

American College of Preventive Medicine Due Process Guidelines

Originally Adopted by the ACPM Board of Regents on 9/8/09, as Amended, Last on 2/22/12

A. Purpose

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

1. Conviction of any crime relating to or arising out of the practice of clinical or population medicine, including but not limited to acts involving moral turpitude, or being charged with or having alleged to have committed a felony act of any kind. This excludes civil findings of medical malpractice, but may include malpractice findings if they show a pattern that imperils the public's health.
2. Limitation or termination of any right associated with the practice of medicine or public health, including the imposition of any requirement for surveillance, supervision, or review, by reason of violation of a medical practice act or regulatory standards of professional conduct, statute or governmental regulation, or disciplinary action by any medical licensing authority.
3. Unlawful financial dealings related to the practice of clinical or population medicine, including but not limited to, fee splitting or the payment or acceptance of kickbacks, bribes, political favors, or misuse of public funds.
4. Unprofessional conduct including, but not limited to, conduct that is in violation of the American College of Preventive Medicine's Code of Ethics, Conflict of Interest policy, Policy on Corporate Relationships, or other conduct-related policies.

B. Definitions

Breach: Actual or alleged conduct for which a complaint is made.

Code of Ethics: the ACPM Code of Ethics as adopted by the Board of Regents July 30, 2009 and as may be amended from time-to-time.

College: The American College of Preventive Medicine or ACPM, a 501(c)(3) organization, organized in the State of North Carolina.

Committee on Ethics (CoE): The ACPM's standing committee defined in the ACPM Bylaws, Article IX, Section 5, Paragraph F.

Complaint: A written charge submitted by a complainant, accusing a member of conduct that conflicts with the standards and principles of the College.

Complainant: The person who brings a complaint against a member of the College. The complainant does not have to be a member of the College.

Egregious violation: alleged conduct that, as determined by the CoE or the EGRC, could significantly impact individual patients, the public's health, or the public's trust or confidence in the College as a national professional society.

Ethics Grievance Review Committee ("EGRC"): a sub-committee or committee of the whole of the American College of Preventive Medicine's Committee on Ethics that receives, investigates, and deliberates on a complaint.

Ex Parte Communication: Unsolicited communication by the Respondent with Ethics Grievance Review Committee members, witnesses, or any complainant, outside of the disciplinary proceedings, not otherwise required of the Respondent by some other authority or tribunal.

Fellow: a member of the College admitted under Article II, Section 1 of the Bylaws.

Formal Complaint: A written charge determined by the Ethics Grievance Review Committee, accusing a member of conduct that conflicts with the standards and principles of the College.

Formal Rules of Evidence: the Federal Rules of Evidence.

Hearing: A proceeding held for the purpose of examining evidence and deciding issues of fact.

Member: Any individual admitted to membership of the College as defined under Article III of the College's Constitution, and Article II of the College's Bylaws.

Notice or Notification: Information that comes to the attention of a staff member of the College or a member of the Committee on Ethics or other Member of the College indicating a cause for concern of a breach of ethics of a Member. This may be provided by email, telephone, in person statement, other electronic means, or other written means, and may be from any source including the general public.

Resignation of a Member: stipulated by a formal, signed letter of resignation, or failure to renew membership because of non-payment of dues, or upon renewal refusal to attest abidance with the Code of Ethics.

Respondent: The Member against whom a complaint has been submitted.

Service of Notice: The formal delivery of notice.

Suspension of Membership: The temporary loss of all rights, privileges, and benefits of membership in the College, including the loss of a Member to use or affiliate with the ACPM name or logo until such time as suspension is terminated by the EGRC, CoE, or other authoritative body of the College.

Termination of Membership: The permanent loss of all rights, privileges, and benefits of membership in the College, including the loss of a Member's right to use or affiliate with the ACPM name or logo.

