

The Principles of Medical Ethics

*With Annotations Especially
Applicable to Psychiatry*

2001 Edition

(Including November 2003 amendments)

Members of the American Psychiatric Association will find additional value in the publication *Code of Medical Ethics, Current Opinions With Annotations*, prepared by the AMA Council on Ethical and Judicial Affairs, available from the American Medical Association, by calling 800-621-8335.

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The Principles of Medical Ethics

THE PRINCIPLES OF MEDICAL ETHICS

With Annotations Especially
Applicable to Psychiatry
2001 Edition (includes November 2003 amendments)

In 1973, the American Psychiatric Association (APA) published the first edition of *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry*. Subsequently, revisions were published as the APA Board of Trustees and the APA Assembly approved additional annotations. In July of 1980, the American Medical Association (AMA) approved a new version of the *Principles of Medical Ethics* (the first revision since 1957), and the APA Ethics Committee¹ incorporated many of its annotations into the new *Principles*, which resulted in the 1981 edition and subsequent revisions. This version includes changes to the *Principles* approved by the AMA in 2001.

Foreword

ALL PHYSICIANS should practice in accordance with the medical code of ethics set forth in the *Principles of Medical Ethics* of the American Medical Association. An up-to-date expression and elaboration of these statements is found in the Opinions and Reports of the Council on Ethical and Judicial Affairs of the American Medical Association.² Psychiatrists are strongly advised to be familiar with these documents.³

However, these general guidelines have sometimes been difficult to interpret for psychiatry, so further annotations to the basic principles are offered in this document. While psychiatrists have the same goals as all physicians, there are special ethical problems in psychiatric practice that

¹The committee included Herbert Klemmer, M.D., Chairperson, Miltiades Zaphiropoulos, M.D., Ewald Busse, M.D., John R. Saunders, M.D., and Robert McDevitt, M.D. J. Brand Brickman, M.D., William P. Camp, M.D., and Robert A. Moore, M.D., served as consultants to the APA Ethics Committee.

²*Current Opinions with Annotations of the Council on Ethical and Judicial Affairs*, Chicago, American Medical Association, 2002–2003.

³Chapter 7, Section 1 of the Bylaws of the American Psychiatric Association (May 2003 edition) states, “All members of the Association shall be bound by the ethical code of the medical profession, specifically defined in the *Principles of Medical Ethics* of the American Medical Association and in the Association’s *Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry*.” In interpreting the Bylaws, it is the opinion of the APA Board of Trustees that inactive status in no way removes a physician member from responsibility to abide by the *Principles of Medical Ethics*.

differ in coloring and degree from ethical problems in other branches of medical practice, even though the basic principles are the same. The annotations are not designed as absolutes and will be revised from time to time so as to be applicable to current practices and problems.

Following are the *AMA Principles of Medical Ethics*, printed in their entirety, and then each principle printed separately along with an annotation especially applicable to psychiatry.

Principles of Medical Ethics American Medical Association

Preamble

The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize responsibility to patients first and foremost, as well as to society, to other health professionals, and to self. The following *Principles* adopted by the American Medical Association are not laws, but standards of conduct which define the essentials of honorable behavior for the physician.

Section 1

A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.

Section 2

A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.

Section 3

A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.

Section 4

A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law.

Section 5

A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.

Section 6

A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.

Section 7

A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health.

Section 8

A physician shall, while caring for a patient, regard responsibility to the patient as paramount.

Section 9

A physician shall support access to medical care for all people.

Principles With Annotations
(The APA is expected to approve new Annotations in 2004)

Following are each of the AMA *Principles of Medical Ethics* printed separately along with annotations especially applicable to psychiatry.

Preamble

The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize responsibility to patients first and foremost, as well as to society, to other health professionals, and to self. The following Principles adopted by the American Medical Association are not laws, but standards of conduct which define the essentials of honorable behavior for the physician.⁴

Section 1

A physician shall be dedicated to providing competent medical care with compassion and respect for human dignity and rights.

1. A psychiatrist shall not gratify his or her own needs by exploiting the patient. The psychiatrist shall be ever vigilant about the impact that his or her conduct has upon the boundaries of the doctor–patient relationship, and thus upon the well-being of the patient. These requirements become particularly important because of the essentially private, highly personal, and sometimes intensely emotional nature of the relationship established with the psychiatrist.

⁴Statements in italics are taken directly from the American Medical Association's *Principles of Medical Ethics*.

2. A psychiatrist should not be a party to any type of policy that excludes, segregates, or demeans the dignity of any patient because of ethnic origin, race, sex, creed, age, socioeconomic status, or sexual orientation.

3. In accord with the requirements of law and accepted medical practice, it is ethical for a physician to submit his or her work to peer review and to the ultimate authority of the medical staff executive body and the hospital administration and its governing body. In case of dispute, the ethical psychiatrist has the following steps available:

- a. Seek appeal from the medical staff decision to a joint conference committee, including members of the medical staff executive committee and the executive committee of the governing board. At this appeal, the ethical psychiatrist could request that outside opinions be considered.
- b. Appeal to the governing body itself.
- c. Appeal to state agencies regulating licensure of hospitals if, in the particular state, they concern themselves with matters of professional competency and quality of care.
- d. Attempt to educate colleagues through development of research projects and data and presentations at professional meetings and in professional journals.
- e. Seek redress in local courts, perhaps through an enjoining injunction against the governing body.
- f. Public education as carried out by an ethical psychiatrist would not utilize appeals based solely upon emotion, but would be presented in a professional way and without any potential exploitation of patients through testimonials.

4. A psychiatrist should not be a participant in a legally authorized execution.

Section 2

A physician shall uphold the standards of professionalism, be honest in all professional interactions and strive to report physicians deficient in character or competence, or engaging in fraud or deception to appropriate entities.

1. The requirement that the physician conduct himself/herself with propriety in his or her profession and in all the actions of his or her life is especially important in the case of the psychiatrist because the patient tends to model his or her behavior after that of his or her psychiatrist by identification. Further, the necessary intensity of the treatment relationship may tend to activate sexual and other needs and fantasies on the part of both patient and psychiatrist, while weakening the objectivity necessary for control. Additionally, the inherent inequality in the

doctor-patient relationship may lead to exploitation of the patient. Sexual activity with a current or former patient is unethical.

