

Professional Compliance Program Frequently Asked Questions (FAQs)

Definitions: The standard terms used in these FAQs are defined below.

Grievant:	The AAOS Fellow or Member filing a grievance.
Respondent:	The AAOS Fellow or Member against whom the grievance has been filed.
Grievance:	A complaint filed by an AAOS Fellow or Member against another Fellow or Member with the AAOS Professional Compliance Program alleging violations of the SOPs.
SOPs:	The AAOS Standards of Professionalism.
Board of Directors:	The AAOS Board of Directors is composed of sixteen (16) AAOS Fellows and one (1) lay member who make the final decision on any official compliance action taken against the Respondent.
COP:	The AAOS Committee on Professionalism is composed of eight (8) AAOS Fellows who are responsible for reviewing each grievance, determining whether the Grievant has presented sufficient evidence for the grievance to proceed to a hearing, and conducting the first hearing on the grievance.
Judiciary Committee:	The AAOS Judiciary Committee is composed of six (6) AAOS Fellows and its membership is separate and distinct from that of the COP. If the COP recommends that official compliance action be taken against the Respondent, the Judiciary Committee conducts a second hearing during which both the Grievant and Respondent have an opportunity to have their positions heard.
Mandatory Standards:	Each SOP consists of a number of individual Mandatory Standards. For instance, the SOP on Research and Academic Responsibilities consists of thirteen (13) Mandatory Standards.
Grievance Procedures:	The procedures that govern the how the grievance process is administered from grievance submission through a final determination by the AAOS Board of Directors.
Letter of Concern	A confidential letter that may be sent to the Grievant and/or Respondent to address concerns about a Fellow or Member’s behavior. A Letter of Concern is not an official compliance action.
Official Compliance Actions	<p><u>Reprimand:</u> A written sanction reprimanding the Fellow or Member for the finding of a violation of one and only one SOP. A reprimand has no loss of benefits of membership, is not published, and is only known to the parties.</p> <p><u>Censure:</u> A written sanction censuring the Fellow or Member for the finding of a violation of one or more SOPs. A censure has no loss of benefits of membership and is published.</p> <p><u>Suspension:</u> A written sanction, causing the Fellow or Member to lose the benefits of membership for a certain period of time. The suspension is published, and the member may be fully reinstated after such time provided he or she pays all past dues and fees.</p> <p><u>Expulsion:</u> A written sanction expelling the Fellow or Member. The expulsion is published, and the member may reapply for Fellowship.</p>

1. Q. I have a complaint about an AAOS Fellow. What should I do?

The AAOS Professional Compliance Program allows an AAOS Fellow or Member to submit a grievance against another Fellow or Member when he/she believes that there has been a violation of the AAOS SOPs. AAOS does not conduct investigations, initiate complaints or prosecute grievances.

To begin the process, review the six (6) SOPs and determine which may apply to your circumstances. The process begins with the submission of a signed and dated grievance report form that identifies the alleged violations of the SOP. The Grievant bears the burden of proving each alleged violation. All material relevant to the Grievant's allegations should be submitted with the grievance report. This often includes:

- A supporting letter which summarizes how the other member, the Respondent, allegedly violated each standard.
- Any relevant medical records/reports, opinion letters, hearing or deposition transcripts, with all patient information de-identified (redacted).
- Documentation confirming that any underlying matter has reached a conclusion (e.g., lawsuit, workers' compensation matter, peer review process).

The Grievant may seek advice or assistance from his/her own counsel to prepare the grievance.

2. Q. Can a grievance be submitted anonymously?

No. A grievance must be submitted by an active Fellow or Member; it must be in writing and signed by the Grievant.

3. Q. I just sat through an expert's testimony --can I file a grievance today?

No. The Professional Compliance Program will not accept any grievance in which the underlying matter is in active litigation. Any related lawsuit must have reached a final conclusion and/or any appeals exhausted before the grievance will be accepted. Documentation confirming that the underlying matter has been concluded (such as a court order) must also be provided.

4. Q. Is there a time frame for submitting a grievance?

Yes. Grievances must be filed within two (2) years of the date of the alleged SOP violation or two (2) years following the conclusion of the underlying matter, whichever is later.

Example: A grievance was submitted on December 1, 2018. The alleged SOP violation occurred during an expert witness deposition taken on December 1, 2015 (which was 3 years ago). However, the lawsuit was dismissed on December 1, 2017. This grievance may proceed as it was submitted within two (2) years from the conclusion of the underlying matter.

5. Q. My court case was public record. Do I still need to de-identify patient information from depositions, medical records and x-rays or other images submitted in connection with the grievance?

Yes. All materials submitted by both parties must follow HIPAA guidelines for de-identifying patient information. This includes, but is not limited to, the patient's name, address, date of birth, telephone, email, SSN, patient ID or medical record number, insurance information, and/or other unique patient identifiers.

6. Q. Many of the above questions seem to be about litigation and expert witness testimony. Is that the only kind of complaint?

