



American Board of Oral and Maxillofacial Surgery

Rules and Procedures Regarding the Canons of Ethical Conduct (Rules)

I. RESPONSIBILITY AND OBJECTIVES OF THE PROFESSIONAL DISCIPLINE PROGRAM

R1.1 Objectives: The fundamental objectives of the Professional Discipline Program are to enforce the *Canons of Ethical Conduct* (“Canons”) to ensure that an oral and maxillofacial surgeon (OMS) who has applied for, or has been awarded, certification as a Diplomate of the American Board of Oral and Maxillofacial Surgery (“ABOMS”) is practicing in accordance with professional standards in order to protect the public against unprofessional and unethical conduct by Diplomates or certification candidates.

For purposes of these Rules and the Canons of Ethical Conduct, the term “OMS” shall mean an oral and maxillofacial surgeon who has been awarded Diplomate status by ABOMS or who has applied for and is a candidate for Diplomate status.

R1.2 Committee: The ABOMS Credentials Committee (Committee) is charged with the responsibility of enforcing the Canons, in accordance with the Bylaws.

R1.3 Rules: The Committee shall review and analyze the Canons and propose recommendations regarding the Canons to the Board of Directors (“Board”) of ABOMS.

R1.4 Conduct: The Committee is responsible for receiving, reviewing and, if appropriate, making recommendations to the Board for adjudication of complaints of unprofessional conduct and/or alleged violations of the Canons.

R1.5 Resolution of Complaints: The Committee shall make recommendations to the Board in order to resolve all complaints of unprofessional and unethical conduct and/or alleged violations of the Canons; including and without limitation, findings, conclusions and sanctions, if warranted.

R1.5.a A Professional Discipline Sub-Committee shall be comprised of the three most recent ABOMS past presidents. At its discretion the Committee may refer allegations of Canons violations to the Sub-Committee for review, evaluation and recommendations. Any such deliberations shall be reported back to the Committee including any appropriate recommended actions.

R1.6 Reports: Upon the Board’s request, the Committee shall deliver a summary report to the Board identifying the Committee’s recommendations and activities.

R1.7 Procedures: Subject to the review and approval of the Board, the Committee shall adopt procedures and safeguards governing the functions of the Committee to ensure that all OMSs, certification applicants, and the Committee, are in full compliance with the Canons and these Rules.

R1.8 Time: The time periods set forth in these Rules are intended to provide guidance to the Committee, the Board and all relevant parties, and may be extended by the Board at the Board's discretion, depending on the circumstances of each proceeding. Failure of the Committee, the Board, or any party to comply

with the time periods, shall not prevent the continuation or conclusion of a proceeding by the Committee or the Board.

II. NATURE OF AUTHORITY

R2.1 Power to Investigate: The Committee shall have the power to, but shall not be obligated to, recommend to the Board actions to adjudicate all allegations of unprofessional and unethical conduct that may be harmful to colleagues, to the public, or that may be otherwise contrary to the objectives of the Canons or ABOMS; provided that such allegations are made in writing. The Committee's powers do not extend to addressing economic issues as they relate to legitimate marketplace competition.

R2.2 Disposition of Complaints: The Committee has the sole authority to decide whether to act on a complaint and the Board will make final determinations regarding each complaint, subject to the Board's authority to conduct an appeal as set forth in these Rules and the ABOMS Bylaws.

R2.3 Committee Actions: The Committee may recommend to the Board the following actions:

- a) notify all parties in writing that no action is warranted against the OMS;
- b) request that the OMS cease the improper conduct, accept supervision, or seek appropriate assistance;
- c) place the OMS on Diplomate status probation or reprimand the OMS;
- d) suspend the OMS's Diplomate credential for a designated amount of time;
- e) temporarily or permanently revoke the OMS's Diplomate credential or eligibility to take the certification or recertification examination, in accordance with the Bylaws;
- f) refer the matter to the proper authorities for criminal prosecution or state dental board action, if appropriate; and/or propose other action that is warranted under the circumstances.

R2.4 Monetary Award: The Committee will not recommend or impose monetary awards as penalties.

R2.5 Committee Meetings: The Committee shall meet as needed. A quorum at such meetings shall consist of a simple majority of the members of the Committee. The Committee may meet by telephone conference call. All Committee members must be given at least ten (10) days advanced written notice of any meeting. Such notice may be waived by any member of the Committee or by the attendance of any member of the Committee at the meeting. Notices may be communicated by mail, hand delivery, electronic transmission, or facsimile.

