



Code of Ethics

2010

Revised December 2006
Appendix A adopted June 2003
Appendix B adopted September 2006

Preamble

The following Statement of Principles and Code of Ethics articulate principles of conduct that are deemed appropriate and acceptable by the American Academy of Otolaryngology-Head and Neck Surgery Foundation, Inc. The statements and principles contained herein are not laws, but rather guidelines for honorable behavior. We believe that these ethical principles should be honored by all Fellows and Members intent on maintaining good standing in the Academy. The ethical principles should serve to bring clarity and definition to areas where confusion might occur in the course of contemporary Otolaryngology practice.

The Academy further endorses the current opinions of the Council on Ethical and Judicial Affairs (CEJA) of the American Medical Association. Adhering to these principles should provide guidance to Otolaryngologists in acting honorably and professionally toward their patients.

Principles

1. The best interest of the patient must be the foremost concern of the physician in all circumstances.
2. The patient must be treated with competence, respect, dignity and honesty. Confidences shall be kept except as required by law.
3. The physician must maintain proficiency and competence through continuing study and be diligent in the administration of patient care.
4. Fees must be commensurate with the service rendered.
5. The impaired physician must withdraw from that part of the practice that is affected by the impairment.
6. Academy members should assist fellow members in complying with these principles.

The Physician-Patient Relationship

Each patient must be treated with respect, dignity, compassion, and honesty. The patient's right to participate in the treatment process must be recognized and promulgated by the otolaryngologist. The otolaryngologist shall be free to choose whom to serve, however discrimination against a patient on the basis of race, color, gender, age, sexual orientation, socioeconomic status, religion or national origin is inappropriate. Confidentiality of patient information is to be maintained, within the constraints of the law and the obligation to protect the welfare of the individual and the community. The otolaryngologist must establish and maintain appropriate relational boundaries, avoiding exploitation of patient vulnerability and specifically avoiding sexual misconduct with patients.

The otolaryngologist must disclose actual or potential conflicts of interest to patients, including but not limited to, fee arrangements and professionally related commercial interests. If a conflict of interest cannot be resolved, the otolaryngologist should withdraw from the relationship in a timely, appropriate manner. After having accepted a patient for care, the otolaryngologist may not neglect that patient.

Colleague Interactions

Interactions with colleagues should be based on mutual respect and a desire to improve patient care. Otolaryngologists must recognize their own professional limitations and expertise. Consultation and referral must be sought when appropriate. Communication with colleagues must be truthful and forthright. Disparagement of any kind is to be discouraged.

Commercial Interests

This Code of Ethics does not seek to restrict legal trade practices. However, a physician's commercial or financial interests should never be placed ahead of the interests and welfare of patients. Conflicts of interest undermine the trust that patients place in their physician. For this reason, physicians should endeavor to avoid any venture that creates a conflict of interest between personal financial interests and the best interests of the patient. Conflicts that develop between a physician's financial interests and the physician's responsibilities to the patient should be resolved to the benefit of the patient.

Referral Practices

All decisions regarding patient referral should be based primarily upon consideration of the needs and best interests of the patient. A physician's referral practice should never lead to exploitation of patients or third party payors. Referral to a health facility in which a physician has a financial interest is not in and of itself unethical. However such referrals are best when the referring physician will be directly involved in providing care to the patient at the facility. In cases where it is not possible or feasible to provide direct care, disclosure of financial interests should be made.

Prescribing Practices

Financial interests that the physician might have in the company supplying the product should not influence a physician in the prescribing of drugs, devices, appliances, or treatments. Neither should a physician's referral or admission patterns be constructed so as to enhance the physician's financial interests in any health facility. Physicians should not accept gifts from industries that would influence their prescribing patterns or practices.

