

September 2014

**AMERICAN BOARD OF  
CRANIOFACIAL DENTAL SLEEP MEDICINE  
Code of Ethics and Rules for Professional Conduct**

The American Board of Craniofacial Dental Sleep Medicine (ABCDSM) is a credentialing board.

**DEFINITION: Craniofacial Dental Sleep Medicine**

Craniofacial Dental Sleep Medicine is the area of dentistry that focuses on the management of sleep-disordered breathing (SDB) associated with the craniofacial complex including, but not limited to, snoring, Upper Airway Resistance Syndrome (UARS) and Obstructive Sleep Apnea (OSA). SDB can be isolated or it can coexist with other respiratory, nervous, cardiovascular and endocrine issues. A multifactorial understanding of the nature of sleep is, therefore, essential to achieving optimal outcomes from Craniofacial Dental Sleep Medicine protocols that may range from extremely conservative measures of weight loss and sleep position change to variations of Oral Appliance Therapy (OAT) or combination therapy [i.e., blending OAT with Continuous Positive Airway Pressure (CPAP) or blending OAT with surgery]. SDB diagnosis must be determined by a board-certified sleep physician. Management of SDB patients who are candidates for dental management with OAT (and its variations), which involves the selection, fabrication, fitting, and calibration of oral devices worn during sleep that reposition the mandible and/or tongue to maintain airway patency, should be performed by qualified dentists who have knowledge and experience in overall oral health, the craniofacial complex, the temporomandibular joint and associated oral structures, and dental occlusion.

**PREFACE**

The purpose of this Code of Ethics is to establish parameters of ethical practice for the management of sleep disorders by practitioners in a rapidly changing world based upon cooperation and sharing rather than on competition, and this Code is to be considered an affirmation of the human spirit of synergy. Self-doubt and mutual distrust have no place in this Code.

This Code of Ethics is based on the certainty that all professionalism and all humanity should be connected, and that a better professional climate and interaction among practitioners will be achieved when this is realized.

Diplomates of the ABCDSM agree to abide by the ABCDSM Code of Ethics as a condition of receipt and maintenance of Diplomate status.

## **ETHICS COMMITTEE**

The Ethics Committee shall be comprised of a minimum of three and not more than six members. A chairman will be appointed by the President of the Board, and members will be mutually selected by the President and Chairman of the Ethics Committee. There shall be no limitation as to term of office, since the Chairman of the Ethics Committee shall serve at the pleasure of each presiding Board President. Each member of the Ethics Committee shall be a Diplomate of the Board. There are no further requirements unless a presiding President chooses to make additional restrictions for his/her term of office. The Chairman shall supply a full report to the Board at least once per calendar year.

## **CODE OF ETHICS (CODE OF PROFESSIONAL CONDUCT) OF THE AMERICAN BOARD OF CRANIOFACIAL DENTAL SLEEP MEDICINE**

### **SECTION I – PREAMBLE**

The Code of Professional Conduct of the Board is a guide for Diplomates as they seek to achieve the highest level of professional and ethical conduct in their relations with their patients, their peers, other areas of dental practice, and the public. It is expected that all Diplomates will observe all areas of professional conduct outlined.

### **SECTION II - BASICS**

Diplomates should observe the basic codes of conduct of their respective areas of licensure to practice (i.e., State Dental Practice Acts). They should observe the laws of their respective states and countries and by their conduct and example should uphold the integrity of their profession. They should safeguard their patients above all else, causing no harm to their patients. Additionally they should safeguard their profession and the public by ensuring that care is rendered only by persons of professional competence, high integrity, and good moral character. Diplomates have a moral and professional obligation to maintain a viable relationship with all areas and segments of the health care community.

#### **A. Peer Review**

All Diplomates should cooperate and be involved in the principle of peer review when such review is requested or conducted by one's professional peers.

#### **B. Rights to Practice**

Diplomates will neither interfere nor infringe on another's rights to practice to the full extent of his/her license, competence, training and abilities.

#### **C. Auxiliary Personnel**

Each Diplomate has an obligation to protect the health of his/her patient by not delegating to a person less qualified any service or operation which requires the professional competence of the Diplomate. A Diplomate has the obligation of training auxiliaries personally or through formal training programs.

## **SECTION II – BASICS (continued)**

### **D. Violations**

Any violation or disregard of the ABCDSM Bylaws may be deemed unethical.