No. Although many of the grievances submitted are related to expert opinion and testimony, grievances may be submitted under any of the six SOPs:

1. Advertising by Orthopaedic Surgeons
2. Orthopaedic Expert Opinion and Testimony
3. Orthopaedic Surgeon-Industry Relationships
4. Professional Relationships
5. Providing Musculoskeletal Services to Patients
6. Research and Academic Responsibilities

7. Q. Could I be sued for filing a grievance? Have any AAOS members been sued in the past as a result of filing a grievance?

Yes. A small number of members who have filed grievances have subsequently been sued by the Respondent. There is a risk that the Grievant or Respondent may be subject to litigation as a result of participating in the grievance process. Although the AAOS Bylaws include a Covenant Not to Sue for matters that are related to the Professional Compliance Program (Association Bylaws Article VIII, Section 8.10), this provision should not be considered blanket protection that litigation will not be filed against AAOS or the participants in the grievance process. AAOS is not responsible for any expenses incurred by the Grievant or Respondent before, during or after the grievance process, including but not limited to legal fees or costs. Parties with concerns about litigation in connection with the Professional Compliance Program may want to review insurance coverage and/or seek the advice of their counsel.

8. Q. Are grievances confidential?

Yes. All communications and submissions regarding grievances are treated confidentially by AAOS and must be made only through the AAOS Office of General Counsel. Grievants acknowledge an obligation to treat grievance information as confidential unless/until the AAOS Board of Directors has taken final action. The grievance process may go through several phases before reaching a conclusion. Any unauthorized disclosure by the Grievant prior to the final determination by the AAOS Board of Directors may result in dismissal of the grievance. In the event information is needed

which is held by an attorney or any other entity, the party requesting the materials is responsible for advising those persons or entities that the grievance process is confidential. If no official action is taken by the Board of Directors, AAOS maintains the confidentiality of all grievance information.

9. Q. I just received notice that a grievance was filed against me. Now what?

Along with notice that a grievance has been filed, AAOS provides the Respondent with copies of the grievance report and all supporting documentation submitted, as well as the Grievance Procedures and applicable SOP. The Respondent has an opportunity to respond to the allegations and submit his or her own set of supporting documents for the COP's consideration. The Respondent bears the burden of submitting any material he/she deems relevant for consideration in response to the allegations made in the grievance. The Respondent has the right to seek the assistance of his/her own counsel.

10. Q. As a Respondent, what protects me from getting drawn into a grievance that seems frivolous and has no merit?

The grievance will not proceed to a hearing if the Grievant fails to present sufficient evidence. The COP receives both parties' submissions and after conducting an objective and substantive review of each grievance, they make what is referred to as a *prima facie* determination. This involves a preliminary determination of whether there is sufficient evidence to support the Grievant's allegation of a violation of at least one of the Mandatory Standards and justify a full hearing.

11. Q. When are COP grievance hearings held? Do I have to attend?

Hearings before the COP are usually held in conjunction with the Annual Meeting and at one or more times during the year (July and/or October).

The Grievant is required to attend the grievance hearing before the COP. Failure to do so may result in the grievance being dismissed. At his or her discretion, the Respondent may appear at the hearing. In lieu of appearance at the hearing, the Respondent may submit a written statement to be read into the record.

At the grievance hearing, each side is allowed 30 minutes to present and the COP may also ask questions to the parties. Parties may be represented by counsel and are limited to presenting only material previously submitted in the grievance - no new material is allowed at the grievance hearing. More information on the hearing process can be found in the Grievance Procedures.

12. Q. What are the possible outcomes of a COP hearing?

After the hearing, the COP will issue a report and recommendation which:

- May recommend that the grievance is not sustained and no action should be taken; or

- May find the grievance is sustained and may recommend to the Board of Directors that the Respondent should be Reprimanded; Censured; Suspended or Expelled.

If the COP finds that the grievance is sustained and recommends that an official professional compliance action be taken, the Judiciary Committee will conduct a hearing which permits the Grievant and Respondent another opportunity to have their positions heard.

At its discretion, the COP may also write a confidential Letter of Concern to the Grievant and/or the Respondent.

13. Q. What happens at a Judiciary Committee hearing?

The Judiciary Committee reviews all grievance materials, examines whether the parties were provided due process in the proceedings before the COP, and further examines whether the COP's recommendations are supported by the weight of the evidence. Parties may appear in person at the Judiciary Committee hearing or have the option of submitting a written statement. Each party has a maximum of ten (10) minutes to present and may be represented by their own counsel. The Judiciary Committee also presents its findings in a report and recommendation to the Board of Directors.

14. Q. When is the grievance considered final?

Any professional compliance action taken by the Board of Directors is final. The Board may

- Take no action; or
- Issue a reprimand, censure, suspension or expulsion against the Respondent.

Unofficial action, such as a confidential Letter of Concern, may also be issued to the Grievant and/or Respondent party concerning issues raised in the grievance process. All decisions made by the Board of Directors are final.

Additional information on the Professional Compliance Program and the grievance hearing process is available on the AAOS website at www.aaos.org/profcomp or through the AAOS Office of General Counsel (professionalcompliance@aaos.org).