



# American Society of Ophthalmic Plastic and Reconstructive Surgery

## ASOPRS CODE OF ETHICS

GROUP RESPONSIBLE: Ethics Committee

LAST BOARD APPROVED: 5-17-24

### A. ASOPRS PRINCIPLES OF ETHICS AND CODE OF CONDUCT

ASOPRS values and respects the dignity and integrity of all who work together to advance the mission of the organization and is committed to providing environments that are free from harassment. These environments include, but are not limited to, ASOPRS-sponsored activities such as committee meetings, membership requirement activities (e.g. oral and written examinations), fellowship training, meetings and social gatherings.

ASOPRS is committed to providing a welcoming environment for all, regardless of gender, sexual orientation, physical ability, ethnicity, socioeconomic status, and religion (or lack thereof).

These Principles of Ethics form the first part of the ASOPRS Code of Ethics. They are aspirational and inspirational model standards of exemplary professional conduct for all Members of the American Society of Ophthalmic Plastics and Reconstructive Surgery in any class of membership. They serve as goals for which ASOPRS Members should constantly strive. The Principles of Ethics are not enforceable.

1. **Ethics in Medicine.** Ethics address conduct and relate to what behavior is appropriate or inappropriate, as reasonably determined by the entity setting the ethical standards. An issue of ethics in medicine is resolved by determining what best serves the interest(s) of patients.
2. **An Oculofacial Plastic Surgeon's Responsibility.** It is the responsibility of an oculofacial plastic surgeon to always act in the best interest of the patient.
3. **Providing Oculofacial Plastic Surgery (OPS) Services.** OPS services must be provided with compassion, respect for human dignity, honesty and integrity.
4. **Competence of the Oculofacial Plastic Surgeon.** An oculofacial plastic surgeon must maintain competence. Competence can never be totally comprehensive, and therefore must be supplemented by other colleagues when indicated. Competence involves technical ability, cognitive knowledge, and ethical concerns for the patient. Competence includes having adequate and proper knowledge to make a professionally appropriate and acceptable decision regarding the patient's management.
5. **Communication with the Patient.** Open communication with the patient is essential. Patient confidences must be safeguarded within the constraints of the law.

6. **Fees for OPS Services.** Fees for OPS services must not exploit patients or others who pay for the services.
7. **Corrective Action.** If an ASOPRS Member has a reasonable basis for believing that another person has deviated from professionally accepted standards in a manner that adversely affects patient care or from the Rules of Ethics, the member should attempt to prevent the continuation of this conduct. This is best done by communicating directly with the other person. When that action is ineffective or is not feasible, the member has a responsibility to refer the matter to the appropriate authorities and to cooperate with those authorities in their professional and legal efforts to prevent the continuation of the conduct.
8. **Professional Integrity in Research.** It is the responsibility of the oculofacial plastic surgeon to maintain integrity in clinical and basic research. Professional relations with industry regarding research should advance the best interests of patients and the profession.
9. **Community Responsibility.** The honored ideals of the medical profession imply that the responsibility of the oculofacial plastic surgeon extends not only to the individual but also to society as a whole. Activities that have the purpose of improving the health and well-being of the patient and/or the community in a cost-effective way deserve the interest, support, and participation of the oculofacial surgeon.
10. **Healthcare Inequities.** Oculofacial plastic surgeons should be aware of disparities in medical care within the communities they serve in the United States and internationally. OPS surgeons should assist patients in need to secure access to appropriate care.
11. **Professional Civility.** Oculofacial plastic surgeons should demonstrate courtesy, civility, inclusion, and respect to persons, groups, and organizations in professional communications of all types especially when discourse involves disagreement of opinion or disparate points of view.

These Principles of Ethics outline ASOPRS' expectations for all those who participate in our community. ASOPRS community members include, but is not limited to, staff, volunteers, members, fellows-in-training, incoming members, meeting attendees, vendors and any other person participating in ASOPRS sponsored activities.

In addition, the following behaviors are expected of all ASOPRS community members:

1. Participate in an authentic and active way.
2. Make decisions and act impartially and objectively. Conduct yourself free from competing self-interest, prejudice, and favoritism.
3. Be honest; understand the truth and act in a truthful manner both in your communications and conduct.
4. Exercise consideration and respect in your speech and actions.
5. Attempt collaboration before conflict.
6. Refrain from demeaning, discriminatory, or harassing behavior and speech.

