specific violation found by the Panel. The disciplinary action may, in the judgment of the Panel, provide for reprimand, suspension from membership in the Academy for a period of time, or expulsion from the Academy. "Reprimand" means that the respondent shall be advised in writing of a finding of misconduct and that such conduct should be changed. A reprimand detailing how the respondent's conduct conflicted with the standards of the Academy and an admonition to correct such behavior may take the form of a private letter to respondent or a public notice in an Academy publication. "Suspension" means that the respondent shall be advised in writing that the respondent's privileges as a member of the Academy have been temporarily suspended for a defined period of time and the conditions necessary for reinstatement. "Expulsion" means that the respondent shall be informed in writing that membership in the Academy is terminated, with or without the option to reapply for membership under certain specified conditions. A respondent's suspension or expulsion from the Academy will be made known to the Academy's general membership and will be reported to the National Practitioner Data Bank.

The chair shall send a copy of the decision to the president and to the respondent together with the notice of the respondent's right to appeal the decision to the Academy's Executive Committee. This and all other notices shall be sent via any carrier that maintains confidentiality and with return receipt requested. If the decision is not appealed, the Fair Hearing Panel findings and recommended disciplinary action will then be referred to the Executive Committee for final action.

10. A respondent may appeal an adverse disciplinary decision within thirty days of receipt of the adverse decision by filing a written request with the president for a hearing before the Executive Committee. The decision of the Fair Hearing Panel shall not be enforced in any way, pending the respondent's appeal. Any Executive Committee member who has served as fact-finder, investigator, complainant, or in any other capacity in this or any other disciplinary proceeding involving the respondent shall not participate in the appeal hearing. The respondent shall have thirty days from the date of the request for an appeals hearing to file written arguments with the vice president of the Academy. The Fair Hearing Panel shall have thirty days to reply to the respondent's arguments. A thirty-day extension for filing written arguments may be granted by the vice president for good cause shown by any of the parties.

11. When all written arguments have been filed with the vice president, the vice president shall provide copies to all members of the Executive Committee and shall request the Executive Committee to schedule an appeals hearing no later than 120 days from the date of the vice president's request. The Executive Committee shall set the date for the appeals hearing and the vice president shall notify the respondent, the complainant, and the Fair Hearing Panel. Thereafter, the date of said hearing shall not be postponed except for the most serious reasons in the judgment of the vice president.

12. The president or the president's designee shall chair the appeals hearing. The president shall establish in advance of the hearing a time limit for arguments at the appeals hearing. Each side shall have an equal amount of time. The respondent shall first present arguments in opposition to the decision of the Fair Hearing Panel. The arguments may relate to the evidence produced at the hearing or to the propriety of the procedure at the hearing and its compliance with this *Disciplinary Action Policy*. When the respondent's argument is completed, a representative of the Fair Hearing Panel shall argue in support of the decision rendered by the Panel. Thereafter, the respondent shall be allowed to reply. At the completion of the appeals hearing, the Executive Committee shall deliberate in Executive Session. The Executive Committee shall thereupon prepare a written document setting forth their decision and its reasoning. This document shall be filed with the vice president who shall provide copies of the decision to the respondent and the Fair Hearing Panel. The president shall take appropriate steps to implement the decision of the Executive Committee, which shall be final.

All material concerned with these matters shall be held strictly confidential at all times. Files will be kept secure. Public release of information on any matter will be prohibited prior to final determination of the matter, including appeal to the Executive Committee. Matters concerning allegations of research misconduct (as defined in Section A, above) shall be held strictly confidential to the extent the confidentiality and disclosure requirements of 42 C.F.R. 93.108 apply; the Academy may be required to disclose the identity of respondents and complainants to the Office of Research Integrity ("ORI") pursuant to an ORI review of research misconduct proceedings and HHS administrative hearings concerning research misconduct must be open to the public.

Participation in the activities of the Grievance Committee, Fair Hearing Panel, or Executive Committee by members with any real or potential conflict of interest is prohibited. This prohibition includes, but is not limited to any individuals who are in direct economic competition with the respondent.

**F. Construction.** This policy is to be construed according to the law of the State of Minnesota, without regard to the residence of the respondent or location of the hearing or related meetings.

History of Disciplinary Action Policy:

Initial versions were approved by the Executive Board in February 1992, May 1994, and February 1997. The Executive Committee approved significant revisions on July 2, 2002 (Policy 2002-35), and additional updates have been approved on June 26, 2004 (Board of Directors, Policy 2004-14), November 6, 2008 (AANPA Executive Committee, AANPA Policy 2008-12), May 8, 2009 (AANPA Executive Committee, AANPA Policy 2009-10), January 28, 2010 (Grievance Committee), February 18, 2010 (AANPA Executive Committee, AANPA Policy 2010-01), May 6, 2011 (AAN Board of Directors). The current policy was approved by the AAN Board of Directors on August 26, 2015.