## **SECTION III – EXPERT WITNESS**

Diplomates may serve as expert witnesses but should not be advocates or partisan. A Diplomat who acts as an expert witness must have demonstrated competence by experience in the specific areas related to dental management of sleep disorders – including but not limited to overall care of oral health, the temporomandibular joint, dental occlusion and associated oral structures – that are involved in the legal proceedings. The guidelines from the Board for expert witness qualifications and testimonies are herein included.

The Board is dedicated to objectivity when its Diplomates respond to requests to serve as expert witnesses in the judicial system. Expert testimony should embody the relevant facts and expert's knowledge, experience and best judgment regarding the facts in question. However, the Board does not condone participation of its Diplomates in court actions in which their testimony will impugn some performances, which clearly fall within the accepted standards of practice. Conversely, the Board will not endorse some obviously deficient practices. Courts and juries rely upon expert witnesses to understand the standards of practice as they apply to a given case. Care must be exercised, however, so that such expert testimony does not exclude other acceptable choices of case management. The Board considers it unethical for any expert witness to provide testimony, which does not adhere to the goal of objectivity.

Expert witnesses in any cases of legal testimony or proceedings are considered unethical if they offer a medical opinion, which is at variance from the reasonable range of accepted standards of practice. Testimony must not exhibit a deficiency in medical knowledge or show a disregard for honesty and integrity, (i.e., a disregard for the standards of diagnosis and management adopted by the American Academy of Craniofacial Pain as presented in their publication titled, *Craniofacial Pain: A Handbook for Assessment, Diagnosis and Management* as well as those specified in the American Academy of Sleep Medicine practice parameters.

### **A. Expert Witness Qualifications**

The following principles have been adopted as guidelines for Diplomates who assume the role of expert witness:

1. The practitioner expert witness, where required, must have a current, valid, and unrestricted state license.
2. The practitioner should be able to demonstrate scholarly activity with evidence of continuing education in the field of Craniofacial Dental Sleep Medicine.
3. The expert witness should be familiar with the clinical practice relevant to this field and the subject matter of the case at the time of the alleged occurrence giving rise to the claim.

### **SECTION III – EXPERT WITNESS**

#### **A. Expert Witness Qualifications (*continued*)**

4. The expert witness should also be actively involved in clinical practice in this field for three of the previous five years at the time of the testimony.

#### **B. Guidelines for Expert Testimony**

1. The practitioner's view of the facts in question should be thorough and impartial and should not exclude any relevant information to create a view favoring either the plaintiff or the defendant. The ultimate test for accuracy and impartiality is a willingness to prepare testimony that could be presented unchanged for use by either the plaintiff or the defendant.
2. The practitioner's testimony should reflect an evaluation of performance in light of generally accepted standards and not condoning performance, which clearly falls outside accepted practice.
3. The practitioner should make a clear distinction between malpractice and mal-occurrence when analyzing any case.
4. The practitioner should make every effort to assess the relationship of the alleged substandard practice to the outcome of patient care. Deviation from a practice standard is not always causally related to a poor outcome.
5. Fees for expert testimony must not be contingent upon outcome of the claim.
6. The practitioner should be willing to submit any testimony for peer review.
7. The expert should be aware that transcripts of depositions and courtroom testimony are public records subject to independent peer review. The practitioner witness must not become a partisan or advocate in the legal proceeding.

### **SECTION IV – SERVICE**

Service to patients may not be denied because of national origin, race, age, religion, gender, sexual preference, or appearance.

A Diplomate should not provide unwarranted or substandard treatment to any patient.

#### **A. Termination of Services**

The practitioner is responsible to perform treatment with due care and to provide complete and adequate instructions to patients pertaining to procedures deemed necessary. Once treatment is commenced the Diplomate may discontinue such service only upon completion of care and should not withdraw from a case as long as a patient still requires services unless adequate notice is provided to the patient to seek the services of another practitioner or upon documented discharge of the patient. Adequate notice is understood to be long enough to permit the patient, with reasonable diligence, to obtain the services of another practitioner to provide necessary care. In cases of practitioner illness or inability to practice, a withdrawal from the case is justified only with adequate and documented notice to the patient by auxiliaries or delegated persons.

## **SECTION IV – SERVICE** *(continued)*

### **B. Emergencies**

A Diplomate should accept reasonable requests for service in an emergency.

