

**American Society for Metabolic and Bariatric Surgery
Disciplinary Procedures
for
Investigation and Determination of Ethical Complaints**

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A. Statement of Purpose and Authority

Pursuant to section 5.03 of the Bylaws, the Society's Executive Council is empowered to adopt and amend rules and regulations, including disciplinary rules and procedures applicable to members, for the management of the Society's affairs. Section 4.07 of the Bylaws sets forth the general procedures for terminating or suspending a member of the Society under sections 4.05 or 4.06. The following Disciplinary Procedures are intended to implement section 4.07 in order to more fully set forth the procedures and process to be followed in the event of a complaint against a member for violation of the Society's Bylaws, Rules and Procedures, or Code of Ethics. These rules are designed to insure that every member who may be the subject of a complaint is afforded notice and a full opportunity to be heard.

B. Scope

All members of the Society are governed in ethical matters by the Bylaws, Rules and Regulations, and Code of Ethics. These Disciplinary Procedures shall apply to the investigation and determination of alleged violations by a member of the Society's Bylaws, Rules and Procedures, or Code of Ethics.

C. Professional Conduct Subcommittee

1. A Professional Conduct Subcommittee shall be established and shall be responsible for investigating, conducting hearings on, and ruling upon complaints of violations of the Bylaws, Rules and Regulations, or Code of Ethics.

2. The Professional Conduct Subcommittee shall be comprised of five members of the Ethical Advisory Committee. Members of the Professional Conduct Subcommittee (the "Subcommittee") shall be appointed by the President of the Society, be ratified by the Executive Council, and shall serve a term of two years. The members of the Subcommittee shall elect a Chairperson. Members

of the Subcommittee may be reappointed for a second two-year term.

3. The Subcommittee may conduct its substantive business in person or by telephonic conference calls as determined by the Chairperson. The presence or participation of three members of the Subcommittee shall constitute a quorum for purposes of conducting formal business. Except as may otherwise be specified in these procedures, if a quorum is present the vote of a simple majority of the members at a meeting or conference call shall constitute the action of the Subcommittee.

D. Allegations of Violations

1. Any member of the Society except officers of the Executive Council in good standing may file a complaint of a violation of the Bylaws, Rules and Regulations or Code of Ethics against any other member of any class of members. Officers of the Executive Council should not file a complaint against a member in order to avoid any appearance of a conflict of interest.

2. A complainant must be an active member of the ASMBS at the time the incident that precipitated the complaint occurred. This time frame includes the 180 day grace period that extends active membership in the ASMBS beyond the deadline date for any dues, fees or assessments.

3. The complaint must be in writing, signed by the complainant(s), and directed to the Subcommittee care of the Executive Director at the offices of the Society. The Executive Director may forward the complaint to the President and/or the Executive Committee of the Executive Council, at the President's discretion. The complaint should be accompanied by documentation of the alleged violation.

4. The Executive Director shall distribute the complaint and any accompanying supporting documentation to the members of the Subcommittee. Any member of the Subcommittee who determines that a conflict of interest exists with the respondent or the subject of the complaint shall immediately recuse themselves from any further involvement with the complaint. In the event of a recusal, the President of the Society shall appoint a temporary member from the Ethical Advisory Committee to take the place of the recused member. The Executive Director shall acknowledge receipt of the complaint from the complainant.

E. Action by the Subcommittee

1. Within 45 days of receipt of the complaint from the Executive Director, the Subcommittee shall consider the complaint and supporting documentation and make a preliminary determination whether there is sufficient basis for further proceedings. If the Subcommittee decides that there is not sufficient basis for

further proceedings, the complaint shall be dismissed and the complainant so notified in writing. In the event of such dismissal no record of the complaint shall be maintained.