Patents

Physicians should be allowed to patent devices, but the use of these devices must be in accordance with the patient's best medical interests, without

regard to the physician's financial interests. Although it is currently lawful in the United States to patent medical and surgical procedures, such patents issued after October 1, 1996, may not be lawfully enforced against physicians or their affiliated health care institutions. This law is consistent with established principles of medical ethics. Medical and surgical procedures contribute to a universal body of medical knowledge. Unrestricted access to that knowledge is one of the defining characteristics of the medical and surgical profession. Enforcing patent restrictions on medical and surgical procedures limits access to medical knowledge, denies potential benefit to patients, and thus is unethical. Physicians should be allowed to charge a reasonable fee for instructional courses which describe and teach techniques and procedures to other physicians.

Advertising

It is not unethical for Otolaryngologists to advertise their services. Advertisement must be truthful and not misleading. An Otolaryngologist should not misrepresent his/her qualifications and/or training, and should not exaggerate the efficacy or uniqueness of treatments rendered. Advertisements should also conform to local legal and commercial requirements with regard to format and content.

Research

Otolaryngologists – Head & Neck Surgeons must conduct biomedical research according to ethical, moral, medical, and legal guidelines. All research should respect the dignity and sanctity of human life. The goal of research should be the betterment of mankind, the alleviation of suffering, and the ultimate improvement of medical practice. Research that knowingly and unnecessarily jeopardizes the health, safety, or longevity of human subjects is unethical.

Biomedical research projects should be approved by institutional animal research boards, or human subject boards when appropriate. When possible, animal studies should precede the use of new and experimental techniques in humans. All human research subjects should be fully informed of the benefits and risks of the research being conducted and should give their informed consent prior to participating as a subject in any prospective trial. Further, any subject should be allowed to withdraw from a research protocol at any time without penalty. Research protocols should not be designed in a manner such that the research subject would receive a treatment which knowingly provides less benefit than the currently accepted standard of care.

The patient's right to privacy must be observed. Communications to the public must not convey false, untrue, deceptive, or misleading information. In addition, these communications should not misrepresent a surgeon's credentials, training, experience, or ability. Otolaryngologists should seek to avoid conflicts of interest in research. When unavoidable, such conflicts should be publicized.

Credit should be given to all investigators who contribute in a material way to a project. Conversely, co-authorship should not be assigned to individuals

who do not participate in the project.

Character Issues

Patients and society at large place a high level of trust in physicians. Physicians are held to the highest moral standards in the community. This level of trust is based on an assumption that the physician maintains a high degree of personal integrity and adheres to a professional code of ethics. Physicians are expected to be truthful and honest. Otolaryngologists should conduct themselves morally and ethically so as to merit the confidence placed in them. Anything that detracts from the ability of an Otolaryngologist to conduct himself or herself in such a fashion should be avoided. Otolaryngologists have an obligation to their colleagues to assist them in avoiding or eliminating behavior which is not conducive to maintaining personal integrity.

Impairment

Physician impairment represents a potential hazard to patients and to the affected physician. Otolaryngologists should make every effort to recognize the signs of physician impairment in themselves and in their colleagues. The Otolaryngologist who suspects impairment in a colleague has an ethical obligation to the impaired physician and his/her patients. Self-referral for appropriate treatment should be advised and encouraged. The physician should withdraw from any component of practice that adequate assessment deems impaired. Appropriate management, including counseling, should follow. Should a physician refuse to self-refer when presented with evidence of impairment, Otolaryngologists have an obligation to report to their the suspected physician to their supervisor or medical licensing authorities, particularly if the impairment is a threat to safe patient care. Confidentiality should be maintained for physicians undergoing evaluation and treatment for impairment. Physicians who have completed rehabilitation for impairment should not be restricted from practice provided that proper post-rehabilitation monitoring shows no evidence of relapse.

Illegal Activity

Otolaryngologists should realize that they are subject to all civil and criminal statutes applicable to the region in which they practice. They are further subject to federal regulations governing medical practice. Illegal activity by an otolaryngologist compromises his or her own personal integrity, and casts aspersions on the medical profession at large. Otolaryngologists who knowingly participate in illegal or fraudulent behavior should be reported to the appropriate local authorities.