Unacceptable behavior from any community member, including sponsors and those with decision-making authority, will not be tolerated.

If potentially unacceptable behavior (as described in this document) is brought to the attention of an individual by a leader or participant in an ASOPRS sponsored activity, the involved person is expected to refrain from continuing that behavior immediately.

Furthermore, ASOPRS members, upon induction, agree to:

1. Abide by the Bylaws, Code of Ethics and policies of ASOPRS.
2. Uphold the reputation and good standing of ASOPRS.
3. Act with integrity and respect others.
4. Not use their position to unfairly benefit themselves, their employer, or others.
5. Promptly pay membership fees and keep information updated.
6. Not knowingly hold, assume, or accept a position in which interests' conflict with commitment to or role with ASOPRS.
7. Not make any statement on behalf of ASOPRS or purport to represent ASOPRS through any public medium, including digital social media, unless authorized to do so by ASOPRS.
8. Reject and not make any offer of bribery or unethical inducement.
9. Conduct all business with ASOPRS and its partners with professionalism and respect.

## **B. ASOPRS ETHICS RULES**

1. **Competence.** An ASOPRS-trained oculofacial plastic surgeon, is a specialist who focuses on the plastic and reconstructive surgery of the periorbital and facial tissues, including the eyelids, eyebrows, orbit, lacrimal system, and adjacent areas of the face. Oculofacial plastic surgeons are trained to manage a variety of conditions, both cosmetic and functional, affecting these areas. An oculofacial plastic surgeon should perform only those procedures in which the surgeon is competent by virtue of specific training or experience or is assisted by one who is. An oculofacial plastic surgeon must not misrepresent credentials, training, experience, ability, or results.
2. **Informed Consent.** Informed consent is the process of shared decision-making between the oculofacial plastic surgeon and the patient and must precede the performance of medical or surgical procedures. During the informed consent process, pertinent medical and surgical facts, and recommendations consistent with standard of care in medical/surgical practice must be presented in understandable terms to the patient or patient surrogate. Such information should include the indications, benefits, objectives, risks and possible complications of the procedure, alternatives to the procedure, and the potential consequences of no treatment. The operating oculofacial plastic surgeon must personally confirm comprehension of this information with the patient or patient surrogate.
3. **Research and Innovation.** Research is conducted to provide information on which to base diagnostic, prognostic or therapeutic decisions and to improve understanding of disease epidemiology and pathogenesis. Research and innovation must be approved by appropriate review mechanisms (e.g. Institutional Review Board (IRB)) and must be performed in accordance with national and regional legislation and the Declaration of Helsinki. In emerging areas of treatment where guidelines do not exist, the oculofacial plastic surgeon should exercise especially careful judgment and take appropriate precautions to safeguard patient welfare. Informed consent for research and innovative procedures must recognize their special nature and ramifications. The oculofacial plastic surgeon must demonstrate an understanding of the goals of the research and recognize and fully disclose financial and non-financial conflicts of interest. Commensurate with the

level of their involvement, the investigator must accept personal accountability for patient safety and compliance with all legal and IRB-imposed requirements.