### **C. Responsibility and Patient Consent**

The responsibility of a Diplomate shall include pre-operative diagnosis and treatment planning, the selection and performance of the treatment proposed, and post-operative treatment plans. It is also deemed unethical to mislead a patient as to the identity of the doctor or persons who will perform these treatment procedures. A Diplomate may delegate part of patient care to associates or assistants or to other practitioners as the case may be under his/her direction, but must not delegate or evade responsibility or keep hidden from the patient the identity and qualifications of those rendering treatment under his/her direction. It is proper for the Diplomate to permit an assistant or associate to perform a given treatment procedure provided the practitioner is an active participant throughout the essential part of the treatment program and the assistant is properly trained and the Diplomate abides by the State Dental Practice laws in which the practitioner practices.

### **D. Billing Responsibilities**

A Diplomate who submits any billing for services, whether to an individual, insurance company, or government entity which is fraudulent, deceitful, misleading, or for services not performed is engaged in unethical conduct.

### **E. Refusal to Treat**

Refusal to treat a patient solely because that patient has or may have a chronic infectious disease is regarded as unethical.

### **F. Postexposure, Bloodpathogens**

Diplomates or staff members regardless of their blood pathogen status, have an ethical responsibility to inform the patient of an exposure to infectious materials and refer the patient to a qualified health practitioner for evaluation.

## **SECTION V – CONTINUING EDUCATION**

A Diplomate should continually improve his/her knowledge and abilities through quality continuing education in the field of Craniofacial Dental Sleep Medicine.

## **SECTION VI – PROFESSIONAL JUDGMENT AND QUALITY OF CARE**

A Diplomate should treat patients as the Diplomate would wish to be treated in like circumstances, and should not disclose professional confidences unless compelled to do so by law. Independent professional judgment should not be compromised in any situation.

## **SECTION VI – PROFESSIONAL JUDGMENT AND QUALITY OF CARE** *(continued)*

- A. A Diplomate must provide the patient with a verbal and/or written explanation of findings and diagnoses as well as a treatment plan, which includes accepted procedures. In addition, appropriate home care instructions should be provided.
- B. Confidentiality - Computer Information:** The utmost care, effort, and diligence must be taken to protect the confidentiality of all patient records, including computerized patient medical records.
1. Confidential patient information should be entered into a computer-based patient record only by authorized personnel of the clinical or data collection facility.
  2. Additions to the records should be date-noted, and the person making the updates or additions should be identified on the record.
  3. The dissemination of confidential patient data should be limited to those individuals or agencies with a bona fide use for the data after a proper patient release has been obtained. Release of confidential patient information from the database should be confined to the specific purpose for which the information is requested, and limited to the specific time frame requested. Access to the computerized database should be controlled through security measures such as passwords, encoding of information, and scanable badges or other user identification.
  4. Stringent security procedures should be in place to prevent unauthorized access to computerized patient records. Terminated or former employees in the data processing environment should have no access to data or the medical records concerning patients.
- C. Diplomates will be in violation of the Code of Ethics if there is a conflict of interest that is not disclosed. A conflict of interest occurs when an individual or organization is involved in multiple interests, one of which could possibly corrupt the motivation for an act in the other.

## **SECTION VII – CONSULTATION**

Consultation should be sought whenever the quality of care may be enhanced by consultation with another health practitioner whose qualifications and training may lend special expertise to the quality and care of a patient. Failure to appropriately consult shall be deemed unethical.

### **A. Confidentiality**

A Diplomate serving as a consultant should hold the details of the consultation in strictest confidence between himself/herself and the attending practitioner.

### **B. Emergency**

A Diplomate consulted in an emergency by a patient or by another practitioner should treat the emergency condition and refer the patient back to his/her doctor of record. The Diplomate should inform the doctor of record of the condition

## **SECTION VII – CONSULTATION**

### **B. Emergency (*continued*)**

found and the treatment provided and should consult with the original treating practitioner.

### **C. Second Opinion**

1. First opinion is defined as an initial evaluation of a patient with a specific problem involving craniofacial pain disorders where treatment has not yet been performed or scheduled. Diplomates should not discourage a second opinion if one is requested by a patient and should actively participate in the transfer of any records that would render a second opinion more meaningful.
2. A second opinion is defined as an evaluation of a patient with a specific craniofacial disorder where that Diplomate has knowledge that a peer has previously evaluated the patient for the problem. Diplomates should provide second opinions under these guidelines:
  - Second opinions should be rendered by Diplomates from a practice independent of the initial evaluator whenever possible.
  - When outside agencies such as insurance companies request second opinions regarding patient care and this is the only reason a patient is seeking a second opinion, the Diplomate rendering the second opinion, if requested, and if this practice is lawful in that state, may provide the initial treating practitioner with a copy of the second opinion. In addition, the relevant report must be returned to the requesting agency in a timely manner. Only after the patient has signed the necessary documents for the right to release information shall any information be released.
  - Patients have the ultimate right to choose a doctor for their primary care. If a patient requests that a Diplomate obtain information from a previously seen doctor regarding opinion or treatment, the Diplomate should comply. If a Diplomate feels that knowing a previous opinion or details of previous treatment would be beneficial to his/her opinion or treatment, he/she should obtain consent from the patient to obtain this information.