Fees

Fees must be commensurate with the service(s) rendered. It is unethical for a physician to charge an illegal or excessive fee. Illegal fee arrangements include charges for services not rendered, fee-splitting in exchange for referrals, and repeated upcoding (i.e., submitting claims with higher codes

than is appropriate for the services rendered). Fee collection efforts should take into account the ability of the patient to pay.

Physicians should not withhold vital and emergent treatment to a patient because of their inability to pay. Physicians should not abandon a patient in a post-operative period because of that patient's inability to pay.

Community Relations

Physicians have been bestowed by society with trust and respect that no other profession can claim. Physicians in turn have a responsibility to their communities that goes beyond that of other commercial enterprises. Physicians must preserve their role as health advocates within the community. This may involve participation in health education programs. It also may involve the physician adopting a protective role when the health and safety of a community is threatened. Academy members should refuse to cooperate in policies that violate the patients' interests and should become advocates for the sick whenever economics, organizations, or regulations threaten the good and welfare of our patients. Physicians may be called upon to act in other roles as civic leaders within the community. Each physician must respond within the scope of his or her abilities. Activities that promote the health and well being of the community in a cost-effective way should be supported.

Otolaryngologists should not abandon the underprivileged segments of our society and should be encouraged to devote some time in caring for patients who are unable to pay.

Otolaryngologists should work hard to preserve their good reputation within the community, and should avoid activities that undermine the trust and high regard society places in them.

Disciplinary Actions

Otolaryngologists have an ethical duty to report colleagues to state licensing authorities when documentary evidence exists of illegal activity. The Academy's Board of Directors shall have the power to censure, suspend or expel any member who violates the Academy's Code of Ethics, as amended from time to time, including violations of the ethical guidelines of expert witness qualifications and testimony as stated in this code. The Board shall follow the procedures set forth in Section 2.23 of the Academy Bylaws and other procedures that it establishes before taking any disciplinary action based on violation of the Code of Ethics.

Expert Witness Qualifications and Testimony

The Academy believes it is important for Otolaryngologists to serve as expert witnesses in legal proceedings to assist in the administration of justice. The Otolaryngologist, as a medical expert witness, shall be appropriately qualified and shall be thoroughly prepared with relevant facts so that he or she can, to the best of his or her ability, provide the court with opinions that are

accurate and capable of substantiation with respect to the matters at hand. Physicians serving as expert witnesses must provide informed, objective, and truthful testimony without adopting a position of advocacy, and serve as spokesman for the field of special knowledge the medical expert witness represents. It is unethical for physicians to accept compensation for expert witness testimony that is linked to the outcome of the case. Academy members must follow the "Statement on Qualifications and Guidelines for the Physician Expert Witnesses," attached to this Code of Ethics as Appendix A and incorporated herein by reference.

Appendix A: Statement on Qualifications and Guidelines for the Physician Expert Witness

I. Qualifications for the Physician Expert Witness:

- A. The physician expert witness must have a current, valid and unrestricted license to practice medicine in the state in which he or she practices.
- B. The physician expert witness should be fully trained in a specialty or a diplomat of a specialty board recognized by the American Board of Medical Specialties and qualified by experience and demonstrated competence in the subject of the case. The specialty of that physician should be appropriate to the subject matter in the case.
- C. The physician expert witness should be familiar with the clinical practice of the specialty and the subject matter of the case, and should be actively involved in the clinical practice of the specialty and the subject matter of the case, for three (3) of the previous five years at the time of the testimony.

II. Guidelines for Behavior of the Physician Expert Witness:

- A. Physicians have an obligation to testify in court as expert witnesses when appropriate to assist in the administration of justice and/or necessary to protect a patient's legal rights.
- B. Physician expert witnesses should not adopt a position as an advocate or partisan in the legal proceedings.
- C. The physician expert witness should review *all* the *appropriate* medical information in the case and testify to its content fairly, truthfully, and objectively.
- D. Within a reasonable time prior to testifying, physician expert witnesses should review and be thoroughly familiar with the relevant standards of practice and medical literature prevailing at the time of the occurrence, and limit their testimony to their areas of expertise, both in terms of the specialty and the subject matter of the case.
- E. The physician expert witness should state the basis of the testimony presented and whether it is based on personal experience, specific clinical references, or is a generally accepted opinion in the specialty field.
- F. Compensation of the physician expert witness should be reasonable

and commensurate with the time and effort given to preparing for deposition and court appearance. It is unethical for a physician expert witness to link compensation to the outcome of the case.