2. The psychiatrist should diligently guard against exploiting information furnished by the patient and should not use the unique position of power afforded him/her by the psychotherapeutic situation to influence the patient in any way not directly relevant to the treatment goals.
3. A psychiatrist who regularly practices outside his or her area of professional competence should be considered unethical. Determination of professional competence should be made by peer review boards or other appropriate bodies.
4. Special consideration should be given to those psychiatrists who, because of mental illness, jeopardize the welfare of their patients and their own reputations and practices. It is ethical, even encouraged, for another psychiatrist to intercede in such situations.
5. Psychiatric services, like all medical services, are dispensed in the context of a contractual arrangement between the patient and the physician. The provisions of the contractual arrangement, which are binding on the physician as well as on the patient, should be explicitly established.
6. It is ethical for the psychiatrist to make a charge for a missed appointment when this falls within the terms of the specific contractual agreement with the patient. Charging for a missed appointment or for one not canceled 24 hours in advance need not, in itself, be considered unethical if a patient is fully advised that the physician will make such a charge. The practice, however, should be resorted to infrequently and always with the utmost consideration for the patient and his or her circumstances.
7. An arrangement in which a psychiatrist provides supervision or administration to other physicians or nonmedical persons for a percentage of their fees or gross income is not acceptable; this would constitute fee splitting. In a team of practitioners, or a multidisciplinary team, it is ethical for the psychiatrist to receive income for administration, research, education, or consultation. This should be based on a mutually agreed-upon and set fee or salary, open to renegotiation when a change in the time demand occurs. (See also Section 5, Annotations 2, 3, and 4.)

Section 3

A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.

1. It would seem self-evident that a psychiatrist who is a law-breaker might be ethically unsuited to practice his or her profession. When such illegal activities bear directly upon his or her practice, this would obviously be the case. However, in other instances, illegal activities such as those concerning the right to protest social injustices might not bear on either the image of the psychiatrist or the ability of the specific psychiatrist to treat his or her patient ethically and well.

While no committee or board could offer prior assurance that any illegal activity would not be considered unethical, it is conceivable that an individual could violate a law without being guilty of professionally unethical behavior. Physicians lose no right of citizenship on entry into the profession of medicine.

2. Where not specifically prohibited by local laws governing medical practice, the practice of acupuncture by a psychiatrist is not unethical per se. The psychiatrist should have professional competence in the use of acupuncture. Or, if he or she is supervising the use of acupuncture by nonmedical individuals, he or she should provide proper medical supervision. (See also Section 5, Annotations 3 and 4.)

Section 4

A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law.

1. Psychiatric records, including even the identification of a person as a patient, must be protected with extreme care. Confidentiality is essential to psychiatric treatment. This is based in part on the special nature of psychiatric therapy as well as on the traditional ethical relationship between physician and patient. Growing concern regarding the civil rights of patients and the possible adverse effects of computerization, duplication equipment, and data banks makes the dissemination of confidential information an increasing hazard. Because of the sensitive and private nature of the information with which the psychiatrist deals, he or she must be circumspect in the information that he or she chooses to disclose to others about a patient. The welfare of the patient must be a continuing consideration.

2. A psychiatrist may release confidential information only with the authorization of the patient or under proper legal compulsion. The continuing duty of the psychiatrist to protect the patient includes fully apprising him/her of the connotations of waiving the privilege of privacy. This may become an issue when the patient is being investigated by a government agency, is applying for a position, or is involved in legal action. The same principles apply to the release of information concerning treatment to medical departments of government agencies, business organizations, labor unions, and insurance companies. Information gained in confidence about patients seen in student health services should not be released without the students' explicit permission.

3. Clinical and other materials used in teaching and writing must be adequately disguised in order to preserve the anonymity of the individuals involved.

4. The ethical responsibility of maintaining confidentiality holds equally for the consultations in which the patient may not have been present and in which the consultee was not a physician. In such instances, the physician consultant should alert the consultee to his or her duty of confidentiality.

5. Ethically, the psychiatrist may disclose only that information which is relevant to a given situation. He or she should avoid offering speculation as fact. Sensitive information such as an individual's sexual orientation or fantasy material is usually unnecessary.

6. Psychiatrists are often asked to examine individuals for security purposes, to determine suitability for various jobs, and to determine legal competence. The psychiatrist must fully describe the nature and purpose and lack of confidentiality of the examination to the examinee at the beginning of the examination.
7. Careful judgment must be exercised by the psychiatrist in order to include, when appropriate, the parents or guardian in the treatment of a minor. At the same time, the psychiatrist must assure the minor proper confidentiality.
8. When, in the clinical judgment of the treating psychiatrist, the risk of danger is deemed to be significant, the psychiatrist may reveal confidential information disclosed by the patient.”
9. When the psychiatrist is ordered by the court to reveal the confidences entrusted to him/her by patients, he or she may comply or he/ she may ethically hold the right to dissent within the framework of the law. When the psychiatrist is in doubt, the right of the patient to confidentiality and, by extension, to unimpaired treatment should be given priority. The psychiatrist should reserve the right to raise the question of adequate need for disclosure. In the event that the necessity for legal disclosure is demonstrated by the court, the psychiatrist may request the right to disclosure of only that information which is relevant to the legal question at hand.
10. With regard for the person’s dignity and privacy and with truly informed consent, it is ethical to present a patient to a scientific gathering if the confidentiality of the presentation is understood and accepted by the audience.
11. It is ethical to present a patient or former patient to a public gathering or to the news media only if the patient is fully informed of enduring loss of confidentiality, is competent, and consents in writing without coercion.
12. When involved in funded research, the ethical psychiatrist will advise human subjects of the funding source, retain his or her freedom to reveal data and results, and follow all appropriate and current guidelines relative to human subject protection.
13. Ethical considerations in medical practice preclude the psychiatric evaluation of any person charged with criminal acts prior to access to, or availability of, legal counsel. The only exception is the rendering of care to the person for the sole purpose of medical treatment.
14. Sexual involvement between a faculty member or supervisor and a trainee or student, in those situations in which an abuse of power can occur, often takes advantage of inequalities in the working relationship and may be unethical because:
 - a. Any treatment of a patient being supervised may be deleteriously affected.
 - b. It may damage the trust relationship between teacher and student.
 - c. Teachers are important professional role models for their trainees and affect their trainees’ future professional behavior.

Section 5

A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.