4. **Other Opinions.** Oculofacial plastic surgeons should be cognizant of the limitations of their knowledge and skills and be willing to seek consultations in clinical situations where appropriate. The patient's request for additional opinion(s) should be respected.
5. **The Impaired Oculofacial Plastic Surgeon.** An oculofacial plastic surgeon who becomes temporarily or permanently impaired by illness, injury, chemical dependence, fatigue, or other conditions that affect medical judgment or performance should withdraw from those aspects of practice affected by the impairment and arrange for a qualified colleague to assume the responsibilities of care until the impairment has been resolved. If an impaired oculofacial plastic surgeon does not appropriately withdraw, it is the duty of other colleagues who know of the impairment to take action to attempt to assure correction of the situation.
6. **Pretreatment Assessment.** Treatment (including but not limited to surgery) should be recommended only after careful consideration of the patient's physical, social, emotional, and occupational needs. The oculofacial plastic surgeon must evaluate and determine the need for treatment for each patient. If the pretreatment evaluation is performed by another health care provider, the oculofacial plastic surgeon must ensure that the evaluation accurately documents the ophthalmic, periocular, orbital, lacrimal and/or facial findings and the indications for treatment. Recommendation of unnecessary treatment or withholding of necessary treatment is unethical.
7. **Delegation of Services.** Delegation is the use of auxiliary health care personnel to provide eye care services for which the oculofacial plastic surgeon is responsible. An oculofacial plastic surgeon must not delegate to an auxiliary those aspects of ophthalmic, periocular, orbital, lacrimal and/or facial, care within the unique competence of the oculofacial plastic surgeon (which do not include those permitted by law to be performed by auxiliaries). When other aspects of care for which the oculofacial plastic surgeon is responsible are delegated to an auxiliary, the auxiliary must be qualified and adequately supervised. An oculofacial plastic surgeon may make different arrangements for the delegation of ophthalmic, periocular, orbital, lacrimal and/or facial care in special circumstances, so long as the patient's welfare and rights are the primary considerations.
8. **Postoperative Care.** The provision of postoperative care until the patient has recovered is integral to patient management. The operating oculofacial plastic surgeon should provide those aspects of postoperative care within the unique competence of the oculofacial plastic surgeon (which do not include those permitted by law to be performed by auxiliaries). Otherwise, the operating surgeon must make arrangements before surgery for referral of the patient to another surgeon, with the patient's approval and that of the other surgeon. The operating oculofacial plastic surgeon may make different arrangements for the provision of those aspects of postoperative eye care within the unique competence of the oculofacial plastic surgeon in special circumstances, such as emergencies or when no oculofacial plastic surgeon is available, so long as the patient's welfare and rights are the primary considerations. Fees should reflect postoperative care arrangements with advance disclosure to the patient.
9. **Medical and Surgical Procedures.** An oculofacial plastic surgeon must not misrepresent the service that is performed, or the charges made for that service. An oculofacial plastic surgeon must not inappropriately alter the medical record.

10. **Procedures and Materials.** Oculofacial plastic surgeons should order and/or utilize only those laboratory and surgical procedures, devices or pharmacological agents that are in the best interest of the patient. It is unethical to prescribe or provide unnecessary services and procedures or seek compensation for those services. It is equally unethical to withhold necessary services or procedures.
11. **Commercial Relationships.** An oculofacial plastic surgeon's clinical judgment and practice must not be affected by economic interest in, commitment to, or benefit from professionally related commercial enterprises.
12. **Communications to Colleagues.** Communications to colleagues must be accurate and truthful.
13. **Communications to the Public.** Communications to the public must be accurate. They must not convey false, untrue, deceptive, or misleading information through statements, testimonials, photographs, graphics, or other means. They must not omit material information without which the communications would be deceptive. Communications must not appeal to an individual's anxiety in an excessive or unfair way; and they must not create unjustified expectations of results. Communications must not promote health-related misinformation or claims that are false, deceptive, or misleading; statements based on opinion must be identified as such and must not contain material claims of safety and/or efficacy that cannot be substantiated. If communications refer to benefits or other attributes of oculofacial plastic procedures that involve significant risks, realistic assessments of their safety and efficacy must also be included, as well as the availability of alternatives and, where necessary to avoid deception, descriptions and/or assessments of the benefits or other attributes of those alternatives. Communications must not misrepresent an oculofacial plastic surgeon's credentials, training, experience, or ability, and must not contain material claims of superiority that cannot be substantiated. If a communication results from payment by an oculofacial plastic surgeon, this must be disclosed unless the nature, format or medium makes it apparent.
14. **Interrelations Between Colleagues.** Interrelations between surgeon colleagues must be conducted in a manner that advances the best interests of the patient, including the sharing of relevant information.
15. **Conflict of Interest.** A conflict of interest exists when professional judgment concerning the well-being of the patient has a reasonable chance of being influenced by other interests of the oculofacial plastic surgeon. Disclosure of a conflict of interest is required in communications to patients, the public, and colleagues.
16. **Expert Testimony.** Expert testimony should be provided in an objective manner using medical knowledge to form expert medical opinions. Nonmedical factors (such as solicitation of business from attorneys, competition with other physicians, and personal bias unrelated to professional expertise) should not bias testimony. It is unethical for a physician to accept compensation that is contingent upon the outcome of litigation. False, deceptive, or misleading expert testimony is unethical. For purposes of this Rule, expert testimony shall include oral testimony provided under oath, affidavits and declarations used in court proceedings and certificates of merit signed, ratified, or otherwise adopted by the oculofacial plastic surgeon.