2. If the Subcommittee determines there is sufficient basis for further proceedings it shall proceed as follows:

a. If the complaint concerns member advertising or alleges a violation of the Society's Advertising Guidelines, the Subcommittee may attempt to resolve the complaint informally as set forth in the Advertising Guidelines;

b. The Subcommittee may refer the complaint to a more appropriate regulatory, licensing or disciplinary authority, in which case the Subcommittee may either close its file or, by majority vote, defer its proceedings until notice of the authority's final action is received; or

c. The Subcommittee may refer the complaint to an Investigating Committee pursuant to subsection F; or

d. The Subcommittee may elect to investigate and determine the matter without referral to an Investigating Committee pursuant to subsections G or H.

3. If the Subcommittee determines to proceed with a complaint under section E(2) above, the respondent shall be notified in writing that a complaint has been lodged and of the factual allegations of the complaint which the Subcommittee is pursuing. The notice shall also inform the respondent whether the complaint has been referred pursuant to section E(2)(a), referred to an Investigating Committee under section E(2)(b), or is being determined as set forth in section E(2)(c). The identity of the complainant shall not be disclosed to the respondent at this time. A copy of the then-current Disciplinary Procedures shall be provided to the respondent.

F. Investigating Committee

1. The Subcommittee may refer a complaint to an Investigating Committee for further investigation. The Investigating Committee shall consist of three Regular members of the Society, except that if the respondent is a member of the Integrated Health section, one of the three members of the Investigating Committee shall also be a member of the Integrated Health section. The Investigating Committee shall be appointed by the Chairperson of the Subcommittee, who shall also designate one of the members as the chair of the Investigating Committee.

2. Members of the Investigating Committee shall have no interest in the matter. A member appointed to the Investigating Committee who believes or thereafter discovers that a conflict of interest exists shall immediately recuse

himself or herself from any further involvement in the case, and a replacement shall be appointed by the Chairperson of the Subcommittee.

3. The Investigating Committee shall be charged with investigating the allegations of the complaint and shall confine its inquiry to the specific complaint referred to it by the Subcommittee. However, in the event the Investigating Committee discovers other actions during the course of its investigation that may subject the respondent to disciplinary action, the Investigating Committee shall report such evidence to the Subcommittee.

4. Within fifteen working days after confirmation of their appointment, the chair of the Investigating Committee shall notify the complainant in writing to produce any additional evidence in support of the complaint to the Investigating Committee within fifteen working days.

5. Upon receipt of any additional supporting evidence from the complainant, or if no such evidence is received, within fifteen working days of the date the additional material was due, the Chair of the Investigating Committee shall provide the respondent with copies of all material received from the complainant in support of the complaint and request the respondent to provide the Investigating Committee with a written response to the relevant factual allegations of the complaint together with any additional evidence the respondent deems appropriate within thirty working days.

6. The Investigating Committee may interview witnesses, the respondent, the complainant, and other interested parties, request documentation from the respondent, the complainant, or other interested parties, and otherwise collect such evidence as it deems relevant for a determination of the allegations in the complaint. The Investigating Committee should at all times use its best efforts to ensure the confidentiality of its investigation.

7. Within ninety working days of receipt of the respondent's written response to the allegations of the complaint, or if no such response is received within ninety working days of the date the response was due, the Investigating Committee shall submit a written report to the Subcommittee including all evidentiary materials obtained during the course of the investigation. The Subcommittee may extend the time for submitting the report upon request of the Investigating Committee. The report should contain a recitation of the relevant facts as determined by the Investigating Committee and may include a recommendation to the Subcommittee. The Investigating Committee shall be disbanded upon submission of its report to the Subcommittee.

8. Within thirty working days of receipt of the report of the Investigating Committee, the Subcommittee shall consider the report and submitted materials, and may, by majority vote, proceed as follows:

- a. Dismiss the complaint, in which case the complainant and

respondent shall be notified that the complaint was considered and that the Subcommittee has determined not to proceed;

b. Refer the complaint to a more appropriate regulatory, licensing or disciplinary authority, in which case the Subcommittee may either close its file or, by majority vote, defer its proceedings until notice of the authority's final action is received; or

c. Proceed to a decision and make a determination pursuant to subsection H without a hearing based on the facts submitted by the Investigating Committee; or

d. Set the matter for hearing pursuant to subsection G.