- G. The physician expert witness should be aware that transcripts of their deposition and courtroom testimony are public records, subject to independent peer review.



**APPENDIX B
PROCEDURAL GUIDELINES FOR AAO-HNS DISCIPLINARY PROCEEDINGS**

(As approved by the Board of Directors September 2006)

**AAO-HNS Ethics Committee
G. Richard Holt, MD, MPH, Chairman**

1. Initiation of Complaint

Only Fellows or Active Members of the Academy may file a complaint with the Executive Vice President charging another member with failing to maintain good professional standing. Failure to maintain good professional standing may be evidenced by, but not limited to, a violation of the Academy's Bylaws or Code of Ethics, as amended from time to time. Such charges may be made against any class of member. All charges shall be in writing and shall specify the basis for the complaint, including, where applicable, the provision of the Academy Bylaws or Ethics Code that has allegedly been violated or other conduct justifying disciplinary action.

2. Procedure for Processing Complaint

- a. All complaints shall be received by the Executive Vice President as designee of the Executive & Finance ("E&F") Committee. The Executive Vice President shall forward a copy of each complaint to the E&F Committee and shall otherwise process the complaint in accordance with these procedures. The complaint shall also be referred to Academy legal counsel, who will review them for compliance with these guidelines and any other applicable bylaws or guidelines of the Academy. Any complaint not in compliance with the bylaws or guidelines, that could not be the basis for disciplinary action by the Academy if proven, or that involves testimony in pending litigation, will be rejected and returned to the Complainant.
- b. With respect to any remaining portion of the complaint, the Executive Vice President will contact the Complainant to determine whether there are any further documents or exhibits that he/she would like to submit in support of the complaint. A copy of the Academy Bylaws and these Guidelines will be sent to the Complainant. Testimony of prospective witnesses should be summarized and submitted in written form, or transcripts of their testimony produced, if germane to the complaint. It is the Complainant's responsibility to collect and present all evidence which he/she wishes the Academy to consider in support of the complaint. Complainant will also be advised that the Academy's disciplinary proceedings are confidential until the final disposition of the complaint is rendered, at which the decision will be published in the manner set forth in Section 5.c. of these Guidelines.
- c. The Respondent will be notified that a complaint has been lodged against him or her and the basis for the complaint, as well as the confidential nature of the proceedings. The Respondent will be

furnished a full set of the documents and other materials submitted by the Complainant, including the complaint and any supporting evidence. The Respondent will then have thirty (30) days to prepare and submit whatever written responses, documents, and/or exhibits he/she believes are appropriate. A full set of copies should also be submitted to the Complainant.

- d. The Respondent shall be furnished with a copy of these Guidelines informing the physician of his/her rights throughout this process.
- e. The Executive Vice President will promptly notify the Academy President and the Chair of the Ethics Committee that a complaint has been filed and forward them a copy of the complaint and all documents submitted by the Complainant and Respondent.