## **SECTION VIII – COMMUNITY RELATIONS**

A Diplomate should conduct himself/herself with dignity and honor that will reflect well on the Board; maintain integrity, dignity and high moral character in all relations with the public and the community at large; and should cause no actions which would reflect unfavorably on the Board and the Diplomates thereof.

## **SECTION IX – ADVERTISING**

Advertising that is false, fraudulent, misleading, or deceptive in stating the qualifications of the Diplomate is regarded as unethical. Any advertising, which is false, fraudulent, or misleading, should be reported to the appropriate governing agency or other health care

## **SECTION IX – ADVERTISING (continued)**

examiners for appropriate action, and it is the obligation of each Diplomate to do so. This information shall also be reported to the Ethics Committee. The Diplomate should not solicit patients in a false, fraudulent, deceptive, or misleading manner. In his/her announcements of availability, he/she should be most circumspect and act only in a professionally accepted manner.

### **A. Fraudulent Solicitation**

The term "fraudulent solicitation" means the attempt to obtain patients by misrepresentation of fact. This may include misleading or deceiving context which makes only a partial disclosure of relevant facts; utilization of patients' laudatory or endorsement statements intending to create false or unjustified expectations of favorable results; or implication of unusual circumstances or results; misrepresentation of fees which do not disclose variables and other relevant factors; or statements intending to imply or to guarantee unusual or atypical results.

### **B. Advertising**

Diplomates who advertise their services and or fees in a manner that is consistent with the decision of the United States Supreme Court in the case of *Bates, et al., v State Bar of Arizona*, shall be deemed as having acceptable advertising. A capsulized version of the Bates decision follows.

Methods under Bates:

1. Advertising in telephone directories, dental directories, newspapers, periodicals, radio, and television is acceptable.
2. A copy of each ad and its placement must be retained for two years following its final publication and dissemination, and a log of each publication must be kept.
3. All advertising must contain the name of the dentist or licensed practitioner.
4. Consent of any patient used in advertising must be obtained if patient's name is used.
5. News stories: No payment may be made to news media representatives for obtaining publicity in a news item.

### **C. Use of Unearned or Non-Health Degrees or Fellowship Designation**

The use of an unearned or non-health degree designation in any general announcements to the public by a Diplomate may be false or misleading. The title "Dr.," "dentist," "DDS" or "DMD," "BDS," "MD," "DO," "DC," "PhD," or any additional earned advanced degree in health service or in dental areas may be used. The use of unearned or non-health degree, fellowship or diplomate designations could be misleading because they may indicate to the public superior status or suggest that the practitioner is claiming superior skills. For purposes of this Code, an unearned academic degree is one, which is awarded by an



## **SECTION IX – ADVERTISING**

**C. Use of Unearned or Non-Health Degrees or Fellowship Designation (*continued*)**  
unaccredited educational institution or is an honorary degree. Use of unearned academic degrees is a violation of the Code of Ethics.

**D. Multiple Degrees**

In all matters pertaining to one's function and identification as a Diplomate, all health or academic degrees can be listed on professional stationery, letterhead, business cards, advertising, publications, and interior/exterior signs.

**E. Medical and Dental Specialties**

Diplomates who practice medical and dental specialties must also follow the principles of ethics of their respective medical and dental specialties.

**F. Scientific Sessions**

Diplomates who present at scientific sessions, lectures, national meetings, or any seminars must disclose any and all involvement with commercial ventures that are related to the presentation or advocated as part of the presentation in any part of the lecture or seminar. Participation in American Academy of Craniofacial Pain or American Board Craniofacial Dental Sleep Medicine sponsored programs, or other activities sponsored by or endorsed by the American Board of Craniofacial Dental Sleep Medicine, may not be used in advertisements for commercial purposes or other continuing education courses. Participation as an attendee at various academies' meetings in craniofacial pain, orofacial pain and craniofacial dental sleep medicine cannot be used to imply or to advertise certification or endorsement by the ABCDSM or possession of superior skills or expertise endorsed by the ABCDSM Board. However, the fact of participation may be made known to patients or the public at large.