R2.6 Confidentiality: All information disclosed to the Committee and/or the Board, shall be maintained on a confidential basis. The Committee and/or the Board shall be permitted to disclose such information when compelled by a validly issued subpoena, when otherwise required by law, to law enforcement officers and/or government agencies, if warranted, and as determined by ABOMS, Board, or the Committee in its sole discretion, or to parties essential to the review and investigation of the alleged unethical or unprofessional conduct, including their legal counsel. Public information shall not be considered confidential information for purposes of this Rule R2.6.

R2.7 Determination: When an investigation has been completed and the Committee has made its decision and recommendation to the Board, it shall inform both the complainant ("Complainant") and the OMS (Respondent) of its conclusions and the actions to be taken, if any, along with the bases for such actions. Such disclosures shall include a citation to any particular Canons section violated.

R2.8 Record Keeping: The Committee shall establish reasonable procedures to ensure that confidentiality is maintained with respect to the handling, storage, maintenance and destruction of records.

III. OMS CONVICTED OF, OR CHARGED WITH, FELONIES; OR, DISCIPLINED BY OTHER ENTITIES, ORGANIZATIONS OR AGENCIES

R3.1 Conviction/Charge: Subject to Rule R3.4 below, if the OMS has been convicted of, pled guilty to, and/or pled nolo contendere to a felony, and/or the Committee finds that a federal, state or other recognized appropriate enforcement agency ("Agency") has determined that the OMS is in violation of pertinent rules and regulations, the Committee shall review the record leading to the conviction, plea and/or Agency finding, and will thereafter send the OMS a notice requesting the OMS to show good cause why he/she is not in violation of the Canons. This action will be conducted without the right to a hearing before the Committee, as described in Rule R5.6. Following receipt of the OMS's response, the Committee may proceed with a recommendation to the Board for final determination in accordance with Rules R2.3 and R6.1. If the OMS has been charged with a felony and/or possible violation of a pertinent rule or regulation, such charge will neither require nor preclude further action by the Committee.

R3.2 Affiliations: If the OMS has been expelled or suspended for unethical or unprofessional conduct from a national, regional or state professional association, or had his/her license/registration or credential revoked or sanctioned in any way on ethical grounds by a federal or state licensing, registration, or certifying authority, the Committee shall review the records leading to the sanction(s), if available, and may, if appropriate, recommend that the Board send the OMS a notice that his/her credentialed Diplomat status will be suspended, denied or revoked without further proceedings, in accordance with the Bylaws.

R3.4 Hearing: If the OMS's Diplomat credentialed status is revoked or suspended, within thirty (30) days from the date of notice of such decision, the OMS shall be permitted to petition the Committee, in writing, to request a hearing before the Board. The hearing shall be conducted orally by telephone conference call. The hearing may be conducted in person if the Committee determines that exceptional circumstances exist warranting an in-person hearing. The hearing shall be scheduled promptly, insofar as feasible in the Committee's judgment. The OMS shall be responsible for all of his/her costs.

IV. DISCIPLINARY PROCEDURES: INITIAL CONSIDERATION

R4.1 Complaint: A complaint ("Complaint") against any OMS may be submitted by: (i) any party claiming to have been harmed by the unethical or unprofessional conduct of the OMS; (ii) any national, regional or state professional association of which the OMS is a member; (iii) any licensing or credentialing authority; (iv) ABOMS; or (v) the Committee. The Complaint must be in writing and must contain complete and accurate information as required by the Complaint form.

R4.2 Disclosure of Previous Actions: The Complainant shall inform the Committee of previous steps, if any, that have been taken with respect to the alleged unethical or unprofessional conduct and the results of such steps taken. If the Complainant has not pursued other available sources of redress, including but not limited to, civil action, criminal complaint, or adjudication by an appropriate licensing authority, the Committee may, at its discretion, require such actions to be taken prior to consideration of the Complaint.

R4.3 Committee Complaint: The Committee may proceed on its own initiative when an OMS appears to have violated the Canons by initiating an investigation and/or requesting information from the OMS and/or by submitting a formal Complaint.

R4.4 Anonymous or Oral Complaint: The Committee may not act solely on the basis of an anonymous or oral Complaint, unless the allegations raised by the Complaint can be verified by other public sources.

