

THE 2023 PROPOSED AMENDMENT TO THE SOP ON PROFESSIONAL RELATIONSHIPS

CONCERNS RAISED ABOUT THE PROPOSED AMENDMENT OF THE SOP ON PROFESSIONAL RELATIONSHIPS

Some AAOS Fellows have raised concerns about the proposed Standards of Professionalism (SOPs) going to a Fellowship vote, as summarized below.

- **Grievances should be subject to a clear process that requires a prior investigation and that provides safeguards against “he said/ she said” situations**

The rigorous grievance process is based on 20 pages of procedures approved by the Board of Directors and focus on providing both parties with equal opportunities to present evidence and argue in support of their positions. Grievances that are unsupported or lacking adequate evidence are dismissed at the preliminary review stage (prima facie) review. Grievances which pass prima facie are presented to a total of 3 groups, the Committee on Professionalism (COP), the Judiciary Committee (JC) and the Board of Directors.

Once the Board has considered the matter, 28 AAOS Fellows have reviewed and voted on a grievance. Only 27% of all filed grievances that move through the whole grievance process result in any official compliance action, a strong testament to the stringent review process required under the Professional Compliance Program (PCP).

AAOS is a voluntary membership organization and as such, has no governmental or regulatory authority that would allow an investigation to be conducted. Each grievance is based solely on evidence provided by the parties, which may include the results of prior investigations, as well as other documentation and witness testimony. A grievance based solely on social media or “he said/she said” scenarios would not be accepted for a grievance hearing.

- **Allowing those wrongfully accused to undergo a public review creates litigation risks**

All grievances are handled in a **confidential** manner, unless and until the Board of Directors takes official compliance action. In fact, most grievances do not result in any official or public sanction and will never become public. Detailed steps were built into the process to eliminate complaints without merit.

The potential for litigation should not be a motivating factor in deciding whether to modify the existing SOP, which already permits grievances based on bullying, harassment, and discrimination. The risk of litigation arising from expert witness-based claims was known when the PCP was created, but Fellows believed strongly that a grievance review process was important enough to accept the risk and voted by a super majority to adopt the program.

The grievance process was thoughtfully crafted from the outset. Additionally, the Board of Directors reviews the PCP every 2-3 years to evaluate its effectiveness and to consider modifications.

- **Stakeholders should have the opportunity to weigh in on the amendment.**

As noted above, this proposed amendment has been extensively vetted and supported by Fellows elected or appointed to lead the AAOS: the Board of Directors, the BOC, the BOS and 3 committees (COP, JC and AAOS Bylaws Committee).

BACKGROUND AND RELEVANT FACTS ABOUT THE AAOS PROFESSIONAL COMPLIANCE PROGRAM

The PCP was created in 2005 at the request of AAOS Fellows who desired a mechanism for unprofessional conduct to be evaluated by the AAOS. Over the ensuing years, 6 Standards of Professionalism (SOPs) have been adopted by the Fellowship:

- Advertising by Orthopaedic Surgeons
- Providing Musculoskeletal Services to Patients
- Professional Relationships
- Orthopaedic Expert Opinion and Testimony
- Orthopaedic Surgeon-Industry Relationships
- Research and Academic Responsibilities

Only AAOS members may file a grievance and only AAOS members may be the subject of a grievance. No patient or public complaints are accepted. *The PCP provides the subject of the grievance the right to file his/her own counter-grievance against the original submitter.*

The majority of grievances (56%) are withdrawn by the grievant, dismissed at the administrative level (i.e., filed by or against a non-member) or at the COP's prima facie review stage. In order to pass prima facie review, 2/3^{rds} of the COP members must vote in favor of a hearing which tends to weed out grievances with no or low levels of evidence that an SOP violation occurred. More information about the PCP is available at www.aaos.org/profcomp.

INITIATION OF THE 2023 PROPOSED AMENDMENT TO THE SOP ON PROFESSIONAL RELATIONS

In 2022, the AAOS Board of Directors, in furtherance of the AAOS goals and to improve the culture of the orthopaedic profession, proposed a revision to the SOP on Professional Relationships to confirm that AAOS considers harassment, bullying and discrimination to be unprofessional conduct. The Board felt strongly that AAOS's formal standards should be updated to meet the expectations of the public, patients and members. At the Board of Director's request, the COP proposed an amendment to the Professional Relationships SOP such that the terms "harassment bullying and

discrimination” are considered unprofessional conduct that may violate a the SOP. The proposed SOP is as follows [proposed addition in underlining]:

An orthopedic surgeon shall conduct himself or herself in a professional manner in interactions with colleagues or other healthcare professionals. This includes, but is not limited to, avoiding behavior that is harassing bullying or discriminatory.

The JC, as the intermediary committee to review grievances prior to the Board’s consideration, also reviewed the proposed amendment and recommended that it be adopted.

The proposed SOP amendment was submitted for consideration at 2022 Fall Meeting, and there, both the Board of Councilors (BOC), the Board of Specialty Societies (BOS) voted overwhelmingly to support it. At its December 2022 meeting, the Board of Directors also recommended adoption of the amendment. Prior to the 2023 Annual Meeting, the Fellowship was notified of matters that would be addressed during the Academy Business Meetings, including this proposed amendment. During the Open Hearing, AAOS Bylaws Committee heard from two AAOS Fellows who were opposed to and others who were supportive of the proposed Amendment. Ultimately, the Bylaws Committee recommended that the proposed SOP amendment be adopted by the Fellowship.

In sum, this proposed amendment has been extensively vetted by persons elected by the Fellowship or otherwise appointed to lead the AAOS: the Board of Directors, the BOC, the BOS and 3 committees. Each governance unit recommends that the Fellowship vote in support of the proposed SOP amendment.