

Upholding professionalism

The disciplinary process of the American Academy of Neurology



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ABSTRACT

Objective: To review the disciplinary process by which the American Academy of Neurology (AAN) enforces its formalized standards of professional conduct.

Methods: We reviewed the AAN's Disciplinary Action Policy. We tracked the elapsed time from receipt to final decision of all allegations ("complaints") of improper conduct by AAN members submitted from 2004 to 2009. We placed each complaint into 1 of 4 categories: allegations of 1) improper expert witness testimony; 2) substandard care; 3) unprofessional conduct; 4) or both 2 and 3. We noted the type of complainant (AAN member or nonmember) and the final outcome for each complaint.

Results: The AAN's disciplinary process is a 5-step procedure with multiple reviewing bodies. From 2004 to 2009, the AAN received 3-16 complaints per year (total 58), with 16 filed each year in 2008 and 2009. Thirty-one complaints (53%) were submitted by nonmembers and 27 (47%) by members. Disciplinary action was recommended for 6 complaints (10.3%) with action taken in 3 (5.1%) and the member resigning in lieu of action in 3 (5.1%). The average number of days from receipt of complaint to final decision was 537, with an average of 890 days from 2004 to 2006, decreased to 184 days from 2007 to 2009.

Conclusions: Recent revisions to the disciplinary process have increased efficiency and enhanced procedural safeguards. The AAN determined a mean of 12 months, from receipt of complaint to final decision rendered, is an appropriate benchmark when handling complaints. The AAN's disciplinary process upholds standards of professional conduct for AAN members and protects members from unsubstantiated complaints. **Neurology® 2010;75:2198-2203**

GLOSSARY

AAN = American Academy of Neurology; **AANPA** = American Academy of Neurology Professional Association; **ELHC** = Ethics, Law and Humanities Committee; **NPDB** = National Practitioner Data Bank.

There is broad agreement in medicine and society that physicians' conduct should follow generally accepted professional and ethical norms and that conduct violating those norms is worthy of sanction.^{1,2} While there is general agreement about professional and ethical norms among physicians, physician behavior does not always reflect such understanding.³ Society and the profession have a responsibility to address unprofessional or unethical physician conduct. A critical contribution of a medical association to its membership, and those served by its members, is to facilitate the self-policing responsibilities of the profession by developing, promulgating, and enforcing ethical and professional standards of conduct. The members of the American Academy of Neurology (AAN) have agreed to a set of ethical and professional standards and have codified those standards in the Code of Professional Conduct (Code) and Qualifications and Guidelines for the Physician Expert Witness (Expert Witness Guidelines).^{4,5} In addition, members have agreed to be bound by a disciplinary process, the purpose of which is to address and sanction violations of the Code or the Expert Witness Guidelines. The AAN Professional Association (AANPA) is currently responsible for maintaining and monitoring disciplinary action activities, including operation of the Grievance Commit-

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Table 1 Five-step process to resolve complaints

Step	Possible outcomes
1. Complaint and related documents are submitted to the Grievance Committee for review.	Dismiss or Step 2
2. Grievance Committee recommends review of the complaint by the Fair Hearing Panel Committee. The respondent is asked to reply in writing. The panel reviews the complaint and the respondent's written reply.	Dismiss or Step 3
3. Respondent is invited to participate in a hearing with the members of the panel.	Dismiss or recommend disciplinary action
4. Respondent may appeal recommendations of disciplinary action to the Executive Committee of the AAN Board of Directors.	Appeals hearing or recommended disciplinary action sent for final approval if no appeal
5. Panel's recommendation for disciplinary action, whether appealed or not, is reviewed by the Executive Committee. Decisions of the Executive Committee are final.	Dismiss, approve alternative disciplinary action, or approve recommended disciplinary action as submitted by panel

tee and Fair Hearing Panel Committee. All members of the AANPA are also members of the AAN, so the term “AAN” in this article refers to both organizations.

MULTILEVEL REVIEW The AAN's Disciplinary Action Policy⁶ governs the AAN's peer review process to examine allegations (“complaints”) that a member's conduct conflicts with the Code or the Expert Witness Guidelines. The Policy details a 5-step process to resolve complaints (table 1).