R4.5 Additional Information: The Committee may, through correspondence or otherwise, seek supplementary information from the Complainant or any other party, when necessary, in order to completely evaluate the substance of the allegations. In the event that the Committee determines that additional information is necessary, but the Complainant refuses to provide such information, the Committee may determine that the case should be closed.

V. DISCIPLINARY PROCEDURES: INITIAL ACTION

R5.1 Initial Determination: Within forty-five (45) days of receiving a Complaint from the Complainant, the Committee shall determine whether sufficient information exists to proceed with a formal Inquiry. The Committee shall not proceed until such time as the Committee is satisfied that the Complainant has complied with all procedural requirements. If the Committee concludes that an investigation is not warranted, it shall notify the Complainant of its determination within thirty (30) days thereafter.

R5.2 Formal Investigation: If the Committee determines that a formal Inquiry should proceed, it shall notify the Complainant and OMS of its determination within thirty (30) days. The notification sent by the Committee to the OMS shall include a description of the alleged behaviors involved in the Complaint, including the specific section of the Canons that the OMS is alleged to have violated. The notification shall include a copy of the Canons and these Rules. The notification shall further contain the name of the Complainant. The notification shall include a statement that the information submitted by the OMS shall become part of the record and may be used in further proceedings.

If the Complainant refuses to have his/her name known to the OMS, the case shall be closed.

R5.3 Response to Complaint: The OMS is required to provide to the Committee, and personally sign, his/her written response within fifteen (15) business days from the date of the notification sent by the Committee. The OMS's response must be complete, accurate and fully responsive to the Complaint. Failure to respond or any other unwarranted delay by the OMS, or the lack of the OMS's cooperation, shall in no way prevent the continuation or conclusion of the proceedings by the Committee as it deems fit.

R5.4 Additional Information: If, after receipt of the OMS's response, the Committee determines that additional information is warranted from either or both the Complainant or the OMS, or from any third party, it shall notify the Complainant and the OMS of the request for additional information. The parties shall provide the additional information no later than fifteen (15) days from the date of the request for additional information.

R5.5 No Further Action: Once all of the information has been received pursuant to Rules R5.3 and R5.4 above, the Committee may conclude that the Complaint has no basis in fact, is insufficient or is likely to be corrected on its own merit and, therefore, may determine to close the case without further action. Such decision shall be made within forty five (45) days of the Committee's receipt of all of the information. If the Committee determines to close the case, it shall make such recommendation to the Board. If approved, both the Complainant and the OMS shall be informed.

R5.6 Right to a Hearing: If the Committee, having received all information pursuant to Rules R5.3 and R5.4 above, determines that further action is warranted, it shall notify the Complainant and the OMS that the Committee is prepared to consider all of the information before it and render a decision on that basis.

The OMS may request that, prior to such analysis and decision, he/she be afforded the opportunity to have a hearing before the Committee so that he/she may present his/her interpretation of the facts before the Committee. If the OMS desires to have a hearing before the Committee, he/she must so notify the Committee, in writing, within fifteen (15) days of the Committee's notification to the OMS and Complainant as set out in this Rule R5.6. The OMS's failure to timely request a hearing shall be deemed a waiver by the OMS of the right to a hearing. All hearings shall be by telephone conference call unless, due to exceptional circumstances, the Committee determines in its sole discretion to conduct an in-person hearing.

R5.7 Peer Review: The hearing process shall be conducted through peer review. The OMS may be accompanied by any third party, including legal counsel. However, the OMS, personally, and not any other party including without limitation the OMS's legal counsel, shall make all presentations, responses and address all issues to the Committee.

R5.8 Committee Panel: The Committee may, in its discretion, establish a panel ("Panel"), including the use of the Professional Discipline Subcommittee as reference in Rule **R1.5.a**, consisting of at least three (3) Committee members, to act on its behalf at any hearing referred to in these Rules. The Panel shall conduct any such hearing in accordance with these Rules and shall report all findings during the hearing to the Committee for the Committee's consideration and determination.

R5.9 Hearing Date/Time: If the OMS requests a hearing pursuant to Rule R5.6, the Committee shall schedule a hearing date no later than sixty (60) days after receipt of the OMS's request. The Committee shall notify the OMS and Complainant of the date and time of the hearing. If the hearing is conducted by telephone conference call, the Committee, in its sole discretion, shall determine the date and time of the hearing. If the hearing is conducted in-person, the Committee, in its sole discretion, shall determine the location, date, and time of the hearing. The OMS and Complainant shall each pay all of his/her own costs, respectively.