1. Psychiatrists are responsible for their own continuing education and should be mindful of the fact that theirs must be a lifetime of learning.
2. In the practice of his or her specialty, the psychiatrist consults, associates, collaborates, or integrates his or her work with that of many professionals, including psychologists, psychometricians, social workers, alcoholism counselors, marriage counselors, public health nurses, and the like. Furthermore, the nature of modern psychiatric practice extends his or her contacts to such people as teachers, juvenile and adult probation officers, attorneys, welfare workers, agency volunteers, and neighborhood aides. In referring patients for treatment, counseling, or rehabilitation to any of these practitioners, the psychiatrist should ensure that the allied professional or paraprofessional with whom he or she is dealing is a recognized member of his or her own discipline and is competent to carry out the therapeutic task required. The psychiatrist should have the same attitude toward members of the medical profession to whom he or she refers patients. Whenever he or she has reason to doubt the training, skill, or ethical qualifications of the allied professional, the psychiatrist should not refer cases to him/her.
3. When the psychiatrist assumes a collaborative or supervisory role with another mental health worker, he or she must expend sufficient time to assure that proper care is given. It is contrary to the interests of the patient and to patient care if the psychiatrist allows himself/herself to be used as a figurehead.
4. In relationships between psychiatrists and practicing licensed psychologists, the physician should not delegate to the psychologist or, in fact, to any nonmedical person any matter requiring the exercise of professional medical judgment.
5. The psychiatrist should agree to the request of a patient for consultation or to such a request from the family of an incompetent or minor patient. The psychiatrist may suggest possible consultants, but the patient or family should be given free choice of the consultant. If the psychiatrist disapproves of the professional qualifications of the consultant or if there is a difference of opinion that the primary therapist cannot resolve, he or she may, after suitable notice, withdraw from the case. If this disagreement occurs within an institution or agency framework, the differences should be resolved by the mediation or arbitration of higher professional authority within the institution or agency.

Section 6

A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.

1. Physicians generally agree that the doctor-patient relationship is such a vital factor in effective treatment of the patient that preservation of optimal conditions for development of a sound working relationship between a doctor and his or her patient should take precedence over all other considerations. Professional courtesy may lead to poor psychiatric care for physicians and their families because of embarrassment over the lack of a complete give-and-take contract.
2. An ethical psychiatrist may refuse to provide psychiatric treatment to a person who, in the psychiatrist's opinion, cannot be diagnosed as having a mental illness amenable to psychiatric treatment.

Section 7

A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health.

1. Psychiatrists should foster the cooperation of those legitimately concerned with the medical, psychological, social, and legal aspects of mental health and illness. Psychiatrists are encouraged to serve society by advising and consulting with the executive, legislative, and judiciary branches of the government. A psychiatrist should clarify whether he/ she speaks as an individual or as a representative of an organization. Furthermore, psychiatrists should avoid cloaking their public statements with the authority of the profession (e.g., "Psychiatrists know that...").
2. Psychiatrists may interpret and share with the public their expertise in the various psychosocial issues that may affect mental health and illness. Psychiatrists should always be mindful of their separate roles as dedicated citizens and as experts in psychological medicine.
3. On occasion psychiatrists are asked for an opinion about an individual who is in the light of public attention or who has disclosed information about himself/herself through public media. In such circumstances, a psychiatrist may share with the public his or her expertise about psychiatric issues in general. However, it is unethical for a psychiatrist to offer a professional opinion unless he or she has conducted an examination and has been granted proper authorization for such a statement.
4. The psychiatrist may permit his or her certification to be used for the involuntary treatment of any person only following his or her personal examination of that person. To do so, he or she must find that the person, because of mental illness, cannot form a judgment as to what is in his/ her own best interests and that, without such treatment, substantial impairment is likely to occur to the person or others.

Section 8

A physician shall, while caring for a patient, regard responsibility to the patient as paramount.

New section recently adopted by the AMA.

Section 9

A physician shall support access to medical care for all people.

New section recently adopted by the AMA.

Procedures for Handling Complaints of Unethical Conduct

The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize responsibility not only to patients but also to society, to other health professionals, and to self. The *Principles*, adopted by the American Medical Association, are not laws but standards of conduct that define the essentials of honorable behavior for the physician.

Complaints charging members of the American Psychiatric Association (APA) with unethical behavior or practices shall be investigated, processed, and resolved in accordance with procedures approved by the APA Assembly and the APA Board of Trustees.

If a complaint of unethical conduct against a member is sustained, the member shall receive a sanction ranging from reprimand to expulsion. Any decision to expel a member must be approved by a two-thirds (2/3) affirmative vote of all members of the APA Board of Trustees present and voting.⁵

PART I: INITIAL PROCEDURES

1. a. All formal complaints charging a member of the APA with unethical behavior shall be made in writing, signed by the complainant, and addressed to the district branch of the charged member (“respondent”) or, if addressed to the APA, shall be referred by the APA to the respondent’s district branch for investigation⁶ and decision in accordance with these Procedures.⁷
 - b. If the respondent is a member-at-large of the APA, the complaint shall be referred to an ad hoc investigating committee, as provided for in Paragraph 2 below.
 - c. To be considered pursuant to these Procedures, a complaint alleging unethical conduct must be received within ten (10) years of the alleged conduct⁸.
2. If, after receiving a written complaint, the district branch determines that there are compelling reasons why it would not be the appropriate body to consider the complaint, the district branch shall write to the Chair of the APA Ethics Committee, requesting that it be excused, providing a

⁵ Chapter 7, Sections 1, 2, and 3, Bylaws, American Psychiatric Association, March 2003 edition.

⁶ As used in these Procedures, the term investigation is meant to include both an information-gathering or investigatory phase of a case and a hearing phase. This term does not apply to the process by which a district branch initially determines whether or not a complaint warrants investigation.

⁷ The Procedures set out minimum requirements. Each district branch should comply with any additional or more stringent requirements of state law.

⁸ In the case of a minor patient, the ten (10) years will not begin until the patient reaches majority.

detailed explanation of the reasons for its request. If the Chair of the APA Ethics Committee determines that the district branch should not be excused, the district branch shall proceed with the complaint. If the Chair of the APA Ethics Committee agrees that the district branch should be excused from considering the complaint, the Chair shall then appoint three (3) Fellows of the APA to serve as an ad hoc investigating committee to conduct the investigation and to render a decision.⁹ When possible, these Fellows shall reside in the same Area as the respondent and in no event shall any such Fellow be a member of the APA Ethics Committee or the APA Board of Trustees.

3. If the district branch finds it cannot determine that the complaint warrants investigation under the ethical standards established by *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry*, the district branch shall so notify the complainant, requesting additional information when appropriate. If the district branch determines that the charges do not warrant investigation, it shall notify the complainant, stating the basis for the conclusion and informing the complainant that he/she may request a review of this decision no later than sixty (60) days to the APA Secretary. If the Secretary determines that the complaint warrants investigation, the complaint shall be referred to the Chair of the APA Ethics Committee, who will appoint an ad hoc investigating committee as provided for in Paragraph 2 above. When an ad hoc investigating committee is appointed, the district branch shall be so notified by the Chair of the APA Ethics Committee.