## **SECTION X – FINANCIAL RESPONSIBILITIES**

**A.** In financial relations with patients, the Diplomate shall neither receive nor accept any fee except in return for those professional services actually provided to the patient.

**B.** A Diplomate shall not engage in fee splitting, rebates, or finder's fees for the referral of patients into his/her practice from any source whatsoever. If the Diplomate has a vested financial interest in another corporate, solo, or specialty practice, or commercial venture for which some form of payment, interest, or dividend will be received for a referral, and if the Diplomate refers a patient into that practice or venture, he/she must inform the patient of his/her financial interest in this arrangement.

**C.** It is unethical for a Diplomate to charge a fee to a third party with the intention of not charging the applicable co-payment or deductible to the patient.

## **SECTION X – FINANCIAL RESPONSIBILITIES** *(continued)*

- D.** It is unethical for a Diplomate to increase a fee to a patient solely because the patient has insurance.
- E.** Diplomates who accept fees higher than their usual fees for certain patients shall not be cited for overbilling in cases involving government funded programs, component or constituent dental society sponsored access programs, managed care programs, or as part of participating agreements entered into under programs established by third parties.
- F.** A Diplomate who submits a claim form to a third party, reporting incorrect treatment dates for the purpose of assisting a patient to obtain benefits under an insurance plan in which benefits would otherwise be disallowed, is engaged in making an unethical, false, or misleading representation to such third party.
- G.** A Diplomate who incorrectly describes, on a third party claim form, a procedure in order to receive a greater payment or reimbursement or incorrectly makes an uncovered procedure appear to be a covered procedure on such a claim form is engaged in making an unethical, false, or misleading representation to such third party.
- H.** A Diplomate who recommends and performs unnecessary services or procedures is engaged in unethical conduct.

NOTE: A third party is any party to a medical or dental pre-payment contract that may collect premiums, assume financial risk, pay claims, and/or provide administrative services.

## **SECTION XI – REPRODUCTION OF THE AMERICAN BOARD OF CRANIOFACIAL DENTAL SLEEP MEDICINE SEAL OR LOGO**

Any use of the ABCDSM logo that is not in compliance with the ABCDSM Logo Manual will be considered a violation of the Code of Ethics.

## **SECTION XII – CHEMICAL DEPENDENCY**

It is unethical for a Diplomate to practice while abusing controlled substances - alcohol or other chemical agents – which impair his/her ability to practice. It is also unethical for a Diplomate to practice while he/she has an incapacitating illness or an illness, which would impair his/her ability to practice with the highest ethical and clinical standards. All Diplomates have an ethical obligation to monitor impaired colleagues and to urge them to seek treatment. Diplomates with first-hand knowledge that a colleague is practicing when so impaired have an ethical responsibility to report such evidence to the professional assistance committee of a local or state dental society or a corresponding medical society and to the Ethics Committee.

### **SECTION XIII – DEVICES AND THERAPEUTIC METHODS**

Except for formal investigative studies, Diplomates shall be obliged to prescribe, dispense, or promote only those devices, drugs and other agents whose complete formula is available to anyone in the health professions. Diplomates shall have the further obligation of not holding out, as exclusive to them, any device, agent, method, or technique not available to the general medical public. Diplomates may secure patents and copyrights, provided that such patents and copyrights shall not be used to restrict research, practice, or general care to the public.

### **SECTION XIV – RELIEF OF VIOLATIONS**

All Diplomates of the Board shall be governed in ethical matters by this Code of Ethics and the relief of such violations shall be rendered as follows:

#### **A. Allegation or Violation**

Any Diplomate, dental society, patient, other individual, or organization may file a written complaint alleging a violation. The Ethics Committee may also act on its own motion by majority vote should a matter within its jurisdiction come to its attention from any other source.

#### **B. Documentation Necessary**

The individual or group filing the complaint shall furnish written documentation of the complaint to the extent available at the time of filing.

#### **C. Complaint in Writing**

The complaint should be in writing, signed by the complainant, and directed to the chairman of the Ethics Committee by the Board's headquarters. It shall be conveyed promptly to the chairman and members of the Ethics Committee.