3. Preliminary Evaluation

- a. The Executive Vice President, the President, and the Chair of the Ethics Committee, serving as the Evaluation Panel, will review the written submissions made by both sides and make a preliminary finding as to whether or not a prima facie case has been asserted—i.e., whether the allegations, if proven to be true, would constitute a violation of the Academy’s Bylaws or Code of Ethics, or other conduct justifying disciplinary action. The parties will then be notified in writing of the Evaluation Panel’s preliminary determination.
- b. If the Evaluation Panel decides that a prima facie case has not been established and that further review is not justified, the case will be dismissed.
- c. If the Evaluation Panel decides, after reviewing the documents submitted by both sides, that a prima facie case has been established, the Panel will also propose whether Respondent should be censured, suspended for a definite time, or expelled.
- d. The Academy shall provide Respondent with prompt notice of the Evaluation Panel’s proposed decision and the reasons for that decision. The notice shall also state that the Respondent has the right to request a hearing within thirty (30) days of receipt of the notice and shall provide a summary of the Respondent’s rights in the hearing.
- e. If Respondent fails to request a hearing in a timely manner, he/she shall be deemed to have waived the right to be present, and the hearing shall proceed without the Respondent pursuant to the procedures set forth in Section 4 below, modified accordingly to reflect Respondent’s absence.

4. Procedures for Conducting Hearing

- a. If the Respondent submits a timely request for hearing, the Academy will promptly send the Respondent another notice stating the place, date, and time of the hearing, which date shall not be less than thirty (30) days and not more than six (6) months after the date of the notice. All materials will be forwarded to an Investigating Panel of Academy Fellows selected by the President and the Executive Vice President, which will conduct a hearing in accordance with the procedures set forth in this Section 4, with all the parties bearing their own expenses. The size and composition of the panel will be determined solely by the President and the Executive Vice

President. Panel members shall not be economic competitors of the Complainant or Respondent.

- b. The Respondent shall be given a list of witnesses (if any) expected to testify at the hearing on behalf of the Complainant or at the request of the Investigating Panel.
- c. A court reporter will transcribe the proceedings.
- d. The Respondent has the right to the following:
 - i. to representation by an attorney or other person of the physician's choice;
 - ii. to obtain a copy of the transcript of the proceedings upon payment of any reasonable charges associated with the preparation thereof;
 - iii. to call, examine, and cross-examine witnesses;
 - iv. to present evidence determined to be relevant by the chair of the Investigating Panel, regardless of its admissibility in a court of law;
 - v. to submit a written statement at the close of the hearing;
 - vi. upon completion of the hearing, to receive the written recommendation of the Investigating Panel, including a statement of the basis for the recommendations.
- e. If any party declines or fails to appear at a duly scheduled hearing, the Investigating Panel may still proceed, and shall consider the previously submitted material furnished by the absent party. The Chair of the Investigating Panel may reschedule the hearing date if good cause is shown.
- f. All parties are advised that no new matters, evidence or witnesses may be introduced in the hearing by either the Complainant or Respondent if they have not been previously disclosed in the documents supporting and denying the charges. The hearing will be conducted by the chair of the Investigating Panel with assistance from the Academy's legal counsel. The strict rules of evidence will not be followed. The chair shall have the authority to impose reasonable limitations on the time available for both direct testimony and cross examination. The hearing shall be closed to all except members of the Investigating Panel, complainant, respondent, witnesses, legal counsel, and the court reporter.
- g. At the conclusion of the hearing, the Investigating Panel shall convene in private (with the presence of Academy legal counsel) and shall determine by majority vote of the members who attended the hearing, which of the following recommendations, shall be adopted:
 - i. The charges are not sustained and no further action shall be taken; or
 - ii. The charges are sustained and one or more of the following occur:
 - iii. The Respondent be censured; or
 - iv. Suspended for a definite time; or
 - v. Expelled.
- h. The Investigating Panel need not reach a final recommendation immediately, but may wait until it has had the opportunity to review the transcript of the proceedings. Committee members may not discuss the merits of the case with any party prior to the formal hearing, and may only consider evidence or testimony introduced in conjunction with the hearing, although they may rely upon their own expertise and experience as physicians in evaluating the testimony of

witnesses or issues raised.

- i. The Investigating Panel's recommendations shall be reduced to writing and forwarded to the Board of Directors, the Complainant, and the Respondent within 30 days of the conclusion of the hearing. Complainant and Respondent agree not to distribute the writing to any third party.