17. **Confidentiality.** An oculo-facial plastic surgeon shall respect the confidential physician-patient relationship and safeguard confidential information consistent with the law.
18. **Harassment and Discrimination.** Harassment and discrimination in the practice of medicine are unethical. The ethical practice of medicine creates and fosters an environment in which patients and all members of the health care team, including those in training, are treated with respect and tolerance. Harassment and discrimination of all types are likely to jeopardize patient care, exploit inequalities in status or power, and abuse the trust placed in us as physicians. Therefore, discrimination, harassment, or creation of a hostile working environment on the basis of personal attributes, including but not limited to sex, gender identity, sexual preference, race, disease, disability, age, or religion, is inconsistent with the ideals and principles of ethics in medicine.

### **C. ADMINISTRATIVE PROCEDURES**

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

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

**(a) The Committee.** The Ethics Committee is chartered as follows:

In accordance with the Bylaws, the Board of Directors charts this committee as follows:

**Purpose.** To address inquiries and complaints regarding the Bylaws, Policies and Procedures and Code of Ethics of the Society.

#### **Primary Responsibilities:**

- A. Investigate alleged infractions (Complaints/Challenges) by ASOPRS Members of the Code of Ethics and make recommendations to the Board concerning investigation, and disciplinary action if appropriate.
- B. Address Inquiries and provide an interpretive opinion regarding how one or more portions of Governing Documents apply to a particular set of facts or for interpretation or clarification of one or more portions of Governing Documents.
- C. Review and re-evaluate this charter and any associated policies and procedures at least annually and propose changes to the Board for approval.

**Composition.** Composed of a Chair, Assistant Chair, the Vice President, and at least three (3) members.

**Chair Qualifications.** The Chair shall have:

1. Been a Member of the Society for at least (10) years.
2. Served in elected or appointed roles for at least three (3) consecutive years within the last six (6) years of appointment.

3. Served as a member of the Ethics Committee.

**Assistant Chair Qualifications and Term.** The Assistant Chair shall have served on the Committee for at least three (3) years.

**Committee Member Qualifications.** Committee members shall have:

1. Been a Member of the Society for at least (10) years.
2. Served in elected or appointed roles for at least three (3) consecutive years within the last six (6) years of the appointment.

**Chair, Assistant Chair, and Member Terms.** Chair, Assistant Chair, and members shall serve a term of three (3) years and may be appointed to an additional three (3) year term. The Vice President shall serve during their time in Office.

**Chair Vacancy.** The Assistant Chair will take the place of the Chair, should the Chair be unable or unwilling to serve.

**Successive Terms.** Committee members may serve successive terms.

**Vacancies, Meetings, Quorum, Voting.** Vacancies, Meetings, Quorum and Voting will all be in keeping with Bylaws Articles X and XI.

**Attendance.** Meetings are open to all Committee members, the Executive Director, and to any other person invited by the Committee to attend. Invited guests shall have no vote.

The ASOPRS President, with approval of the Board, makes appointments to the Committee from among respected ASOPRS Voting Members and assures, to the extent practicable, that the Committee's composition is balanced as to relative age, diversity, experience, and the emphasis of the appointees upon practice, education, research or other endeavors within oculofacial plastic surgery (OPS).

The Ethics Committee is responsible for (i) responding to each inquiry regarding ethics and, if appropriate, making a recommendation to the ASOPRS Executive Board regarding action, such as the development of an advisory opinion interpreting the Rules of Ethics in this Code; (iii) investigating each challenge regarding ethics and recommending whether the ASOPRS Executive Board should make a determination that an ASOPRS Member has failed to observe the Rules of Ethics in this Code, and recommending an appropriate sanction; (iv) serving as a resource for ASOPRS, its members and the ASOPRS Executive Board regarding professional ethics and ethical issues; and (v) assessing the Principles of Ethics, Rules of Ethics and Administrative Procedures in this Code periodically and recommending any amendments to the ASOPRS Executive Board.

**(b) The Chair of the Committee.** Upon nomination by the President, the Board appoints the Committee Chair to serve, at the will of the Board, as the principal administrative officer responsible for management of the promulgation, interpretation, and enforcement of the ASOPRS Code of Ethics. The Board appoints as the Chair a distinguished oculofacial plastic surgeon who possesses recognized integrity and broad experience. The Committee Chair is responsible directly and exclusively to the Board; and is provided, upon approval of the Board, with legal counsel and other resources necessary to fulfill the responsibilities of administering this Code. The Chair presides at, and participates in, all meetings and hearings of the Ethics Committee. The Chair is responsible for ensuring that these Administrative Procedures are followed. The Chair maintains

liaison with entities, both public and private, which are interested or involved in medical ethics, particularly as they relate to OPS.