#### **D. Complaint Review**

Within ninety (90) days of receipt of a complaint by Board headquarters, the Committee shall review the complaint and any related material. Upon review, the Committee may decide that there is insufficient basis for further proceedings in which case the complaint shall be dismissed and the complainant so notified in writing. The Committee, upon majority vote, may dismiss a complaint at any time after consultation with the Board President and Executive Director. Information about Complaints that are dismissed by the Ethics Committee will be destroyed (expunged from any Board files). If the Committee does not dismiss the complaint as provided in this section, referral of the complaint may be made to a more appropriate federal or state authority charged with insuring quality health care. The Committee, upon majority vote, may proceed to a hearing or may refer the complaint to an investigating committee. The investigating committee may be appointed but must consist of three or more Diplomates or may be the Ethics Committee itself. The Committee can also act on the complaint in regard to its own protection of the ethical standards of the American Board of Craniofacial Dental Sleep Medicine. Written notification is to be made to the complainant regarding each action taken by the Ethics Committee.

## **SECTION XIV – RELIEF OF VIOLATIONS (*continued*)**

### **E. Material**

All material obtained in connection with a complaint is to be held in strict confidence by committee members.

### **F. Time**

If a complaint before the committee is also the subject of pending action by a regulatory licensing or disciplining authority, the Committee may by a majority vote defer its proceedings until notice is received of the final action by that authority. Otherwise all time limits shall be strictly followed. If the committee determines that there is sufficient basis to instigate an investigation, after consultation with the Board President and Executive Director, notice of the allegations shall be sent to the respondent by the committee within thirty (30) working days together with a description of the procedures that will be followed in the investigation of the complaint. A copy of the complaint, the complainant's name, the supporting material, and the Code of Ethics shall be provided to the respondent. In the event that the complainant is the Ethics Committee, the supporting material provided to the respondent shall be subject to the requirements of confidentiality.

### **G. Investigating Committee**

1. The Investigating Committee shall consist of three or more Diplomates who serve on the Ethics Committee, plus the addition of one Diplomat from the Board of Directors of the Board. The Ethics Committee Chairman shall designate one of the other three committee members to act as Chairman of the Investigating Committee.
2. An effort shall be made by the chairman of the Ethics Committee to select a committee member who has no interest in the case. Any Diplomat or committee member should disqualify himself/herself from serving on a particular investigating committee if that individual has any interest in the case.
3. The respondent may challenge members of the Investigating Committee for cause or interest in the case. Any challenge will be ruled upon by the Chairman of the Ethics Committee except where the challenge has been made to the Chairman. In that case, the President of the Board will rule upon the challenge.
4. The Chairman of the Ethics Committee shall fill any vacancy on the committee caused by death, resignation, or inability to serve within thirty (30) days of any notification of vacancy.

### **H. Duties of the Investigating Committee**

The Investigating Committee and/or Ethics Committee shall investigate complaints of infractions of the Code of Ethics or other conduct constituting grounds for discipline in accordance with any instructions from the Board of Directors of the Board.

## **SECTION XIV – RELIEF OF VIOLATIONS (*continued*)**

### **I. Collect Evidence**

The Investigating Committee shall use its best efforts to collect evidence pertinent to the allegations of the complaint. The role of the committee is limited to fact finding. It is not a judicial body. The committee will maintain decorum, objectivity, impartiality, and professionalism at all times and shall not determine guilt or innocence, nor shall it discuss the matter except in strict observance of its specific duty.

### **J. Timely Response**

The Chairman of the Ethics Committee investigating a complaint shall contact the respondent within ten (10) working days in writing and advise him/her of the committee's investigation. The respondent will be advised that an adequate opportunity to present evidence to the committee in person or in writing will be provided.

### **K. Report to Ethics Committee**

The Investigating Committee shall confine itself to the specific complaint referred to it by the Ethics Committee. If, however, during the course of such investigation, the Investigating Committee finds other actions, which may subject the respondent to discipline, these other actions and supporting evidence shall be reported back to the Ethics Committee. The Investigation Committee will exert every effort to insure the confidentiality of its investigation. The Investigation Committee shall submit a written report to the Ethics Committee within ninety (90) days of receipt of notice by the Ethics Committee of the alleged violation. The Ethics Committee will then in turn submit the report to the Board of Directors of the Board and Executive Director. Such report shall contain all material gathered, and it may contain a resume of the facts, with recommendations of the committee concerning the need for further investigation. Each member of the Investigating Committee must sign a copy of the report submitted to the Ethics Committee.