VI. DISCIPLINARY PROCEDURES: DISPOSITION OF COMPLAINT

R6.1 Committee Action: If the Committee concludes that some type of action is warranted, it shall recommend to the Board any one (1) or more of the following sanctions or take any other appropriate action:

- a) require that the OMS cease and desist the alleged conduct;
- b) reprimand the OMS if the Committee determines there has been a Canons violation but no damage to another patient, the public or the profession has occurred;
- c) censor the OMS if the Committee determines there has been a Canons violation but the damage done is not sufficient to warrant more serious action;
- d) place the OMS under probation and monitor the OMS for a specific length of time;
- e) if appropriate, refer the matter to the national, regional and state professional association and/ or state licensing, registration, or certifying authority;
- f) suspend or revoke the OMS's credential;
- g) require the OMS to take remedial personal rehabilitative and/or educational actions; and/or take any other action as set forth in Rule R2.3 above, in accordance with the Bylaws.

R6.2 Notification: The Committee shall notify the Complainant and OMS of its determination and action to be taken within thirty (30) days of the date of its decision, in accordance with the Bylaws.

R6.3 Appeal: In accordance with the Bylaws, the OMS shall have fifteen (15) days from the date of the judgment notification to appeal the Committee's findings. The OMS must notify the Committee in writing within fifteen (15) days of the date of the Committee's notification if he/she intends to appeal.

The appeal must be mailed by certified mail, return receipt requested or by verifiable overnight express mail service, to ABOMS's headquarters. The OMS's notification must include all reasons and bases for the appeal. If the OMS does not appeal the Committee's decision within the fifteen (15) day time period, the Committee's conclusions and recommended sanctions shall be deemed final, effective immediately. The Committee shall so notify the Complainant and the OMS.

R6.4 Panel: In accordance with the Bylaws, the Board may elect to establish a panel consisting of three (3) of its members ("Panel"), who are not simultaneously serving on the Committee, to act on its behalf to afford the OMS a hearing, or to review, consider, or make a final determination about an appeal of a Committee decision.

R6.5 Board: If the OMS appeals a decision by the Committee regarding the recommended imposition of discipline and/or sanctions, he/she must do so by submitting a written appeal statement. In accordance with the Bylaws the Board or Panel shall consider the written appeal statement and all available evidence. The OMS shall pay for all of his/her own costs.

VII. BOARD'S DECISION

R7.1 Further Consideration: The Board or Appeal Panel may, after reviewing the decision of the Committee, determine that the matter requires further review by the Committee. In such case, the Board or Appeal Panel may remand the matter back to the Committee for further consideration.

R7.2 Board or Appeal Panel's Decision: The Board or Appeal Panel shall only overrule the Committee's recommendations in the event of the following:

- a) the Canons were incorrectly applied;
- b) the findings of facts by the Committee were clearly erroneous;
- c) it would be unjust or unfair to implement the Committee's decision;
- d) the procedures used by the Committee were in serious and substantial violation of the Canons and these Rules;
- e) the disciplinary sanctions determined by the Committee were grossly disproportionate to the facts; or,
- f) additional evidence was brought to the attention of the Board or Appeal Panel.

The Board and Appeal Panel are not bound by the Committee's determination regarding the sanction.

R7.3 Notification: Within sixty (60) days of receipt of the written appeal statement, the Board or Appeal Panel shall notify the Complainant and the OMS of its decision.. The Board's decision may not be appealed. Once the Board or Appeal Panel's decision has been made, it shall notify the Committee, which shall implement the Board or Appeal Panel's directives. The Board's decision shall be final.

R7.4 Publication of Sanction: ABOMS shall report, at least annually, the names of all sanctioned OMSs and the violations of the Canons involved. In addition, ABOMS shall notify all interested national, regional and state professional associations as well state licensing and certifying authorities; and, on request, any interested patient or public agency deemed necessary to know to protect the public and/or who recognizes the standards of ABOMS.

VIII. CLOSE OF CASE

R8.1 Close of Case: Once the final decision has been made by the Committee, Appeal Panel, or the Board, the matter shall be closed and the files shall be retained at ABOMS's headquarters.