**(d) Meetings of the Committee.** See Bylaws Article XI: Meetings of the Committees.

**(e) Indemnification and Insurance.** See Bylaws Article XIV: Indemnification.

All Ethics Committee members, staff, and other individuals engaged in investigations at the written request of the Chair, are indemnified and defended by ASOPRS against liability arising from Committee-related activities to the extent provided by the ASOPRS Bylaws (ARTICLE XIV: INDEMNIFICATION). The ASOPRS maintains indemnification insurance against such liability.

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

**(a) Preliminary Review.** The Chair preliminarily reviews each submission involving the ASOPRS Code of Ethics to consider whether it may be an inquiry (e.g., a request for issuance by the Board of an advisory opinion interpreting the Rules of Ethics in this Code) or a challenge (i.e., a request for a finding by the Board that a Member of ASOPRS has failed to observe the Rules of Ethics in this Code). A submission involving the ASOPRS Code of Ethics, whether it is designated or phrased as an inquiry or challenge, may be construed by the Committee Chair as either an inquiry or a challenge in light of information in the submission. Inquiries may be considered without regard to their means or form of submission. Challenges must be submitted in the format required by the Ethics Committee containing specific allegations against an ASOPRS Member non-observance of the Rules of the Code and de-identifying patient information consistent with relevant law(s). Such submissions will not be considered unless they are signed by their submitters. The Ethics Committee will review material submitted in writing or electronically once a signed and dated submission form is received.

The requirement that a challenge be submitted in the format above and signed by the submitter does not apply to items that are in the public domain or those that "speak for themselves." These items include, but are not limited to, written, printed, recorded, televised, broadcast, or other audio or audiovisual materials or presentations, whether or not signed by, or contained on the letterhead of, or personally presented by a person, which describe or promote the credentials, training, experience, ability, results, or medical or surgical practice of the person. Items received by the Ethics Committee which "speak for themselves" may be considered as a challenge whether or not they are submitted in writing and signed by a submitter. Inquiries or challenges may be submitted by anyone.

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

**(c) Investigation.** For each submission involving the ASOPRS Code of Ethics that the Chair concludes is a valid and actionable inquiry or challenge, the Chair shall present the submission to the Ethics Committee or one of its members for investigation into its specific facts or circumstances to whatever extent is necessary



in order to clarify, expand or corroborate the information provided by the submitter. The Chair may either conduct an investigation personally or appoint one or more other Committee members to conduct the investigation. The individual conducting the investigation (the "investigator") may be assisted in the investigation by other Ethics Committee members, by staff and legal counsel and by any other individual (a) whose location, professional position, or expertise might be thought to facilitate the investigation, (b) whose assistance is requested by the Chair in writing, and (c) who agrees in writing to follow the Administrative Procedures of the ASOPRS Code of Ethics.

The investigator or staff shall obtain written confirmation that the submitter will (a) consent to the disclosure of their name to the ASOPRS Member being challenged, (b) cooperate with the investigator and the Ethics Committee during the investigation, and (c) testify at any hearing before the Ethics Committee concerning the matter. (If the submitter refuses to confirm these matters in writing, the investigator shall return to the Ethics Committee for guidance.) The investigator may seek preliminary information in addition to that contained in the submission if deemed necessary to verify that the submission is a valid and actionable challenge, or to clarify or corroborate information found in the challenge.

A Member of ASOPRS who is the subject of a valid and actionable challenge (the "challenged Member") is informed of the challenge by the investigator who shall give written notice specifying:

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

At any time after providing the notice described above and after receiving the challenged Member's reply, the investigator may conduct any investigation of the matter to the extent deemed appropriate in order to gather, clarify, expand or corroborate facts and information necessary to analyze the merits of the challenge and to prepare for any hearing. The investigator may request signed written statements or affidavits from witnesses. Investigations involving challenges are conducted in confidence, with all written communications to the submitter and challenged Member sealed and marked "Personal and Confidential." Communications will be sent via any carrier that maintains confidentiality and provides documentation of delivery. All written communications to the Ethics Committee from a challenged Member must be signed by the challenged individual even if written on their behalf by legal counsel or other representative.