G. Investigations By and Hearings Before the Subcommittee

1. If the Subcommittee elects to investigate and determine a matter without referral to an Investigating Committee the Subcommittee shall notify the complainant in writing to produce any additional evidence in support of the complaint to the Subcommittee within fifteen working days. Within sixty working days of receipt of any additional supporting evidence from the complainant, or if no such evidence is received, within sixty working days of the date the additional material was due, the Chair of the Subcommittee shall provide the respondent with copies of all material received from the complainant in support of the complaint and request the respondent to provide the Subcommittee with a written response to the relevant factual allegations of the complaint together with any additional evidence the respondent deems appropriate within thirty working days. The Subcommittee may interview witnesses, the respondent, the complainant, and other interested parties, request documentation from the respondent, the complainant, or other interested parties, and otherwise collect such evidence as it deems relevant for a determination of the allegations in the complaint. The Subcommittee should at all times use its best efforts to ensure the confidentiality of its investigation.

2. Within sixty working days of receipt the respondent's written response, or if no written response has been received, within sixty working days of the date the response was due, the Subcommittee shall consider the material submitted and either:

a. Dismiss the complaint, in which case the complainant and respondent shall be notified that the complaint was considered and that the Subcommittee has determined not to proceed;

b. Refer the complaint to a more appropriate regulatory, licensing or disciplinary authority, in which case the Subcommittee may either close its file or, by majority vote, defer its proceedings until notice of the authority's final action is received; or

c. Set the matter for hearing.

3. A hearing is defined as an appearance by the respondent before the Subcommittee. If the Subcommittee elects to hold a hearing, either with or without referral to an Investigating Subcommittee, the respondent shall be notified in writing of the Subcommittee's election to hold a hearing, of the respondent's right to appear at the hearing, and of the respondent's right to appear at the hearing with legal counsel or other representative. The notice shall include a copy of the complaint. Upon receipt of such notice, the respondent shall have twenty working days to notify the Subcommittee in writing whether or not he or she wishes to personally appear at the hearing. If a written notice of intention to appear is not received by the Subcommittee within twenty working days, the respondent will be deemed to have waived the right to appear before the Subcommittee, and the Subcommittee may proceed without an actual hearing. The respondent may still submit written documentation to the Subcommittee for a period of thirty working days after the date of the Subcommittee's notice to the respondent to proceed by hearing. The Subcommittee may then determine the matter via teleconference or actual meeting.

4. If the respondent timely notifies the Subcommittee of his or her intention to appear at the hearing, the Subcommittee shall schedule a hearing date not less than forty-five and not more than one hundred twenty working days from the date of the notice to proceed by hearing.

5. The notice of hearing date setting forth the date, time and place of the hearing shall be sent to the respondent by certified mail, return receipt requested, not less than thirty working days prior to the date of the hearing. The notice shall also include copies of all relevant supporting documentation not otherwise privileged or protected by applicable state or federal law which has not previously been provided to the respondent, together with the report of the Investigating Committee if one was formed. The notice shall advise the respondent of his or her right to appear at the hearing with legal counsel or a representative, to submit documentation, to call and examine witnesses, and to offer testimony or any other material on his or her behalf. Any additional documentation the respondent wishes to be considered at the hearing must be submitted to the Subcommittee at least ten working days prior to the hearing date.

6. Legal counsel or an advisor may not appear at a hearing in lieu of the respondent. The failure of the respondent to appear at a hearing shall not be considered as evidence of a violation.

7. Hearings are not subject to formal rules of evidence or procedure. The Chair of the Subcommittee shall be the presiding officer of the hearing and may control the presentation of evidence and argument and the appearance of witnesses. The hearing should be limited to matters and issues identified in the report, if any, of an Investigating Committee. The Subcommittee shall make

every effort to assure that the respondent has the opportunity to submit any relevant material not otherwise privileged. The Subcommittee has the right to determine the weight to be accorded all evidence.