C. Process

- 1.) When the Committee on Ethics receives a notice of breach by a Member from any source¹ .the CoE shall review all allegations to determine if there is credible evidence to support the filing of formal charges against the Member for possible disciplinary action. Such determination proceedings do not require a formal meeting of the Committee if the Chairperson of the CoE determines that no further action need be taken. If the Chairperson believes there is substance to the complaint requiring further consideration (s)he shall convene the CoE for determining the need to proceed. If the CoE investigation and findings fail to substantiate the allegations for formal charges, the matter will be dismissed. If findings substantiate these or other allegations of ethical breaches, formal charges are to be filed, and an EGRC shall be appointed by the Chairperson of the CoE per paragraph D below to adjudicate the formal charges.
- 2.) If a notice is received from a specific Complainant, the Complainant shall be responsible for any of their own costs associated with the initial complaint to the EGRC, including but not limited to, costs of obtaining, copying and mailing records, but excluding costs associated with EGRC meetings. If the

¹ Sources of notices do not have to come from Members or staff of the College, but may be from any source, whether intentionally brought to the attention of the CoE (e.g., by a member of the public at large) or unintentionally (e.g., a newspaper article read by a staff member of the College).

Committee determines that the complaint warrants further review and action, the College shall be responsible for the costs incurred in the further review of the complaint.

- 3.) The CoE or EGRC may notify the Respondent of the complaint during the CoE or EGRC's review if the Committee believes that correspondence with the Respondent concerning the allegations in the complaint will assist the Committee in its deliberations.
- 4.) If the EGRC determines that the evidence substantiates formal charges against the Respondent, the EGRC shall so notify the Respondent.
- 5.) If a Respondent resigns from the College, any disciplinary proceedings against the former Respondent may be suspended. However, if the former Respondent reapplies for membership, the disciplinary proceedings will be reinstated unless dismissed by the College's Board of Regents. Any inquiries regarding the former Respondent's membership status in the wake of such resignation shall be communicated as "Resigned membership in ACPM – Ethics Fair Hearing Panel determination pending - <date of resignation>." unless the initial grievance has been dismissed by the College's Board of Regents, in which case the former Respondent's membership status shall be communicated as "Resigned - <date of resignation>."
- 6.) In the event that allegations against a Member are so serious as to constitute a grave concern of the CoE or EGRC that they are an egregious violation, the CoE or EGRC may invoke immediate suspension of Membership from the College until such time as a full investigation is completed and final recommendations are made through these Due Process Guidelines.

D. EGRC Composition and Hearing Initiation

- 1.) The Ethics Grievance Review Committee shall consist of five or more persons appointed by the Chairperson of the Committee on Ethics for any particular complaint. The EGRC must include at least two Fellows of the College. The Chairperson of the Committee on Ethics shall also appoint the chair of the EGRC.²
- 2.) The EGRC chairperson shall arrange for a hearing before the EGRC to be held on charges issued by the Committee on Ethics as may be amended by the EGRC³ against any member of the College. The EGRC may meet in person or through electronic means so long as all members of the EGRC are able to participate equally.

E. Fair Hearing Procedure

- 1.) The EGRC shall deliberate upon the alleged breach as per the request of the CoE. Upon the ongoing determination by the EGRC of valid, formal charges, it shall create a formal written complaint against the Respondent. Within 30 (thirty) days of this complaint being written and finalized by the EGRC the EGRC chairperson shall provide a copy of that complaint along with all evidence considered by the Grievance Committee to the Respondent,⁴ give notice that Respondent may submit a written response within 30 (thirty) calendar days after receipt of the complaint and provide the Respondent with a copy of these ACPM Due Process Guidelines. The notice, including all information specified, shall be sent via any carrier that maintains confidentiality and with certification of return receipt requested.

² The Chair of the Ethics Committee may appoint himself/herself as the Chairperson of the EGRC.

³ Including altering, adding to, or subtracting from the CoE charges based upon the EGRC's own investigation.