Investigations are conducted objectively and without prejudice. An investigation may be directed toward any aspect of a challenge which is relevant or potentially relevant and may lead to allegations of potential Rule violations other than those identified by the submitter. Upon completion of the investigation, the investigator shall assemble the investigation file, including all information submitted by the challenged Member and shall submit the file to the Chair. If the Chair determines that additional investigation is necessary, the Chair, the investigator, staff or legal counsel, or some combination of these, will attempt to obtain the additional information, to possibly include one (1) or more virtual informal interviews with the

challenged Member.

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

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

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

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

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

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

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

**2. Hearing Format and Procedures.** The hearing is conducted by a Hearing Panel, with any two (2) or more Committee members participating, other than the investigator and any other Committee member who assisted substantially in the investigation of the challenge, any Committee member whose professional

activities are conducted at a location in the approximate area of that of the challenged Member, or who, in that Committee member's discretionary judgment, may not be impartial for any reason. The Chair may be one (1) of the three (3) or more members of the Hearing Panel unless the Chair is disqualified by reason of circumstances described in the preceding sentence. If the Chair is disqualified, the Hearing Panel shall elect from their number a Hearing Officer to preside at the hearing.

The Hearing Officer shall be assisted by staff and legal counsel and shall assure that these Administrative Procedures are followed. The Hearing Officer may issue any appropriate procedural or evidentiary rulings in the course of the hearing. The Hearing Panel shall not be bound by technical rules of evidence which are usually applicable in legal proceedings, but it may receive and consider any evidence (to include documentary evidence and testimony of witnesses virtually, or by telephonic examination) it deems to be appropriate and relevant or potentially relevant. The Hearing Panel may receive a person's signed affidavit or declaration in lieu of virtual testimony at the hearing or through telephonic examination, unless the Hearing Officer concludes, in their sole discretion, that substantial prejudice would result therefrom.

- 1) The Chief Investigator, or a person or persons designated by the Hearing Officer, shall summarize for the Hearing Panel the results of the investigation up to the date of the hearing which are believed to support a finding that the challenged Member has failed to observe the Rules of Ethics, and may make such other introductory factual remarks as the Hearing Officer deems appropriate.
- 2) The Hearing Officer shall present the facts indicating that the challenged Member has failed to observe the Rules of Ethics, including documentary evidence and the testimony of witnesses. Those witnesses shall be available virtually, or by telephone for questioning by the Hearing Panel and its legal counsel and by the challenged Member or their legal counsel or other representative.
- 3) The challenged Member may be assisted at the hearing, at their sole cost and expense, by legal counsel or other representative.
- 4) The challenged Member or legal counsel or other representative may present documentary evidence and the testimony of witnesses in the Member's defense. Those witnesses shall be available by telephone, or secure online virtual conference for questioning by the challenged Member or legal counsel or other representative and by the Hearing Panel and ASOPRS legal counsel.
- 5) The challenged Member shall be given 60 minutes to make a presentation to the Hearing Panel; all witness and counsel presentations are included in this 60-minute time frame, unless there is good cause to lengthen this time frame and all parties are in agreement. Any information may be considered which is relevant or potentially relevant.
- 6) The challenged Member may submit a written statement at the close of the hearing.
- 7) A recording and transcription of the hearing is made as the Hearing Officer directs. If the challenged Member requests a transcription, they shall bear the expense. If transcribed at the request of the Hearing Officer, the transcription shall become part of the record of the investigation of the challenge.
- 8) The hearing is closed to all persons except the Hearing Panel, the Chief Investigator, the challenged Member, their respective witnesses (when testifying and at other times as determined by the Hearing Officer) and legal counsel or, in the case of the challenged Member, other representative, staff, and legal counsel and official reporter, if any.
- 9) The Hearing Panel will vote on the determination of the hearing at the end of the hearing and may delay the vote to allow time to consider the official transcript or other recording of the hearing.
- 10) Unauthorized oral or written communications with any member of the Ethics Committee or with any member of the Board prior to the final resolution of a challenge (including the completion of any appeal) are strictly forbidden. Any such unauthorized communications by the challenged Member, or by the submitter of the challenge, either directly or by proxy, shall be considered as non-

cooperation with the Ethics Committee and shall be subject to the same sanctions as the failure to observe the Rules of Ethics.