8. A verbatim transcript shall be made of the hearing with the cost borne by the Society. Copies of the transcript shall be made available to the respondent upon request at his or her expense. All other expenses of the respondent including travel to and representation at the hearing shall be borne by the respondent.

9. The Subcommittee may continue a hearing on its own motion, or on request of the respondent for good cause. Notice of the continuance and the new date, time and place of the hearing shall be provided to all parties not less than twenty working days prior to the new hearing date.

H. Decisions by the Subcommittee

1. If the Subcommittee elects to proceed without a hearing after referral to an Investigating Committee, the respondent shall be notified in writing of the Subcommittee's election and of the respondent's right to submit additional documentation in support of respondent's position. Any such additional documentation shall be submitted to the Subcommittee within thirty working days of the Subcommittee's notice of its intent to proceed without a hearing.

2. The Subcommittee shall reach a decision within thirty working days of the conclusion of the hearing or, if the respondent waives the right to a hearing or the Subcommittee has elected to proceed without a hearing, within thirty working days of the final submission of materials by the respondent or within thirty working days of the day the final submission was due.

3. The affirmative vote of at least three members of the Subcommittee shall be required to sustain a complaint. If less than three members vote to sustain the complaint, the complaint shall be dismissed and the case closed. If the Subcommittee votes to sustain the complaint, the Subcommittee shall then decide the appropriate discipline to be imposed as set forth in section I below.

4. Within twenty working days of the Subcommittee's decision, the respondent shall be notified of the decision by certified mail, return receipt requested. If the decision is to sustain the complaint, the notification shall cite the applicable Bylaw, Rule and Regulation, or provision of the Code of Ethics violated, the discipline imposed, and the procedure for appealing the decision to the Executive Council. No discipline imposed shall become effective until the time period for appeal to the Executive Council has expired. A complainant has no right to appeal any decision of the Subcommittee.

I. Discipline

1. If the complaint is sustained, the Subcommittee may impose the following discipline on the respondent:

- a. ethical guidance or warning;
- b. censure;
- c. suspension for a specified period of time; or
- d. termination of membership.

2. Ethical guidance or warning, censure or suspension shall require an affirmative vote of at least three members of the Subcommittee. Termination of membership shall require the vote of at least four members of the Subcommittee.

J. Appeal to Executive Council

1. If the Subcommittee imposes discipline, a respondent may appeal the decision and/or the discipline imposed to the Executive Council.

2. An appeal to the Executive Council shall be initiated by the respondent by sending written notice to the Executive Council, care of the Society's Executive Director, setting forth the decision or discipline being appealed, the alleged error(s), and the reason(s) why the Subcommittee's decision should be overturned. The notice of appeal must be received by the Society within twenty working days of the date the Subcommittee's decision was mailed to the respondent. Any notice of appeal received beyond such twenty day period is void, and the decision of the Subcommittee shall be final.

3. Upon receipt of a notice of appeal, the Executive Director shall forward the notice to all voting members of the Executive Council and shall send the respondent an acknowledgement of receipt of the notice of appeal. The acknowledgement shall be sent by certified mail, return receipt requested, and shall inform the respondent that a written brief or statement in support of the appeal may be filed with the Executive Director within twenty working days of the date of mailing the acknowledgement.

4. Upon receipt of the respondent's written brief or statement the Executive Director shall forward copies to all voting members of the Executive Council. If no brief or statement is received within the twenty-day period for filing, the Executive Director shall notify the voting members of the Executive Council that no such brief was received.

5. The Executive Council shall schedule a hearing on the appeal following receipt of the respondent's brief or statement or upon being notified that no such brief has been filed. The hearing should normally be scheduled at the next regularly scheduled meeting of the Executive Council provided that the respondent has at least thirty days notice of the hearing. If the next regularly scheduled meeting of the Executive Council is such that the respondent would

have less than thirty days notice, the hearing shall be set for the following regularly scheduled meeting or a special meeting of the Executive Council, at the Executive Council's discretion. Notice of the date, time and place of the appeals hearing shall be provided to the respondent by certified mail, return receipt requested. Any member of the Executive Council that believes that he or she has a conflict of interest regarding the appeal should recuse him or herself from participation in the appeal. If the appeal pertains to a current member of the Executive Council that member shall be recused from participation in the appeal.