### **L. Hearings Before the Ethics Committee**

1. After reviewing the report of the Investigating Committee and any additional materials as may be before it, the Ethics Committee will determine by majority vote whether to proceed to the hearing stage after consultation with the Board President, Executive Director and Board Counsel.
2. If the Ethics Committee elects to proceed to the hearing stage, a notice shall be sent to the respondent by certified mail, return receipt requested, advising the respondent of the right to a hearing before the committee.
3. The hearing may be made either in person by all members of the Ethics Committee and/or by conference call to the committee members and respondent simultaneously.

## **SECTION XIV – RELIEF OF VIOLATIONS**

### **L. Hearings Before the Ethics Committee (*continued*)**

4. The respondent has the right to submit documentary evidence to the committee and to appear at a hearing before the committee. A written request for a hearing must be received by the Board within thirty (30) days of the date of the notice of the right for a hearing. If a written request by the respondent is not received within thirty (30) days of the date of notice, the respondent will be deemed to have waived the right to a hearing. In case of criminal or administrative action against a Diplomat, government or agency resolution of the matter should be allowed to be finalized before any Board action is taken.

### **M. Committee Withdrawal/ Dismissal**

A member of the committee may, by his/her own motion, withdraw from the hearing. The respondent may submit a properly documented request that the Chairman dismiss any committee member for cause. The Chairman, with the advice of the committee, shall be empowered to accept or reject the request.

### **N. Proceed Without a Hearing**

If the respondent does not submit a written request for a hearing within the allotted time, the committee may proceed without a hearing. The respondent has the right to submit documentation if a hearing is not requested for a period extending sixty (60) days after the date of notice of hearing. If the respondent files a request for a hearing; a hearing date shall be set by the committee that is not less than thirty (30) and not more than ninety (90) days after the request for a hearing.

### **O. Notification and Conduct of a Hearing**

1. The respondent shall be informed in writing of the time and place of the hearing along with copies of all relevant supporting documentation which has been otherwise privileged or protected by applicable federal or state authority. This documentation, together with the report of the Investigating Committee, will be sent, by certified mail, return receipt requested, not less than thirty (30) working days prior to the date of the hearing. This notice shall inform the respondent of his/her right to appear at the hearing or to be represented by counsel. The respondent may also present additional documentation, present and call witnesses, or offer testimony or any other material on his/her behalf.
2. The respondent may attend the hearing in person or by representative or both. It shall be considered evidence of guilt or infraction if the respondent or their representative fails to either appear at a hearing or to offer materials in his/her defense, or both.
3. A representative must file notice of appearance with the committee no later than ten (10) working days prior to the date of the hearing.

## **SECTION XIV – RELIEF OF VIOLATIONS (*continued*)**

### **P. Relevant Material**

Hearings are not subject to formal rules of evidence or civil procedure. However, the committee shall make every effort to insure the respondent has the opportunity to submit any relevant material. The committee has the authority to accept material from any source and the responsibility to determine the weight to be accorded to all evidence. A verbatim transcript shall be made of any formal hearing; the cost of the transcript will be borne by the Board. Copies of the transcript will be provided to the respondent upon request at his/her expense. Though respondents are not entitled to a continuance, and the Committee does not have any procedure in place to perform or to make available continuances, a respondent may be granted a continuance upon showing good cause, such as illness, at the discretion of the committee.

### **Q. Decision of the Committee**

The committee shall reach a decision within thirty (30) working days after the conclusion of any hearing. If the respondent waives the right for a hearing the Committee with approval of the President, ABCDSM legal counsel and the Executive Director will make a decision. If the complaint is upheld, the Committee with approval of the President, ABCDSM legal counsel and the Executive Director shall decide the appropriate discipline within this same time period. The discipline imposed by the committee shall be in accordance with the Code of Ethics as set forth in Section XIV-V.

### **R. Notification**

Within thirty (30) working days after a Committee decision, the respondent shall be notified of the decision by certified mail, return receipt requested. Where the complaint is upheld, the notification to the respondent shall include the sections of the Code of Ethics violated, any discipline imposed, and the procedure for appeal of the decision. Remedies imposed by the Committee shall not take effect prior to the expiration of thirty (30) working days following the notice of decision of the Committee.

### **S. Appeal of the Decision of the Ethics Committee**

The Appeals Committee shall consist of five members; three Officers or Directors of the Board as appointed by the President, the ABCDSM legal counsel and the Executive Director. One member of this five-member committee shall be designated as Chairman. Any member of an Appeals Committee residing in the same state or a contiguous state as the respondent shall be disqualified from hearing the appeals and will be replaced by another Officer or Director, appointed by the President. The respondent may also request removal of a Diplomat for cause. The decision on such a request will be made by the President of the Board.