4. If the district branch determines that a complaint warrants investigation under the ethical standards established by *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry*, the district branch shall advise the APA Secretary as well as the complainant and the respondent that it will be conducting the investigation. The district branch shall also send a copy of the complaint to the respondent, along with copies of *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* and these Procedures. If the district branch decides to consider the complaint in accordance with the procedures in Part II (Enforcement Option), the respondent shall further be informed that he/she has the right to be represented by counsel; that he/she has the right to a hearing; and that if there is a hearing, at the hearing, he/she will have the rights set out in Paragraph 9 below. The respondent will also be informed of his/her right to appeal an adverse decision to the APA Ethics Committee or, where appropriate, to the APA Ethics Appeals Board in accordance with the provisions of Paragraphs 19–23 below.

5. The district branch investigation shall be comprehensive and fair and conducted as provided herein. The district branch may decide:

- a. to conduct a formal enforcement proceeding, including where appropriate a hearing, pursuant to the Enforcement Option procedures set out in Part II, Paragraphs 6-25 below, or

⁹ Unless otherwise indicated, whenever these Procedures refer to activities of a district branch, the same requirements shall apply to the ad hoc investigating committee when it performs an investigation.

b. with the agreement of the respondent , to attempt to consider and resolve the complaint in accordance with the Educational Option procedures set out in Part III, Paragraphs 26-33 below.

In deciding which approach to use, the district branch shall consider factors including the nature and seriousness of the alleged misconduct, prior findings or allegations of unethical conduct, and guidelines developed by the APA Ethics Committee. Any attempt to resolve the matter through the Educational Option shall be without prejudice to the right of the district branch to determine at a later time that resolution pursuant to this option is not possible and to proceed to consider and resolve the complaint pursuant to the Enforcement Option procedures of Part II.

PART II: ENFORCEMENT OPTION

6. If the district branch pursues investigation and resolution of a complaint in accordance with the provisions in this Part, a hearing conducted in accordance with the provisions of Paragraph 9 below shall be held unless the respondent has voluntarily waived his/her right to a hearing, or the district branch, prior to the hearing, has determined that there has been no ethics violations. The respondent's waiver of a hearing shall not prevent the district branch from meeting with, and hearing the evidence of, the complainant and other witnesses and reaching a decision in the case.

7. The respondent will be notified of the hearing by certified mail or overnight delivery (signature required) at least thirty (30) days in advance of the hearing. The notice will include the following:

- a. The date, time, and place of the hearing;
- b. A list of witnesses expected to testify;
- c. Notification of the respondent's right to representation by legal counsel or another individual of his/her choice;
- d. Notification of the respondent's right to appeal any adverse decision to the APA Ethics Committee; and
- e. The names of the members of the ethics committee or panel which will conduct the hearing.

8. The initial, information-gathering stages of the investigation, which may include preliminary interviews of the complainant and the respondent , may be conducted by any single member of or a subcommittee of the ethics committee. In all cases in which there may be a decision adverse to the respondent, unless the respondent has waived his/her right to a hearing, there must be a hearing before the district branch ethics committee or a specially constituted panel of at least three (3) members, at least one (1) of whom must be a member of the district branch ethics committee.

9. The hearing shall provide fairness and respect for both the respondent and the complainant. The following procedures shall apply:

- a. The respondent may be represented by counsel or other person. The counsel or other person may answer questions addressed to him/her, advise his/her client, introduce evidence, examine and cross-examine witnesses, and make opening and closing statements. Counsel's participation is subject to the continuing direction and control of the Chair. The Chair shall exercise its discretion so as to prevent the intimidation or harassment of the complainant and/or other witnesses and with regard to the peer review nature of the proceedings. Questions addressed by members of the committee or panel to the respondent shall be answered by the respondent.
- b. Except when the district branch concludes that it is prepared to proceed solely on the basis of extrinsic evidence,¹⁰ the complainant must be present at the hearing unless excused by the committee or panel Chair. The complainant will be excused only when he/she has so requested and, in the judgment of the Chair, participation would be harmful to him/her.
- c. Except when the district branch concludes that it is prepared to proceed solely on the basis of extrinsic evidence or the complainant is excused pursuant to Paragraph 9(b) above, the complainant shall testify regarding his/her charges.
- d. The respondent or his/her attorney may challenge material presented by the complainant or the complainant's witnesses: (i) by appropriate direct challenge through cross-examination; or (ii) if the complainant asked to be excused from such direct challenge and the Chair determined that such direct challenge will be harmful to the complainant, by written questions submitted by the respondent and posed to the complainant by the Chair, with answers to be provided orally or in writing as the Chair in his/her discretion determines is appropriate.
- e. The respondent may choose not to be present at the hearing and to present his/her defense through other witnesses and counsel.
- f. The respondent may testify on his/her own behalf, call and examine supporting witnesses, and introduce relevant evidence in support of his/her case. Evidence may not be excluded solely on the grounds that it would be inadmissible in a court of law.
- g. Members of the hearing panel may ask pertinent questions during the hearing.

¹⁰ For these purposes, "extrinsic evidence" shall mean documents whose validity and accuracy appear to be clear on their face and which do not rely on the assertions or opinions of the complainant and/or his/her witnesses. Examples of such evidence include admissions by the respondent, formal judicial or administrative reports, sworn deposition or trial testimony that was subject to cross-examination, photographs, medical or hospital records, hotel or credit card receipts, and so forth. When the district branch decides to rely solely on such extrinsic evidence, it should take appropriate steps to ensure that members of the hearing panel do not take into account any information from the complainant or other witnesses and base their decision solely on the available extrinsic evidence. Additional information on extrinsic evidence is available from the APA.

h. A stenographic or tape record shall be made of the proceedings, and a copy shall subsequently be made available to the respondent at a reasonable charge.

i. The respondent may make an oral statement and/or submit a written statement at the close of the hearing.

10. All ethics committee or panel recommendations shall be in writing and shall include a statement of the basis for the recommendation. If the investigation has been conducted by a panel, the panel shall make a recommendation only as to whether there has been an ethics violation, and the district branch ethics committee shall review this recommendation and add its recommendation as to sanction, if any.

11. Upon completion of the investigation and any internal review procedures required by the district branch's governing documents, the district branch shall render a decision—

a. that the respondent did not act unethically;

b. that the case should be concluded without a finding; or

c. that the respondent acted unethically, and what sanction is appropriate.

If the investigation has been conducted by an ad hoc investigating committee, the ad hoc investigating committee shall make the decision. The district branch decision shall be in writing and shall include a statement of the basis of the decision. In all cases, the district branch shall seek to reach a decision as expeditiously as possible. This should usually be within nine (9) months from the time that the complaint was received. All district branch decisions must be reviewed by the APA Ethics Committee in accordance with Paragraph 15 below.