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

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

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

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

disposition of the challenge occurs automatically upon the Chair's receipt of acceptance of the offer by mutually agreed upon communication, all on the terms and conditions specified in the offer. Written notice of the alternative disposition shall be given to the submitter of the challenge, only if the submitter agrees in advance and in writing to maintain the information in confidence.

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

- (i) Reprimand to the Member
- (ii) Suspension of the Member from ASOPRS for a designated period; or
- (iii) Termination of ASOPRS membership of the Member.,

In addition to and not in limitation of the foregoing, in any case in which the Board determines that a Member has failed to observe the Rules of Ethics, and the Member is not terminated, the Board may impose the further sanctions that the Member shall not be allowed to serve in an appointed or nominated position, and/or be entitled to participate in any way at any meeting or program sponsored by ASOPRS, for a period of time decided by the Board, including permanently barring the Member from those activities.

Members who are suspended remain subject to the Code of Ethics during the period of the suspension and are deprived of all benefits of membership during the period of suspension. If the Member is suspended or terminated with publication of the Member's name, and the appeal (if any) sustains the determination on which the sanction is based, the Board may authorize the Ethics Committee to communicate the determination and transfer a summary or the entire record of the proceeding on the challenge to an entity engaged in the administration of law or a governmental program or the regulation of the conduct of physicians, in a proceeding that relates to the subject matter of the challenge, provided, however, that the entity is a federal or state administrative department or agency, law enforcement agency, physician licensing authority, medical quality review board, professional peer review committee, or similar entity; and the Chair of the Ethics Committee may appear if requested as a witness to that determination and record.

Except in the instance of communication of the determination and transfer of the record, or in the instance of request of the record by the Member who was the subject of the challenge, the entire record, including the record of any appeal, is sealed by the Ethics Committee and the Board and no part of it is communicated by the members of the Board, the members of any appellate body, the members of the Ethics Committee, the staff or any others who assisted in the proceeding on the challenge, to any third parties. Members whose membership has been terminated as provided in this paragraph 4(e) may not reapply for membership.

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

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

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

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

**(f) Appeal.** Within thirty (30) days of receipt of notice of a determination by the Board that a Member of ASOPRS has failed to observe the Rules of Ethics in this Code and of imposition of a sanction, the affected Member may submit to the Board in writing a request for an appeal. The written request must require a signature upon delivery.

The written appeal (not to exceed 2500 words shall set forth the reason(s) why the Member believes that the Ethics Committee erred in its decision. This submission shall not contain new factual material or raise substantial new arguments that are not part of the record of the Ethics Committee's proceeding. The Ethics Committee, or a person designated by the Ethics Committee, shall present the recommendations of the Ethics Committee and the record of the investigation to the Board. The Board establishes an appellate body consisting of at least three (3), but not more than five (5) Voting Members of ASOPRS, who did not participate in the Ethics Committee's investigation or in the Board's determination, and who declare no actual or potential conflicts of interest with the subject matter of the investigation or the Member who is the subject of the challenge. The appellate body conducts and completes the appeal within ninety (90) days after receipt of the request for an appeal.

The purpose of the appeal is to provide an objective review of the original challenge, the investigation and recommendation of the Ethics Committee, and the determination of the Ethics Committee, and the determination of the Board, but not, however, the sanction imposed. The appeal is limited to a review of the Ethics Committee and the Board's application of the Rules of Ethics in this Code to the facts established in the investigation of the challenge and to a review of the procedures followed to ascertain whether they were consistent with those detailed in these Administrative Procedures. An appeal may not take into consideration any matters not included as part of the record of the Ethics Committee's Investigation and the Board's determination. The appeal consists of a review by the appellate body of the entire record of the proceeding on the challenge and written appellate submission of the Member who was the subject of the challenge. Written appellate submissions and any reply submissions may be made by authorized representatives of the Member and of the Board. Submissions are made according to whatever schedule is established by the appellate body. The decision of the appellate body either affirms or overrules the determination of the Board of non-observance of the Rules of Ethics in this Code by a Member. The decision does not address the sanction imposed by the Board. The decision of the appellate body, including a statement of the reasons for the decision, is reported to the Board. The decision is binding upon the Board, the Member who is subject of the challenge, the Ethics Committee and all other persons.

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

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