⁴ The evidence may be redacted to maintain confidentiality of informants or others at the discretion of the Chairperson.

- 2.) In considering the alleged breach of ethics charge for which the EGRC was empanelled by the CoE, the EGRC may consider any evidence or testimony in addition to that described in the findings of the CoE. The EGRC may also extend or limit the alleged charges (or dismiss them) during its ongoing investigation, and may extend the time it allows the Respondent to respond to allegations at the Chairperson of the EGRC's discretion. When the Respondent files a written response to the complaint, the EGRC chairperson shall send the complaint, all evidence received from the EGRC, and the written response from the Respondent to the EGRC members. The EGRC shall meet (either in person or electronically) within 45 days after receipt of the information to determine whether to further consider the complaint.
- 3.) The EGRC, at its discretion, may request that the EGRC chairperson invite an expert in the field to which the case pertains, as a non-voting member. During any further consideration of the complaint, the EGRC may invite the Respondent to submit additional information to the EGRC, including additional expert(s) that may be arranged at the Respondent's expense.
- 4.) If the EGRC dismisses the complaint, the Respondent shall be promptly notified via any carrier that maintains confidentiality and with certification of return receipt requested. If the EGRC decides to further consider the complaint, the Respondent shall be notified of the Respondent's right to a hearing.
- 5.) 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 EGRC may, after considering any evidence submitted to it, enter a final decision on the complaint and refer this decision to the Executive Committee for action, per paragraph E.17 below.
- 6.) If the Respondent requests a hearing, the EGRC shall receive copies of any additional evidentiary material and witness lists not less than fourteen days prior to the hearing. The EGRC shall decide whether it will call any witnesses, and the EGRC chairperson shall provide the Respondent with a list of witnesses, if any, expected to testify at the hearing on behalf of the College, along with a summary of their expected testimony prepared by the EGRC. Similarly, the Respondent shall provide the EGRC chairperson 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 EGRC members, EGRC chairperson, or Complainant witnesses, or any Complainant, is prohibited and shall result in suspension of Respondent's membership in the College and reporting to the National Practitioner Data Bank. The EGRC may limit the number or time of witnesses proposed by the Respondent.
- 7.) The EGRC chairperson will notify the EGRC 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.
- 8.) At least one representative of the Ethics Grievance Review Committee shall formally submit the complaint and prosecute.
- 9.) At the request of any party for a good cause, the EGRC chairperson may postpone the date of the hearing for a reasonable period of time, but reserves the right to deny postponement.
- 10.) The right to a hearing may be forfeited if the Respondent fails to appear without good cause.
- 11.) 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 EGRC.
 - d) To submit evidence.
 - e) To call, examine and cross-examine witnesses, subject to any limits placed per paragraph E.6 above.
 - f) To submit a written statement within five working (business) days of the close of the hearing.
 - g) To receive a written decision of the EGRC that includes the reasons supporting the decision.
- 12.) The EGRC 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 EGRC may hear any evidence relating to the issues contained in the complaint, as they deem appropriate. Any witness who gives testimony shall be subject to examination by the EGRC.
- 13.) The EGRC chairperson, after consulting with the EGRC members and the Respondent, shall determine if observers may attend the hearing. The Complainant will not be invited to attend the hearing unless the EGRC chairperson and the Respondent agree on the terms of an invitation. Observers will not be permitted to participate in the hearing.
- 14.) The EGRC shall issue a written decision within 10 days after the receipt of the Respondent's written statement (per paragraph E.6.f.), or within ten (10) calendar days of the close of the hearing if the Respondent waives the right to file a post-hearing statement. The decision of the EGRC 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, what disciplinary action, if any, is recommended. The recommended disciplinary action may be designed to correct a specific violation found by the EGRC.
- 15.) The disciplinary action may, in the judgment of the EGRC, provide for reprimand, suspension from membership in the College for a period of time, or expulsion from the College.
- a. "Reprimand" means that the Respondent shall be advised in writing of a finding of misconduct and that such conduct should be changed. A Reprimand may also include a suggested form of managing the corrected conduct, including who would be monitoring such behavior.
 - b. "Suspension" means that the Respondent shall be advised in writing that the Respondent's privileges as a member of the College have been temporarily suspended for a defined period of time, and the conditions necessary for reinstatement.
 - c. "Expulsion" means that the Respondent shall be informed in writing that membership in the College is terminated, with or without the option to reapply for membership under certain specified conditions.
- 16.) A Respondent's suspension or expulsion from the College will be made known to the College's general membership and will be reported to the National Practitioner Data Bank.
- 17.) The EGRC chairperson 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. This and all other notices shall be sent via any carrier that maintains confidentiality and with certification of return receipt requested. If the decision is not appealed, the EGRC findings and recommended disciplinary action will then be referred to the Executive Committee for final action.