12. The three (3) sanctions in order of severity are as follows:

a. reprimand;

b. suspension (for a period not to exceed five [5] years);¹¹

c. expulsion.

13. If the district branch renders a decision that the case should be concluded without a finding, it may issue a letter of concern to the member, which can include suggestions for education. The letter of concern will be signed by the president of the district branch after a draft has been reviewed by the APA Ethics Committee. The APA Ethics Committee must

¹¹ A suspended member will be required to pay dues and will be eligible for APA benefits, except that such a member will lose his/her rights to hold office, vote, nominate candidates, propose referenda or amendments to the Bylaws, and serve on any APA committee or component, including the APA Board of Trustees and the APA Assembly. If the suspended member is a Fellow or Life Fellow, the Fellowship will be suspended for the same period of time. Each district branch shall decide which, if any, district branch privileges and benefits shall be denied during the period of suspension.

agree that the complaint resulted in an investigation that was comprehensive and fair, and in accordance with the procedures in Paragraphs 6–9 above. In addition to the three (3) sanctions noted in Paragraph 12, the district branch may also, but is not required to, impose certain conditions, such as educational or supervisory requirements, on a suspended member.¹² When such conditions are imposed, the following procedures shall apply:

- a. If the district branch imposes conditions, it shall monitor compliance.
- b. If the ad hoc investigating committee imposes conditions, the Chair of the APA Ethics Committee shall establish a means for monitoring compliance.
- c. If a member fails to satisfy the conditions, the district branch or the APA monitoring body established by the Chair of the APA Ethics Committee may decide to expel the member.
- d. If it is determined that a member should be expelled for noncompliance with conditions, the member may appeal pursuant to the provisions set forth in Paragraphs 19–23 below.
- e. If a member expelled for noncompliance with conditions does not appeal, the APA Board of Trustees shall review the expulsion in accordance with the provisions of Paragraph 18 below.

14. After the district branch completes its investigation and arrives at its decision, the decision and any pertinent information concerning the procedures followed or relating to the action taken shall be forwarded to the APA Ethics Committee for review in accordance with the provisions of Paragraphs 15-17 below. If the Chair of the APA Ethics Committee determines that these review functions are best carried out instead by a subcommittee, he/she shall designate such a subcommittee (or subcommittees) that shall include at least three (3) voting members of the APA Ethics Committee and that shall be authorized to undertake these review functions on behalf of the full APA Ethics Committee. The review proceedings shall be undertaken expeditiously, in no instance exceeding ninety (90) days from the receipt of the district branch’s report before the district branch is informed of the APA Ethics Committee’s opinion, conclusion, or need for clarification of the material received. If the APA Ethics Committee fails to act within ninety (90) days, the district branch may inform the respondent in accordance with Paragraph 17 below.

15. In all cases, including those where the district branch finds that an ethics violation has not occurred or that the case should be concluded without a finding, the APA Ethics Committee shall review the information submitted by the district branch to assure that the complaint received an investigation that was comprehensive and fair and in accordance with the procedures in Paragraphs 6–9 above. If the APA Ethics Committee concludes that these requirements were not satisfied, it shall so advise the district branch, and the district branch shall remedy the

¹² Personal treatment may be recommended, but not required, and any such recommendation shall be carried out in accordance with the ethical requirements governing confidentiality as set forth in *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry*. In appropriate cases, the district branch may in addition refer the psychiatrist in question to a component responsible for considering impaired or physically ill physicians.

deficiencies and shall make further reports to the APA Ethics Committee until such time as the APA Ethics Committee is satisfied that these requirements have been met. If, in the view of the APA Ethics Committee, the district branch is either unwilling or unable to complete the investigation in a satisfactory manner, the Chair of the APA Ethics Committee may appoint an ad hoc investigating committee to conduct the investigation and render a decision.

16. In cases where the district branch has found that an ethics violation has occurred, the APA Ethics Committee or subcommittee, after ascertaining that the investigation was comprehensive and fair and in accordance with these procedures, shall consider the appropriateness of the sanction imposed. If the APA Ethics Committee or subcommittee concludes that the sanction is appropriate, it shall so notify the district branch. If the APA Ethics Committee or subcommittee concludes that the sanction should be reconsidered by the district branch, it shall provide a statement of reasons explaining the basis for its opinion, and the district branch shall reconsider the sanction. After reconsideration, the decision of the district branch shall stand, even if the district branch decides to adhere to the original sanction, except that the sanction may be modified as provided for in Paragraphs 18, 22 or 24 below.

17. After the APA Ethics Committee or subcommittee completes the review process, the district branch shall notify the respondent of the decision and sanction, if any, by certified mail or overnight mail (signature required). The respondent shall be provided copies of the district branch ethics committee and/or panel recommendation(s) and the district branch decision. If the decision is that no ethics violation has occurred, the case shall be terminated, and the district branch shall also notify the complainant of this decision. If the decision is that an ethics violation has occurred, the respondent shall be advised that he/she has thirty (30) days to file a written letter of appeal with the Chair of the APA Ethics Committee. In such circumstances, the complainant shall not be advised of any action until after the appeal has been completed or until the APA notifies the district branch that no appeal has been taken or that the procedures provided for in Paragraph 18 below have been completed.

18. If, after review by the APA Ethics Committee or upon a finding of noncompliance with conditions as provided for in Paragraph 13(c) above, the decision is to expel a respondent, and the respondent fails to appeal the decision, the APA Board of Trustees at its next meeting shall review the expulsion on the basis of a presentation by the Chair of the APA Ethics Committee and the documentary record in the case. A decision to affirm an expulsion must be by a vote of two-thirds (2/3) of those Trustees present and voting. A decision to impose a lesser sanction shall be by a majority vote. If necessary, the APA Board of Trustees may request further information from the district branch before voting on the decision to expel.

19. a. All appeals in cases in which the complaint was received by the district branch after January 1, 2003 shall be considered and decided by a panel of three (3) members of the APA Ethics Committee who have not been involved in a review of the case pursuant to Paragraphs 14-17. The Chair of the APA Ethics Committee may appoint a replacement if there are not three members of the Committee who have not been involved in the case who are able to serve.

b. In cases in which the complaint was received by the district branch prior to January 1, 2003, the APA Ethics Committee shall decide whether it is appropriate under the

circumstances for the appeal to be heard by a panel of the Ethics Committee or by the APA Ethics Appeal Board pursuant to procedures in effect prior to January 1, 2003. In making this decision, the APA Ethics Committee shall consider the availability of an Ethics Committee panel which has not reviewed the case, whether the respondent was notified of his/her right to appeal to the Ethics Appeals Board and whether a respondent informed of an appeal to the Appeals Board will agree to an appeal to a panel of the Ethics Committee.