6. At the appeals hearing, the respondent and his or her legal counsel or representative, if any, shall be permitted to make a statement and to present such arguments as they deem appropriate provided that the scope of the hearing shall be limited to the consideration of the issues raised in respondent's notice of appeal. The submission of written materials other than the written brief or statement is not favored, and there shall be no examination of witnesses or introduction of additional evidence. The Executive Council may, at its discretion, and for good cause shown, consider additional material submitted by the respondent which was not previously considered by the Subcommittee. A verbatim transcript of the proceedings of the appeals hearing shall be made with the costs borne by the Society. Only the voting members of the Executive Council, the Society's legal counsel, the Society's Executive Director, the respondent, the respondent's legal counsel and/or representative, and a certified court reporter shall be permitted to attend the appeals hearing. If the respondent fails to appear at the hearing the Executive Council may proceed to deliberate the matter.

7. The Executive Council shall render its decision within thirty working days of the appeals hearing or, if no hearing is held, within thirty working days of its deliberations. The Executive Council may reverse or uphold the decision of the Subcommittee or may reduce or uphold, but not increase, the severity of any discipline imposed. In addition, the Executive Council may remand the matter to the Subcommittee for further investigation or deliberation or reconsideration of the discipline imposed.

8. The decision of the Executive Council shall be by majority vote. The decision rendered by the Executive Council shall be final and not subject to further review or appeal.

K. General Provisions

1. Determinations of the Subcommittee shall be reported periodically to the Executive Council. A record of any discipline imposed shall be maintained in the confidential files of the Subcommittee. If the Subcommittee receives a complaint, a notation shall be placed in the membership file of the member stating only that the Subcommittee has a file on the member. No other record of a complaint or disciplinary action or related documents shall be entered or

maintained in membership files, except for the fact that membership was suspended or terminated.

2. The identity of a complainant shall not be disclosed to a respondent except a) a copy of the complaint including the identity of the complainant shall be provided to the respondent at the time the respondent is notified of the Subcommittee's election to hold a hearing pursuant to Section G(3); or (b) at the request of the respondent if the complainant agrees that the complainant's identity may be disclosed.

3. A record of any discipline imposed by the Subcommittee or the Executive Council on appeal shall generally be kept confidential except as set forth in this section. Both a complainant and the respondent shall be informed when no violation has been found. The final outcome of a complaint sustained by the Subcommittee or the Executive Council may be provided to a complainant, but the complainant is obligated to maintain the confidentiality of the decision. A record of any discipline imposed by the Subcommittee or Executive Council may be disclosed to a licensing, regulatory or disciplinary authority upon receipt of an official written request at the discretion of a majority of the members of the Executive Council. Suspension or termination of membership in the ASMBS may be reported to the ACS if approved by a majority vote of the Subcommittee and the Executive Council. Information not otherwise privileged or protected from disclosure by law may be disclosed in response to an apparently lawful subpoena issued by a court or governmental agency. A notice including the name and state of residence of any member who is censured or whose membership is suspended or terminated for violation of the Society's Code of Ethics may be posted on the Member's Only access portion of the Society's website together with a brief summary of the basis for the disciplinary action. Names of members who receive only an ethical guidance or warning, or whose advertising violations have been informally adjudicated under the Advertising Guidelines, shall not be posted. Unauthorized disclosure of information in contravention of these rules should be viewed by the Subcommittee as grounds for disciplinary action.

4. The Subcommittee may, upon a majority vote, dismiss any complaint at any stage of the disciplinary process.

5. Wherever these Disciplinary Procedures call for the mailing of a document by certified mail, return receipt requested, it shall be sufficient if the document is delivered by any delivery or overnight express service which can verify delivery.