The opportunity for review of a complaint by multiple bodies (i.e., Grievance, Fair Hearing Panel, and Executive Committee) ensures impartiality and expands the scope of experience and areas of expertise that will be brought to bear on each case.² According to the Disciplinary Action Policy, the Grievance Committee shall consist of 5 AAN members, including at least 2 AAN fellows, and the Fair Hearing Panel Committee will consist of 3 AAN members, including at least 2 fellows, plus one or more alternates. The members of both committees are appointed by the AAN president. Institutional knowledge (prior service on the Grievance Committee provides experience with the disciplinary process, which is helpful when serving on the Fair Hearing Panel Committee), prior service on the Ethics, Law and Humanities Committee of the AAN, American Neurological Association, and Child Neurology Society (ELHC) (the committee responsible for drafting and updating the Code and Expert Witness Guidelines), or on peer review/ethics boards of other medical organizations are considered when identifying potential members of these 2 committees. In addition, each member is required to complete a disclosure statement in accordance with the AAN's Conflict of Interest Policy.⁷ Currently, the Grievance Committee consists of 3 fellows, 2 MD-JDs, the chair of the ELHC, and one other member of the ELHC. The Fair Hearing Panel consists of 2 fellows, 1 MD-JD, a former AAN president, and a former

chair of the Grievance Committee. At its discretion, the panel may request that the vice president of the AAN invite an expert in the field to which a complaint pertains, to join the panel as a nonvoting member. The AAN Office of General Counsel facilitates the disciplinary process at each level, but does not influence the decision of the reviewing bodies.

ALLEGATIONS Members and nonmembers may file complaints against AAN members. Some associations accept complaints from members only.⁸ Under the AAN's Code, members must meet certain ethical obligations related to their relationships with patients and the public. Patients and other members of the lay public who deal with AAN members in their professional capacities are well-placed to identify AAN members who fail to meet these obligations. For this reason, the AAN supports access to its disciplinary process for these groups.

In order to be considered by the AAN, complaints must allege a violation of a standard set forth in the Expert Witness Guidelines, the Code, or the Disciplinary Action Policy. The complaints (from 2004–2009) alleging a violation of one, some, or all of these documents fell into 4 broad categories: 1) improper expert witness testimony; 2) substandard care (e.g., wrong diagnosis, lack of competence in a particular area, submitting incomplete patient reports [typically in relation to workers' compensation cases], performing incomplete examinations); 3) unprofessional behavior (e.g., ending a patient relationship improperly, failing to communicate effectively with the patient, violating the law); and 4) allegations of both substandard care and unprofessional conduct. From 2004 to 2009, 22 complaints (38%) alleged improper expert witness testimony, 19 (33%) alleged substandard care, 13 (22%) alleged unprofessional conduct, and 4 (7%) alleged both substandard care and unprofessional conduct.

The most common complaints submitted by patients and other nonmembers involve allegations of substandard care or unprofessional behavior by AAN members. In these cases, there is often little or no

evidence to support the assertion of improper conduct. The Grievance Committee is not an investigatory body and therefore is unable to obtain evidence beyond documentation it receives from the complainant or respondent, or licensure information available on state medical board Web sites. Although given serious consideration by the Grievance Committee, unsupported allegations are generally insufficient to warrant further review by a Fair Hearing Panel. If the committee feels a hospital, state department of health, or state medical board is better equipped to investigate a particular complainant, the AAN will refer the complainant to one or more of those bodies. Patients submitting claims which may have legal ramifications (e.g., allegations of stalking or refusal to submit patient records) are encouraged by the AAN's General Counsel to contact local authorities and/or obtain private counsel.

Supporting evidence sufficient to warrant further review may come in the form of an admission or documentation corroborating the allegation, such as a written reply from the respondent admitting to some allegations in the complaint. Complaints supported by findings of unprofessional or illegal behavior from a court of law or a state licensing board are given great weight in the discipline process. Such complaints are typically handled quickly, as the supporting evidence includes a judgment from a duly-authorized legal entity based upon facts resulting from a detailed investigatory process.

FREQUENCY OF COMPLAINTS Since 2004, the AAN has received a mean of 9.6 complaints per year, the number increasing in 2008 (16) and 2009 (16) (table 2). Disciplinary action was recommended for 6 (10.3%) of the 58 complaints received from 2004 to 2009. In June 2010, the AAN used a listserv to ask executive directors of medical specialty societies how many complaints their societies received on an annual basis during the period 2004–2009; 11 medical specialty societies responded. Two of the responding societies do not have a disciplinary process, 2 re-

ceived no complaints, and 2 received one complaint in the specified period. Of these 6 societies, 1 has fewer than 10,000 members, 4 have 15,000–20,000, and 1 has over 100,000. Of the remaining 5 societies responding, 2 received 3–5 complaints per year, 1 received 5–6, 1 received 10–11, and 1 received 18–19 during the specified period. Two of these societies have fewer than 10,000 members, 1 has over 25,000, and 2 have over 70,000. The memberships of all but one of the 11 societies are comprised primarily of physicians.