20. All appeals shall be based on one (1) or more of the following grounds:
 - a. that there have been significant procedural irregularities or deficiencies in the case;
 - b. that *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* has been improperly applied;
 - c. that the findings of or sanction imposed by the district branch are not supported by substantial evidence;
 - d. that substantial new evidence has called into question the findings and conclusions of the district branch.
21.
 - a. The respondent's request for an appeal must be received within 30 days of the date the respondent is notified of the district branch decision. Upon receipt of the respondent's request for an appeal, the APA Ethics Committee or Ethics Appeals Board shall request a copy of the district branch file, which shall be made available to the respondent upon request and compliance with any conditions set by the Committee or Appeals Board.
 - b. In appeals heard by an Ethics Committee appeals panel, the panel will review, and decide the appeal solely on the basis of, the district branch's documentary record of its investigation and decision and any written appeal statements filed by the respondent and the district branch. The respondent's statement will be provided to the district branch, which may file a written response. Any district branch response will be forwarded to the respondent, who will have the opportunity to respond in writing prior to the Ethics Committee's consideration of the appeal. Filing deadlines and other procedures governing the appeal shall be established by the APA Ethics Committee.
 - c. In appeals heard by the Ethics Appeals Board,¹³ the respondent shall be entitled to file a written statement with the Appeals Board and may appear before the Board alone or accompanied by counsel. The Appeals Board shall request a representative of the district branch, accompanied by counsel if the district branch so requests, to participate in the appeal by speaker phone. In addition, the Appeals Board may request any

¹³ The Ethics Appeals Board shall be chaired by the APA Secretary and shall include two past Presidents of the APA, a past Speaker of the APA Assembly, the Chair of the APA Ethics Committee and a current chair of a district branch ethics committee. The Secretary and Chair of the APA Ethics Committee shall serve during their respective terms of office. All other members of the Ethics Appeals Board shall be appointed by the President for a three-year term. All members of the Ethics Appeals Board, including the chair, shall be entitled to one vote on all matters. If any of the above cannot serve, the President is authorized to appoint a replacement.

information from the district branch and may also request the complainant, accompanied by counsel if he/she so requests, to attend the appeal. The APA counsel and other necessary APA staff may also attend if the Appeals Board so requests. Time limits and other procedures governing the appeal shall be established by the Appeals Board.

22. After reviewing all documents and hearing any oral presentation, the APA Ethics Committee appeals panel or the APA Ethics Appeals Board may take any of the following actions:

- a. affirm the decision, including the sanction imposed by the district branch;
- b. affirm the decision, but alter the sanction imposed by the district branch;
- c. reverse the decision of the district branch and terminate the case;
- d. remand the case to the district branch with specific instructions as to what further information or action is necessary.¹⁴ After the district branch or panel has completed remand proceedings, the case shall be handled in accordance with procedures in Paragraphs 14 through 22 .

23. After the APA Ethics Committee appeals panel or Ethics Appeals Board reaches a decision as set forth in Paragraph 22 , if the decision is anything other than to expel a member, the Chair of the APA Ethics Committee shall notify the district branch and the respondent simultaneously of the decision and that it is final.

24. If the decision is to expel a member, the APA Board of Trustees at its next meeting shall review the action solely on the basis of the presentation of the APA Secretary (or his/her designee) or the APA Ethics Committee Chair (or designee) and the documentary record in the case. The APA Board of Trustees may affirm the sanction, impose a lesser sanction, or remand to the APA Ethics Committee appeals panel or the Ethics Appeals Board for further action or consideration. A decision to affirm an expulsion must be by a vote of two-thirds (2/3) of those Trustees present and voting. All other actions shall be by majority vote. Members of the APA Board of Trustees who participated as members of the APA Ethics Committee appeals panel or the Ethics Appeals Board shall not vote when the APA Board of Trustees considers the case. Once the APA Board of Trustees has acted or, in a case of a remand, has approved the action taken on remand, the APA Secretary shall notify the district branch of the decision and that it is final.

25. Once a final decision is reached, the district branch shall notify the complainant and the respondent by certified mail or by overnight mail (signature required).

¹⁴ Remands will be employed only in rare cases, such as when new information has been presented on appeal or when there is an indication that important information is available and has not been considered.

PART III: EDUCATIONAL OPTION

26. If the district branch decides to attempt to resolve the complaint pursuant to the Educational Option procedures in this Part III (Paragraphs 26-33), it shall proceed only after (a) the respondent has been informed (i) that the district branch wishes to proceed in this manner but that he/she is entitled to proceed under Part II enforcement procedures, and (ii) that the district branch reserves the right to begin the investigation again and use formal enforcement procedures in Part II if in its sole discretion it determines that the respondent has not satisfactorily cooperated, (b) the respondent agrees to proceed under Part III rather than Part II, and (c) the complainant has been notified that the district branch has decided to proceed in this manner and has been provided a copy of the Procedures.

27. The district branch's consideration of an ethics complaint under this Part shall provide both the complainant and the respondent the opportunity to address the district branch. The district branch shall determine the procedures to be used, including whether to meet separately or together with the complainant and the respondent, whether to permit the respondent to be accompanied by a person of his or her own choosing, the size and composition of the group(s) meeting with the parties, and other matters involving the form and details of the district branch's consideration of the complaint. However, in determining the procedure it will use, the district branch shall seek to provide a format that will facilitate the respondent's understanding of the ethical issues raised by the complaint, including the reasons for or sources of the complainant's concern, and to permit the district branch to assess the respondent's understanding of these matters.

28. In proceedings under this Part, the district branch shall make no determination as to whether the respondent has violated the *Principles* or otherwise committed an ethics violation.

29. After its consideration of the complaint pursuant to Paragraph 27, the district branch may identify a specific educational program including courses, reading and consultation for the respondent to complete within a specified period. The respondent and the APA Ethics Committee will be notified of the required steps, the time frame in which they must be completed, and that failure to complete them as required will be grounds for being dropped from membership in the APA and the district branch for failure to satisfy educational requirements (*see* Bylaws, Section 2.5 or for further proceedings pursuant to Part II of these Procedures. The district branch will monitor the respondent's compliance with any such educational requirements.

30. The district branch shall retain records of complaints considered pursuant to this Part and of any education thereafter required of a respondent. The district branch may consider such information in connection with a decision as to how to handle any later complaints involving the respondent .