5. Final Decision

- a. The Respondent will be advised in writing of the date of the Board of Directors meeting, at which time the recommendations of the Investigating Panel will be presented, and the Respondent shall have an opportunity to make any statement he or she desires before the Board makes a final decision. Such notice shall be provided at least 30 days prior to the date of the meeting. The President may also make a statement and explain and define findings to the Board of Directors, No new evidence or witnesses may be presented to or considered by the Board. The Board may set reasonable limitations on the length of the oral presentations.
- b. At the conclusion of the hearing, the Board shall adopt, modify, or reject the recommendation of the Investigating Panel. Censure or suspension shall require an affirmative vote of at least two-thirds (2/3) of the voting Directors present. Expulsion shall require an affirmative vote of at least three-fourths (3/4) of the voting Directors present. The Board's decision must be based on a reasonable belief that the action is warranted by the facts presented in the documents and the Investigating Panel hearing. Within thirty (30) days of the Board meeting, the Academy will provide the Complainant and Respondent with written notice of the Board's decision, including a statement of the reasons for such decision.

Where appropriate, the Academy shall report its decision to the National Practitioner Data Bank and the relevant state medical licensing bodies. The decision may also be reported to the American Board of Otolaryngology and/or state or local otolaryngology societies if the circumstances so warrant. The Academy may also publish a notice of its decision in the Academy Bulletin, on the Academy website, and through other means.



**PROCEDURES FOR HANDLING CONCERNS OR COMPLAINTS REGARDING
GENDER EQUITY GUIDELINES**

(As approved by the Board of Directors September 2006)

**AAO-HNS Ethics Committee
G. Richard Holt, MD, MPH, Chairman**

The American Academy of Otolaryngology-Head and Neck Surgery (AAO-HNS) Code of Ethics endorses the current opinions of the Council on Ethical and Judicial Affairs of the American Medical Association. Opinion E-9.035 sets forth the AMA's position against gender discrimination in the medical profession. AAO-HNS Ethics Committee will receive and review complaints about such discrimination in accordance with the procedures, as elaborated in this document.

1. AAO-HNS will primarily respond to concerns or complaints regarding gender equity by providing information to the complainant member regarding resources and conflict resolution strategies for consideration by the complainant member.
2. Complainants who seek information on resolution of gender equity issues from the AAO-HNS shall not hold the AAO-HNS liable based on the information provided, and will be required to waive their right to bring litigation action against the association.
3. Complaints and concerns brought forward by a member will initially be addressed by the Chair of the Ethics Committee, who will explain the limited role of the Academy in responding to such complaints or concerns. The Chair of the Ethics Committee will further explain that the Academy cannot provide the remedies that a court or governmental agency may be able to provide, and that if the Complainant wishes to pursue legal remedies, such as filing charges with governmental agencies and/or filing a lawsuit, a complaint with the Academy does not toll the limitations periods for so doing. If the complainant member wishes to proceed with filing a gender equity-related complaint with the Academy, he or she must first sign of the waiver referenced in paragraph 2 above. As with all ethics proceedings, gender equity inquiries or complaints will be treated as confidential unless and until there is a final disposition by the Academy Board of Directors.
4. The Chair of the Ethics Committee will then direct AAO-HNS staff to provide the complainant member with written information on options, resources, and best practice standards and strategies for conflict resolution of gender equity issues as prepared and/or compiled by the Academy for this purpose.
5. Should the complainant member request informal discussion with the Ethics Committee after reviewing the materials provided, the Chair of the Ethics Committee shall refer the complainant

member to the “Gender Equity Resource Subcommittee” of the Ethics Committee for further discussion and review of possible avenues of conflict resolution. This subcommittee shall be composed of four (4) members, two of each gender. The purpose of this subcommittee’s activities is to provide information to the complainant member with regard to conflict resolution strategies. The subcommittee will offer no “advice,” but rather will review the resources available with the complainant member for his or her consideration.

6. Should the member allege violations of other sections of the AAO-HNS Code of Ethics, then the formal process for evaluation and investigation, as provided for in Procedure B, shall be invoked.