REPRIMAND, SUSPENSION, OR EXPULSION

If there is sufficient evidence to warrant punishment, the Executive Committee of the AAN Board of Directors may reprimand, suspend, or expel the AAN member for violating the Code, Expert Witness Guidelines, or the Disciplinary Action Policy. A reprimand may consist of a private letter to respondents detailing how their conduct conflicted with the standards of the AAN, with an admonition to correct such behavior (appendix), or a public reprimand via notice in an AAN publication. Suspension means the disciplined member will lose all privileges associated with AAN membership for a period of time recommended by the panel and approved by the Executive Committee. Expulsion means the disciplined member shall be informed in writing that his or her membership in the AAN is terminated. All suspensions and expulsions are published in an AAN publication and reported to the National Practitioner Data Bank (NPDB). The NPDB is not open to the general public, but is a resource available to state licensing boards, hospitals, and other health care entities when investigating the qualifications of physicians whom they are seeking to license, hire, or grant privileges.⁹

Since 2004, 3 AAN members have resigned in lieu of disciplinary action. According to Minnesota law, a member of a nonprofit association may resign at any time.¹⁰ Once a member has resigned from the AAN, the AAN no longer has jurisdiction over that former member, apart from requesting outstanding

Table 2 Complaints per year received by the American Academy of Neurology

Year	Total no. of complaints received	Improper expert witness testimony	Substandard care	Unprofessional conduct	Substandard and unprofessional
2004	3	3	0	0	0
2005	5	5	0	0	0
2006	12	7	3	2	0
2007	6	1	5	0	0
2008	16	3	9	4	0
2009	16	3	2	7	4

dues or other monetary payments owed. Therefore, if a member resigns from the AAN, any disciplinary proceedings against the former respondent must be suspended. However, the Policy states that if the former member successfully reapplies for membership at a later date, the disciplinary proceedings will be reinstated unless dismissed by the Board of Directors. Beyond losing all the benefits associated with being an AAN member, there are potential consequences for resigning in lieu of discipline. For example, if a member facing discipline for providing improper expert witness testimony resigns, and the member chooses to provide expert witness testimony in another proceeding, that member may be questioned under oath about the reason for his or her resignation from the AAN.

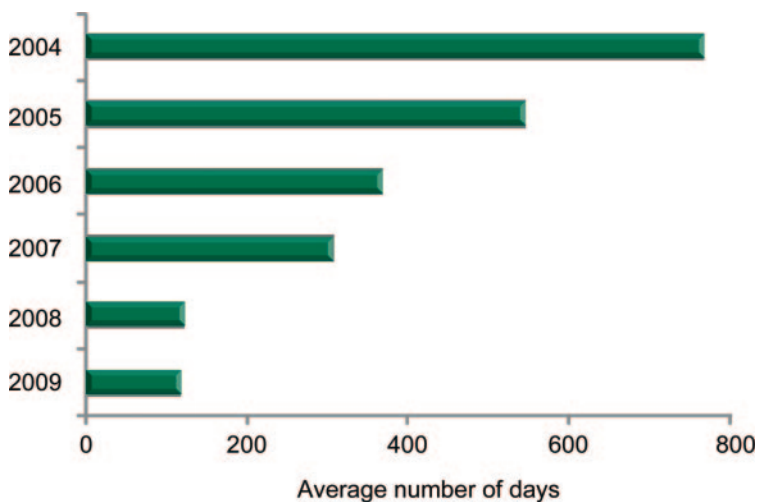
Over one-third (22/58) of complaints submitted between 2004 and 2009 alleged an AAN member gave improper expert testimony.¹¹ Of the 22 complaints alleging improper expert testimony, 12 were dismissed by the Grievance Committee because the testimony provided did not violate the Code or the Expert Witness Guidelines. Three of these complaints were dismissed by the Fair Hearing Panel after its first review, and 2 after its hearing with the respondent. Respondents are not asked to reply to a complaint unless the Grievance Committee believed the complaint merited further review by the panel. Therefore, the first opportunity for a member to respond to a complaint and provide information that supports his or her position occurs at the panel level. Disciplinary action was recommended in 4 of the 22 complaints alleging improper expert testimony, with action approved and taken against 2 members and 2 other members resigning in lieu of disciplinary action.