31. If the district branch at any time determines that the respondent has not cooperated with the district branch's consideration of the complaint, has not otherwise participated in a manner that permits an adequate educational experience or has not satisfied any educational requirements it has imposed, the district branch may so notify the respondent and inform him/her (a) that the complaint will be returned to the district branch ethics committee for its consideration and

resolution pursuant to the procedures set out in Part II, above, or (b) that the respondent's name will be presented to the Board of Trustees at its next meeting and the member dropped from membership unless the Board acts to exempt the respondent from the educational requirements. The decision as to whether to proceed under Part II or to recommend that the respondent be dropped from membership in the APA and the district branch will be in the district branch's discretion.

32. If the district branch decides to return the complaint for consideration and resolution pursuant to Part II of the Procedures, any subsequent investigation and hearing under Part II shall be conducted by district branch members who did not conduct the proceedings pursuant to the Educational Option in Part III.

33. If the district branch decides and notifies the respondent that his/her name will be presented to the Board of Trustees for purposes of being dropped from membership, the district branch shall also notify the APA Ethics Committee, which will notify the Office of Membership and the Board of Trustees.

PART IV: CONFIDENTIALITY

34. Except as described in Paragraph 35 below, disclosure by APA members of the name of the respondent, the fact that a complaint has been lodged, the substance of the complaint, or the identity of any witnesses shall be limited to persons who need this information to assure the orderly and effective administration of these procedures.

35. To assure proper protection of the public, there are times when disclosure of the identity of a respondent and other information may be essential. Such disclosure is authorized in the following instances:¹⁵

- a. The name of any member who is expelled from the APA for an ethics violation, along with an explanation of the nature of the violation, shall be reported in *Psychiatric News* and in the district branch newsletter or other usual means of communication with its membership. The name of any member who is expelled from the APA for an ethics violation, along with an explanation of the nature of the violation, shall also be reported to the medical licensing authority in all states in which the member is licensed. In addition, the name of any member who is also a member of a foreign psychiatric society or association and who is expelled shall be reported to the international society or association to which the member belongs.¹⁶ This Paragraph does not apply to those members who are dropped from membership for failure to satisfy educational requirements, pursuant to Paragraph 33, above.

¹⁵ State and/or federal law may impose additional reporting requirements with which district branches or the APA must comply.

¹⁶ Reporting shall include a press release to the media in the area in which the expelled member lives. If requested by a state licensing board to which the expulsion is reported, the APA and/or district branch may release relevant information from their files.

- b. The name of any member who is suspended from the APA for an ethics violation, along with an explanation of the nature of the violation, shall be reported in *Psychiatric News* and in the district branch newsletter or other usual means of communication with its membership. The name of any member who is suspended from the APA for an ethics violation, along with an explanation of the nature of the violation, shall also be reported to the medical licensing authority in all states in which the member is licensed.¹⁷
- c. The name of any member who resigns from the APA after an ethics complaint against him/her is received and before it is resolved shall be reported in *Psychiatric News* and in the district branch newsletter or other usual means of communication with its membership.
- d. The APA Board of Trustees or, after approval by the APA Ethics Committee, any district branch's governing council may report an ethics charge or a decision finding that a member has engaged in unethical conduct to any medical licensing authority, medical society, hospital, clinic, or other institutions or persons where such disclosure is deemed appropriate to protect the public.¹⁸

¹⁷ If requested by a state licensing board to whom the suspension is reported, the APA and/or district branch may release relevant information from their files.

¹⁸ Chapter 7, Sections 1, 2, and 3, Bylaws, American Psychiatric Association, March 2003 edition.

Guidelines for Ethical Practice in Organized Settings

At its meeting of September 13–14, 1997, the APA Ethics Committee voted to make the “Guidelines for Ethical Practice in Organized Settings,” as approved by the Board and the Assembly, an addendum to *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry*, to be preceded by introductory historical comments and cross-referenced to the appropriate annotations, as follows:

This addendum to *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* was approved by the Board of Trustees in March 1997 and by the Assembly in May 1997. This addendum contains specific guidelines regarding ethical psychiatric practice in organized settings and is intended to clarify existing ethical standards contained in Sections 1–9.

Addendum

Psychiatrists have a long and valued tradition of being essential participants in organizations that deliver health care. Such organizations can enhance medical effectiveness and protect the standards and values of the psychiatric profession by fostering competent, compassionate medical care in a setting in which informed consent and confidentiality are rigorously preserved, conditions essential for the successful treatment of mental illness. However, some organizations may place the psychiatrist in a position where the clinical needs of the patient, the demands of the community and larger society, and even the professional role of the psychiatrist are in conflict with the interests of the organization.

The psychiatrist must consider the consequences of such role conflicts with respect to patients in his/her care, and strive to resolve these conflicts in a manner that is likely to be of greatest benefit to the patient. Whether during treatment or a review process, a psychiatrist shall respect the autonomy, privacy, and dignity of the patient and his/her family.

These guidelines are intended to clarify existing standards. They are intended to promote the interests of the patient and should not be construed to interfere with the ability of a psychiatrist to practice in an organized setting. The *Principles* and *Annotations* noted in this communication conform to the statement in the preamble to the *Principles of Medical Ethics*. These are not laws but standards of conduct, which define the essentials of honorable behavior for the physician.

1. Appropriateness of Treatment and Treatment Options

a. A psychiatrist shall not withhold information that the patient needs or reasonably could use to make informed treatment decisions, including options for treatment not provided by the psychiatrist. [Section 1, Annotation 1 (APA); Section 2, Annotation 4 (APA)]

b. A psychiatrist's treatment plan shall be based upon clinical, scientific, or generally accepted standards of treatment. This applies to the treating and the reviewing psychiatrist. [Section 1, Annotation 1 (APA); Section 2 (APA); Section 4 (APA)]

c. A psychiatrist shall strive to provide beneficial treatment that shall not be limited to minimum criteria of medical necessity. [Section 1, Annotation 1 (APA)]

2. Financial Arrangements

When a psychiatrist is aware of financial incentives or penalties that limit the provision of appropriate treatment for that patient, the psychiatrist shall inform the patient and/or designated guardian. [Section 1, Annotation 1 (APA); Section 2 (APA)]

3. Review Process

A psychiatrist shall not conduct reviews or participate in reviews in a manner likely to demean the dignity of the patient by asking for highly personal material not necessary for the conduct of the review. A reviewing psychiatrist shall strive as hard for a patient he or she reviews as for one he or she treats to prevent the disclosure of sensitive patient material to anyone other than for clear, clinical necessity. [Section 1, Annotations 1 and 2 (APA); Section 4, Annotations 1, 2, 4, and 5 (APA)]

Questions & Answers About Procedures for Handling Complaints of Unethical Conduct

The APA Ethics Committee receives frequent requests for opinions on the Procedures for Handling Complaints of Unethical Conduct (following the Annotations in this edition of the *Principles*; referred to in this Addendum as the Procedures). The questions and answers that follow have been received and developed since 1973.

