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The American College of Obstetrics and Gynecology Grievance Committee: how does it function?

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Abstract

The American College of Obstetricians and Gynecologists (ACOG) Grievance Committee has been functioning since its' inception in 1998. The committee provides a mechanism for the evaluation of fellows' compliance with the ACOG "Code of Professional Ethics and ACOG By-laws and policies". Sanctions may include warning, censure, suspensions and expulsion. In addition, the committee determined misconduct will be reported to the Licensing Board in the state of the fellow's practice. With that information the Licensing Board may restrict or withdraw his/her license to practice medicine.

Keywords: Grievance Committee, obstetrician's ethics, physician conduct

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The following areas of professional activity by fellows may be examined for possible violations of the ACOG “Code of Professional Ethics”:

- I. code of conduct,
- II. physician conduct and practice,
- III. conflicts of interest,
- IV. professional relations,
- V. societal responsibilities.

I. Code of conduct (ACOG Code of Professional Ethics)

Patient-Physician Relationship:

- 1) the patient-physician relationship is the central focus of all ethical concerns, and the welfare of the patient must form the basis of all medical judgments,
- 2) sexual contact or a romantic relationship between a physician and a current patient is always unethical,
- 3) the obstetrician-gynecologist has an obligation to obtain the informed consent of each patient,
- 4) it is unethical to prescribe, provide, or seek compensation for therapies that are of no benefit to the patient,
- 5) the obstetrician-gynecologist must not, for any reason, discriminate against patients, in his/her delivery of medical services.

II. Physician conduct and practice (ACOG Code of Professional Ethics)

- A. The obstetrician-gynecologist must provide only those services and use only those techniques for which he or she is qualified.

- B. The obstetrician-gynecologist should participate in continuing medical education activities.
- C. The obstetrician-gynecologist must not publicize or represent himself/herself in any untruthful, misleading or deceptive manner.
- D. The obstetrician-gynecologist who has reason to believe that he/she is infected with HIV should adhere to the fundamental professional obligation to avoid harm to patients.
- E. The obstetrician-gynecologist should not practice medicine while impaired by alcohol, drugs or physical or mental disability.

III. Conflicts of interest (ACOG Code of Professional Ethics)

- A. Conflicts of interest should be resolved in accordance with the best interest of the patient.
- B. The obstetrician-gynecologist should prescribe drugs, devices and other treatments solely on the basis of medical considerations and patient needs, regardless of any direct or indirect personal interests.
- C. When the obstetrician-gynecologist receives anything of substantial value, including royalties, this fact should be disclosed to patients and colleagues when material.

IV. Professional relations (ACOG Code of Professional Ethics)

The obstetrician-gynecologist should consult, refer or cooperate with other physicians, healthcare professional and institutions to the extent necessary to serve the best interests of their patients.

V. Societal responsibilities (ACOG Code of Professional Ethics)

- A. The obstetrician-gynecologist should respect all laws, uphold the dignity and honor of the profession and accept the profession's self-imposed discipline.
- B. The obstetrician-gynecologist should strive to address and correct those physicians who demonstrate questionable, competence, impairment or unethical or illegal behavior.

- C. The obstetrician-gynecologist must not offer testimony that is false. The obstetrician-gynecologist must testify only on matters about which he/she has knowledge and experience. The obstetrician-gynecologist must not misrepresent his/her credentials.
- D. The obstetrician-gynecologist testifying as an expert witness must have knowledge and experience about the range of the standard of care. He/she must be aware of the available scientific evidence for the condition in question during the relevant time, and must respond accurately to questions about the available scientific evidence.
- E. Before offering testimony, the obstetrician-gynecologist must thoroughly review the medical facts of the case and all available relevant information.
- F. The obstetrician-gynecologist serving as an expert witness must accept neither disproportionate compensation nor compensation that is contingent upon the outcome of the litigation.

ACOG PROCEDURES FOR HANDLING COMPLAINTS AGAINST FELLOWS AND PROPOSED TERMINATION OF FELLOWSHIP

I. Filing a complaint

A complaint may be filed by a college fellow (complainant) against another fellow (respondent) or result from a state medical board, all of which state boards are routinely monitored by ACOG:

- A. for a perceived violation of the ACOG Code of Ethics or,
- B. for behavior inconsistent with ACOG bylaws or policies,
- C. complaints are required to be filed on the official Grievance Complaint Form which can be downloaded from the ACOG website,
- D. the complaint form should be sent to the ACOG General Counsel who will decide if it should be forwarded to the Grievance Committee,
- E. issues not considered: matters in litigation and advertising issues, unless untruthful, misleading or deceptive.

II. Special Responsibilities of the Parties

Until the final resolution of the complaint, the strictest confidentiality will be maintained at all times, by the parties, Grievance Committee members and Panel Hearing members.

III. Conflicts of interest by Grievance and Panel Hearing members must be reported

- A. Practice related direct competition with either the complainant or the respondent.
- B. Personal relationship with either of the parties.

IV. ACOG annual reporting to all voting fellows

- A. All disciplinary actions, for the previous year, leading to resignation or termination.
- B. In addition, all disciplinary activities, with a brief description of each, will be reproduced on the ACOG website.

V. Grievance Committee composition

- A. Eight college members, each for a 3 year term.
- B. Five additional members, with expertise in sub-specialty matters, each for a four year term.
- C. The chairperson will be the most immediate former ACOG Vice-president.