ACCELERATING THE REVIEW PROCESS In 2007, the Grievance Committee and AAN legal staff modified the system to better track the status of each complaint, from the initial receipt to resolution by dismissal or recommendation of disciplinary action. The 6 complaints received in 2007 took an average of 309 days to be reviewed and resolved, and all 6 were dismissed by the committee after the first level of review. The delay at the committee level was caused by the need to obtain additional information for review from the parties involved, a required due process measure, but also due to the prior practice of the committee reviewing complaints at only 2 meetings per year. To expedite the process, the committee began reviewing the less complicated complaints by conference call, while deferring more complex complaints (often complaints alleging improper expert witness testimony) for face-to-face meetings. Subsequently, the average time between receipt of complaints to resolution for cases dismissed by the committee was reduced from an average of 889.6 days (2004–2006) to 184.5 days (2007–2009) (figure).

While these changes addressed delays associated with complaints being resolved at the Grievance Committee stage, delays also occurred for those complaints forwarded for fair hearing panel review. Due to challenges associated with assembling ad hoc fair hearing panels, some complaints took as long as 2 years to work through the process.

In November 2008, AAN legal staff and the Grievance Committee proposed establishment of a standing Fair Hearing Panel Committee, in order to eliminate the challenges in assembling the panels ad hoc. The Executive Committee adopted the revised Policy on November 6, 2008, and it became effective May 3, 2009. Under the revised Policy, the AAN has improved the efficiency of the process (table 3). In April 2009, the AAN used a listserv to ask executive directors of medical specialty societies to provide the amount of time from receipt of a complaint to final decision; 12 societies responded. Even with inclusion

Figure Average review time of the Grievance Committee



The average number of days (x axis) from receipt of complaint to dismissal by the Grievance Committee in each year (y axis) from 2004 to 2009.

Table 3 Efficiency of the process under the revised policy

Year	Average number of days from receipt to final decision (Grievance Committee dismissal, Fair Hearing Panel dismissal, or disciplinary action confirmed by Executive Committee)
2004	984
2005	1,271
2006	414
2007	309
2008	126
2009	118.5
2004–2009	537.08

of data from 4 years prior to the revisions of the process, the AAN's average is 18 months to review and resolve complaints, consistent with the 12 medical specialty societies responding, who ranged from 6 to 25 months, with 8 societies taking a minimum of 12 months. In the 2 years since the revisions to the Policy (2008–2009), the AAN is reviewing and resolving complaints in half the time or less than in previous years. The average review time can fluctuate depending on the levels of review utilized in a disciplinary matter and how long it takes complainants to submit evidentiary material. There are notice and response periods afforded to all parties in the Policy, which can reach a total of 210 days if a member exercises the right to appeal the decision of the panel to the Executive Committee.

ENHANCING PROCEDURAL SAFEGUARDS AND IMPROVING COMMUNICATION

The Policy was recently amended with 2 additional revisions. The first revision allows the panel to amend the formal complaint submitted by the Grievance Committee if additional evidence from the respondent becomes available during the panel's deliberations. The second revision requires a representative of the Grievance Committee to present the formal complaint to the panel during the Fair Hearing Panel's first review of the case rather than waiting until the hearing stage. The presentation ensures that the panel members understand the reasoning behind the Grievance Committee's recommendation before the panel makes the decision to hold a hearing with the respondent. The Executive Committee unanimously approved both revisions on February 18, 2010.

In addition to improving the efficiency of the process and recent procedural revisions, improving the communication between the AAN and the parties involved in disciplinary matters has been critical. In 2007, AAN staff and physician leadership recognized a need to provide complainants and respondents with periodic status reports throughout the review process. Until 2007, complainants heard from the AAN at 2 points in time: when the complaint was received and when a decision about the complaint was made. AAN staff notified respondents when a formal complaint was filed against them, when a formal hearing was requested, and when a committee made a final decision. Complainants and respondents requested more information to better understand the steps of the review process and to confirm the status of their matter. Therefore, when AAN legal staff modified the system for tracking complaints in 2007, they added fields for tracking communication with the parties to ensure the AAN provides status updates to com-

plainants and respondents (as applicable) at each step of the review process (table 1).