F. Appeals

- 1.) 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 College's Executive Committee. With the exception of an egregious violation, the decision of the EGRC shall not be enforced pending the thirty day opportunity for a Respondent's appeal. If the Respondent does not appeal within the designated thirty days, or indicates (s)he will not appeal the decision before the end of the designated thirty days, the EGRC decision shall be enforced immediately.

- 2.) 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.
- 3.) The Respondent shall have thirty (30) calendar days from the date of the request for an appeals hearing to file written arguments with the EGRC chairperson. The EGRC shall have thirty (30) calendar days to reply to the Respondent's arguments. A thirty (30) calendar day extension for filing written arguments may be granted by the EGRC chairperson for good cause shown by any of the parties.
- 4.) When all written arguments have been filed with the EGRC chairperson, the EGRC chairperson shall provide copies to all members of the Executive Committee and shall request that the Executive Committee schedule an appeals hearing no later than thirty (30) days from the date of the EGRC chairperson's request. The Executive Committee shall set the date for the appeals hearing and the EGRC chairperson shall notify the Respondent, the Complainant, and the EGRC. Thereafter, the date of said hearing shall not be postponed except for the most serious reasons in the judgment of the EGRC chairperson. The Executive Committee meeting as the Appeals body may meet in person or electronically.
- 5.) 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 EGRC. 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 ACPM Due Process Guidelines Policy. When the Respondent's argument is completed, a representative of the EGRC shall argue in support of the decision rendered by the EGRC. Thereafter, the Respondent shall be allowed to reply.
- 6.) 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 EGRC chairperson who shall provide copies of the decision to the Respondent and the EGRC members.
- 7.) The President shall take appropriate steps to implement the decision of the Executive Committee, which shall be final.

G. Records of the EGRC

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. However, in the event of an inquiry by the media, the College may prepare a press release reasonably conforming with the following:

ACPM is aware of the situation of [the Member] and is currently investigating the underlying facts. ACPM does not comment on the facts or situation during investigation. ACPM has not yet come to a conclusion regarding the situation or the Member in question. The College will take appropriate action once the facts are determined.

H. Conflicts of Interest

Participation in the activities of the Ethics Grievance Review Committee 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.

I. Domicile

This policy is to be construed according to the laws of the State of North Carolina, without regard to the residence of the Respondent or location of the hearing or related meetings.

Policy History

- August/September 2009 – Adapted from the American Academy of Neurology “Disciplinary Action Policy” by the ACPM Code of Ethics Development Committee.
- September 2010 – Changed the name from the Disciplinary Action Policy to the Due Process Guidelines. Name changed approved by the ACPM Board of Regents September 2010.
- February 17, 2011 – Minor edits made for consistency and clarity of the document; these changes did not require Board of Regents approval.
- February 22, 2012 – Clarified role of CoE vis a vis EGRC; added “egregious violation” suspension capability recommendations; clarified some process components and ability of EGRC to broaden or limit its charges/investigation based on findings; shortens appeals time line.