## **SECTION XIV – RELIEF OF VIOLATIONS (*continued*)**

### **T. Appeals Procedure**

1. If a remedy is imposed by the Ethics committee, the respondent has the right to appeal the decision to the Board. The complainants may not appeal.
2. Appeal of a decision shall not be valid unless the Board headquarters receives a written notice of appeal from the respondent within thirty (30) working days of the date the Ethics committee's notice of its decision. The notice of appeal shall contain a succinct statement of the alleged errors and the reason why the decision of the committee is claimed to be incorrect.
3. After receipt of a notice of appeal, there should be no communication between the Ethics Committee and the Appeals Committee except for the reply statement, unless the Appeals Committee remands the case to the Ethics Committee.
4. Within ninety (90) days after the receipt of the respondent's notice of appeal, the Appeals Committee as appointed by the President shall consider the complete record of the case, the record of the committee's proceedings, the respondent's statements submitted with the notice of appeal, and any brief or reply statement filed. The Appeals Committee, in consultation with the Board President, shall then make a determination as to whether a hearing shall be held.
5. If a hearing is to be held, a date shall be set after the Appeals Committee makes the determination to hold a hearing. The respondent shall receive written notice of the time and place of the hearing by certified mail, return receipt requested, no later than thirty (30) working days prior to the date of the hearing. Such notice shall inform the respondent of a right to present material to the Appeals Committee and to appear with or without a representative. A representative must file a notice of appearance no later than ten (10) working days prior to the date of the hearing.
6. The appeal shall be limited to consideration only of the errors alleged by the Ethics Committee. The submission of materials to the Appeals Committee other than the brief and any material considered by the Ethics Committee is not favored. The Appeals Committee, at its discretion and for good cause shown, may consider additional materials submitted to the Board by the respondent.

### **U. Decision of the Appeals Committee**

1. The Appeals Committee, after consultation with the Board President, shall render its decision after the conclusion of a hearing or examination of all records and/or new material, and the new written request by the respondent.
2. The Appeals Committee may reverse or uphold the findings of the Ethics Committee. The Appeals Committee may also remand any issues of the case to the Ethics Committee if the Appeals Committee finds that there have been substantive errors, which deprived the respondent of any right,



## **SECTION XIV – RELIEF OF VIOLATIONS**

### **U. Decision of the Appeals Committee (*continued*)**

including the right to a fair hearing, or the discipline is considered inappropriate. The Appeals Committee may also remand this issue to the Ethics Committee.

3. The decision of the Appeals Committee shall be final and not subject to further review or appeal within the Board.

### **V. Remedies to Ethics Code Violations**

When applicable, the Ethics Committee or the Appeals Committee may impose any of the following remedies:

1. Censure: A Formal statement in writing expressing disapproval or criticism of the respondent's actions or conduct is sent to the respondent and kept in the file of the respondent at the Board's headquarters.
2. Probation: A period of time, of a stated length, in which a Diplomate is under probation. The Diplomate is expected to provide evidence to the Ethics Committee that the actions or circumstances that brought him/her in violation of the Code of Ethics have been corrected by the end of the probation period.
3. Suspension: Denial of all rights and privileges as a Diplomate for a stated period of time. A copy of the notice of suspension will be placed in the confidential files of the Board's headquarters for a prescribed length of time.
4. Expulsion: Loss of Diplomate Status and denial of all rights and privileges accorded Diplomates for a stated period of time. An expelled Diplomate may, after the expiration of five (5) years, submit a new application for Diplomate status.

### **W. Record of Ethics Code Remedies**

1. No record of any actual complaint or remedy action shall be entered into Diplomate files except for the imposition of censure, probation, suspension, or expulsion.
2. A record of any remedy imposed pursuant to the violation of the Code of Ethics may be provided to any licensing, regulatory, or disciplinary authorities upon the discretion of the Ethics Committee.
3. The complainant shall be informed that the matter has been resolved. Both complainants and respondents shall be advised when no violation of the Code has been found. The final decision of the Ethics Committee shall be provided to a complainant who is a Diplomate.

## **SECTION IX - AMENDING THE CODE**

This Code of Ethics may be amended by the Ethics Committee when necessary with the approval of the Officers and Directors.

## CREDITS AND SOURCES

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