PROTECTING THE PROCESS Creating and adhering to a sound disciplinary process protects the integrity of the AAN and its members. But a sound disciplinary process also protects the process and the participants. Under Minnesota law, information acquired and reviewed by a "review organization" is protected from subpoena or discovery as part of the peer review process.¹² As part of the criteria for qualifying as a review organization, the AAN and its disciplinary bodies, in accordance with the Disciplinary Action Policy, treat their peer review work as confidential. In 2009, the AAN successfully defended an effort by a party in a medical malpractice action to subpoena records of a disciplinary proceeding. The decision of the US District Court,¹³ upheld by the 8th Circuit Court of Appeals,¹⁴ speaks to the lengths the AAN goes to protect the integrity of the disciplinary process and the value the courts see in maintaining a confidential peer-review process.

CONCLUSION The AAN's disciplinary process provides members, patients, and other nonmembers with the opportunity to submit complaints concerning AAN members while protecting members from unsubstantiated allegations of misconduct with procedural safeguards, such as multiple review bodies and an opportunity for appeal. The AAN is the first medical specialty society since 2000 to publish data on all types of complaints it receives,² not only allegations of improper expert witness testimony. The AAN is handling an increasing number of complaints per year from members and nonmembers. By comparing the review time of similar medical specialty societies, taking into account the necessary notice and response periods, the AAN has determined a mean of 12 months from receipt to final decision rendered is an appropriate benchmark. With improvements to the efficiency and procedural mechanisms of its process, the AAN is reviewing and rendering decisions within 6 to 18 months. The AAN will continue to review its disciplinary process to ensure the benchmark is met and the integrity of the process is maintained. By reviewing complaints concerning AAN members and taking disciplinary action when warranted, the AAN affirms that being a member "in good standing" means the member is upholding the AAN's formalized standards of professional conduct.

APPENDIX

Sample private letter of reprimand. The Fair Hearing Panel has carefully considered the complaint from the Grievance

Committee, the written information you provided, and the information provided during the teleconference on [DATE].

Section A-4 of the disciplinary action policy of the Academy states in part:

A member of the Academy may be subject to discipline if the member's conduct conflicts with the standards and principles of the Academy. Without limiting the generality of the foregoing, the following shall be considered as conduct for which disciplinary action may be justified: [...] Unprofessional conduct including, but not limited to, conduct that is in violation of the American Academy of Neurology's Code of Professional Conduct.

After considering the entire body of evidence submitted, the Fair Hearing Panel found that your admission (in your response dated [DATE]) corroborated a portion of the complainant's affidavit. The admitted comments are italicized below [...]

The Fair Hearing Panel found [the admitted] comments, in the context they were offered, to be in conflict with the standards and principles of the Academy and justification for disciplinary action under Section A-4 of the Disciplinary Action Policy of the Academy.

Therefore, it is the judgment of the Fair Hearing Panel to formally reprimand you by way of this letter. According to the Disciplinary Action Policy, the word "Reprimand" means that the respondent [Dr. X] shall be advised in writing of a finding of misconduct and that such conduct should be changed.

Please note this is a "private" reprimand. There will not be public notification of this matter. The complainant will be given only verbal notice by Academy legal staff that this matter was sent through the Academy's disciplinary process, that a private reprimand was issued, and that the existence of this complaint with the Academy and the Academy's private reprimand are to be kept confidential. The complainant may not disclose the existence of the complaint filed with the Academy nor the Academy's action. Pursuant to the Disciplinary Action Policy, "all material concerned with these matters shall be held strictly confidential at all times." If the Academy receives an inquiry about a complaint against you, the standard response will be that (1) the Academy's disciplinary process is confidential and (2) the Board of Directors has not taken action to discipline you. Finally, this private reprimand will not be filed with the National Practitioner Data Bank.

DISCLOSURE

J.C. Hutchins serves as Associate General Counsel, American Academy of Neurology, American Academy of Neurology Professional Association, and serves as General Counsel, American Academy of Neurology Foundation. M.G. Sagsveen serves as General Counsel, American Academy of Neurology, American Academy of Neurology Professional Association, and United Council for Neurologic Subspecialties. Dr. Larriviere serves as a consultant for Allergan, Inc. and serves on the editorial board of *Neurology Today*.

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