VI. Referral to the Grievance Committee

- A. The general counsel will determine if conflicts of interest are present.
- B. The Grievance Committee will not make a determination of the merits, but will decide if the complaint should be assigned to a Hearing Panel.
- C. Hearing Panel composition: 3 Grievance Comm. or former Grievance Comm. members. The Hearing Panel will adjudicate the complaint.

VII. Hearing Panels

- A. Will be held at ACOG Headquarters in Washington DC.
- B. Will be attended by the ACOG General Counsel.
- C. Will not follow rules of law or evidence.
- D. Each party will have 30 minutes for their presentation.
- E. Either party may present witnesses but must include them in their allowed 30 minutes.

VIII. Hearing Panel Findings

- A. Complaint not sustained.
- B. Complaint not sustained but a Letter of Notice-indicating some reservations about the behavior of the fellow-will be sent to the respondent.
- C. Complaint is sustained and may result in:
 - 1) Warning: a written statement expressing concern with a fellow's actions regarding the Code of Professional Ethics or
 - 2) Censure: A written statement criticizing the fellow's action as a violation of a provision of the Code of Professional Ethics or qualifications for Fellowship; reprimand.
 - 3) Suspension: a severe punitive action, for a stated period of time.
 - 4) Expulsion: the certificate of Fellowship must be forthwith returned to the College and the ob-gyn may not hold himself/herself out as, or pretend to be a Fellow of ACOG.

IX. Appeals Panel

- A. May be petitioned for, for any reason, within 30 days of the conclusion of the Panel Hearing.
- B. The respondent may attend the Appeals Panel hearing.
- C. The Appeals Panel may affirm the Hearing Panel decision, may affirm but reduce the disciplinary measures or may reverse the Hearing Panel decision.

X. Ratification

All Hearing Panel and Appeals Panel decisions will be ratified by the ACOG Executive Board at its next regularly scheduled meeting. The Executive Board is composed of 25 members, governs ACOG. These members include the seven nationally elected officers.

EXAMPLES OF PANEL HEARING RULINGS

I. Warning. False testimony (violation of the ACOG Code of Professional Ethics)

- A. Testimony that the blood loss associated with a vaginal delivery is usually more than with a cesarean delivery.
- B. Testified falsely that suprapubic pressure was the cause of the brachial plexus injury (BPI).
- C. Testified that the child's injury could not have occurred except from the defendant's use of suprapubic pressure and could not have occurred from the natural forces of labor.

II. Warning. False testimony (violation of the ACOG Code of Professional Ethics)

- A. The Fellow stated that any degree of traction in a shoulder dystocia (SD) case is inappropriate, without recognizing options within the range of the standard of care.
- B. The Fellow did not respond accurately to questions about the range of the standard of care during testimony regarding encouraging a patient to push during SD maneuvers.

III. Censured. False testimony (violation of the ACOG Code of Professional Ethics)

- A. When he/she gave testimony beyond matters about which he/she has knowledge and experience. He/she testified that the forceps delivery caused the fetal stroke but he/she could not explain how the forceps delivery caused the stroke.

- B. In his/her trial testimony he/she continued to testify that the child's stroke was caused by the forceps delivery but when asked, he/she could not provide an explanation as to how the forceps delivery caused the stroke.

IV. Censured. False testimony (violation of the ACOG Code of Professional Ethics)

- A. Regarding his/her claim to be involved in active clinical instruction.
- B. The Panel Hearing ruled that attending a conference where residents are also in attendance and asking some questions, does not rise to the level of active clinical instruction.
- C. The Fellow represented, on several occasions over multiple years in his/her deposition testimony, that he/she was a "courtesy" Associate Clinical Professor with the Univ. of Florida College of Medicine, but was unable to document his/ her appointment.

V. Censured. Sexual misconduct (violation of the ACOG Code of Professional Ethics)

The Fellow's membership was censured because the Medical Board of California placed him/her license to practice medicine on probation for 5 years because it determined that he/she engaged in a sexual relationship with a patient.

VI. Expulsion. Criminal conviction (violation of article X, Section 1, of the ACOG By-laws)

The Fellow was expelled as a result of his conviction of felony charges for conspiracy to commit wire fraud and for failure to maintain accurate and current drug records in connection with his/her bariatric medicine practice.

CONCLUSIONS

I. What the ACOG Grievance Committee can do:

- A. withdraw or restrict the respondents ACOG membership,
- B. **what ACOG cannot directly do:** withdraw or restrict the respondent's license to practice medicine.

II. ACOG may forward Panel Hearing

findings to the respondent's State Medical Licensing Board which has the legal authority to restrict or withdraw his/her license to practice medicine. (Expert Witness testimony has been determined to be engaging in the practice of medicine in most of the USA states). It is therefore, subject to Licensing Board determinations.

III. Function of the State Medical Licensing Board Disciplinary Hearing

- A. Under oath testimony is obtained from the Medical Licensing Board and the respondent.
- B. Each may be supported by expert witnesses.
- C. Following the introduction of all of the testimony, the final decision is made by an Administrative Law judge from the State Division of Hearings and Appeals.
- D. If based on ACOG Panel Hearing findings and the State Medical Licensing Board findings, it is determined that the respondent's incorrect testimony, as an expert witness, violates the ACOG and that State's Professional Ethics standards, the license may be restricted or withdrawn.