1. Question: Ethics proceedings sometimes involve serious unethical conduct. Under what circumstances should information about ethics cases be disclosed to the membership, government authorities, or other interested organizations and persons?

Answer: APA ethics cases are conducted in secrecy. As a general matter, the complainant's charges, the identity of the respondent, and other information are made available only to persons participating directly in the proceedings. Even within the APA and the district branches, information should not be passed on to other components. (October 1976; November 1977)

However, there are times when disclosure of information about an ethics case is necessary to assure proper protection of the public. For example, many states now require reporting to government agencies concerning members who have been found to have engaged in unethical conduct. The timing of such required reports, the amount and specificity of information to be disclosed, and other matters will vary from state to state. District branches should consult applicable state statutes to assure that these requirements are adhered to. The National Practitioner Data Bank requires that the APA report suspensions and expulsions. (March 1985; November 1989)

The Procedures outline in detail the public reporting that is now authorized, including releasing the names of members who are expelled or suspended, reporting to medical licensing authorities, reporting members who resign after an ethics complaint is received, and so forth. It is important to carefully review Paragraph 35 of the Procedures to ensure that you understand what is required. (July 1993)

Apart from these specific guidelines, public safety considerations may justify reporting before completion of formal proceedings. If a complainant, deemed highly credible, alleges unethical conduct on the part of a member that would pose a serious danger to the safety of patients, the district branch could report the allegations to an appropriate state agency, following consultation with legal counsel. (October 1977; March 1985)

2. Question: Does an Inactive Member have the responsibility to abide by the *Principles of Medical Ethics*?

Answer: These Principles apply to all categories of members living in the United States and in Canada. International Members and Fellows should abide by the ethics of the countries in which they live. (May 2003)

3. Question: For the sake of educating members and showing diligence to the public, should the results of ethics hearings be made public? Such results could be printed in the district branch newsletter or in *Psychiatric News*.

Answer: Undoubtedly, such publication would accomplish the above goals; but, it might also discourage complainants and district branch ethics committees from proceeding. However, if the penalty is expulsion or suspension, the name is to be published with the offense specified. If a member resigns during an ethics investigation, the name will be published. (See Question and Answer 1 above.) (March 1974; March 1985)

For educational purposes, we also encourage district branch ethics committees to extract the lessons from ethics hearings to illustrate the tensions between ethics principles and member behavior and their resolution. The purpose is to alert members to possible vulnerability to allegations of unethical conduct. (September 1979)

In addition, the APA may publish disguised ethics cases in *Psychiatric News* in order to educate members and the public as to what matters are being reported and how they are being handled. (APA Board of Trustees, December 1981)

4. Question: Aren't APA members who participate in ethics hearings or who bring complaints taking a risk of being sued?

Answer: Local laws vary, and one should check with local attorneys. In general, if procedures are followed properly and all involved act without malice, there should be no serious risk. In many states, specific immunity has been granted by laws. In fact, the public expects professional organizations to police themselves, and courts have held that professional peers are best qualified to judge the actions of each other. The most a respondent could sue for would be a rehearing, not damages, unless the member can prove malice on the part of those who judged him or her. It should be understood that anyone can file a suit at any time. To date, there has never been a successful suit against the APA and/or its district branches. (April 1976; March 1985)

5. Question: What does a complainant have to gain except potential embarrassment and harassment?

Answer: Patient complainants may be seeking vindication or revenge. Occasionally they see an ethics procedure as a route to financial reward. There have been complainants who demonstrate a sincere desire to obtain help for the respondent. Colleague complainants are usually seeking to protect the reputation of the profession. As a general statement, the only gain a complainant can expect is the realization that he or she has brought to our profession's attention a possible break

in our ethical standards. From then on, it is up to us. Local laws vary, but in most jurisdictions complainants who bring ethics charges without malice receive legal protection. (June 1976; March 1985)

6. Question: In an ethics hearing, should the complainant and respondent be heard together?

Answer: The Procedures require that the complainant and the respondent be heard together under most circumstances. Exceptions include cases in which the member has waived his/her right to a hearing, cases in which the committee or panel chair has determined that requiring the complainant and the respondent to appear together would be harmful to the complainant, and cases in which the respondent decides not to appear but to present his/her case through legal counsel and other witnesses. (November 1989)

If the district branch determines that an ethics complaint will be handled under the Educational Option (see Paragraph 27 of the Procedures), both the complainant and the respondent shall have the opportunity to address the district branch. The district branch shall determine the procedures to be used, including whether to meet separately or together with the complainant and the respondent. (May 2003)

7. Question: Can various specialty groups within psychiatry develop their own code of ethics?

Answer: Because we are members of the medical profession first, we are responsible to the *Principles of Medical Ethics*, formulated by the American Medical Association. The APA added “With Annotations Especially Applicable to Psychiatry.” These annotations were additive, and in no case did they subtract from or change any elements of the *Principles of Medical Ethics*. Nothing precludes another psychiatric society from developing a code that addresses the special needs of that group as long as it is additive to *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry* and does not subtract or change any elements of the above. To allow anything else would be to create much confusion for our membership and the public and would lead to legal challenges. (July 1976)

8. Question: To whom at the district branch should formal complaints be directed?

Answer: That is to be determined by each district branch. We recommend complaints be directed to the president of the district branch. We prefer the president to be the initial recipient because of his/her elected status and because there is frequent turnover in the office. Occasionally a chair of an ethics committee remains in that position for several years, and it would be unwise for him or her to be not only the initial recipient of complaints but also the recipient of charges of member harassment or complaint suppression. (October 1976)

9. Question: Should a district branch provide an appeal mechanism?

Answer: There are ample appeal mechanisms available under the Procedures. Nothing prevents a district branch from setting up an appeal to its local membership as long as the district branch

follows its own procedures as well as those of the APA. We do not recommend it. (January 1977; March 1977)

10. Question: Can a former member dropped for ethical reasons be readmitted to membership?

Answer: Yes, if he or she demonstrates a return to ethical conduct. We should strongly encourage and reward efforts toward rehabilitation. (March 1977)

11. Question: If a member is undergoing legal investigation for an alleged crime or is involved in a malpractice suit and a formal complaint has been received by the district branch, should its ethics committee proceed?

Answer: If the ethics committee decides to proceed, the member may object because he or she might fear that information produced at the ethics hearing could be subpoenaed for the trial, although the district branch would be advised to use all legal means to resist the subpoena. For this reason, or others, the district branch might determine it was more prudent to defer the investigation for the time being. However, it is incumbent upon the ethics committee to monitor the investigation and trial so that an ethics hearing can be conducted as soon after their completion as possible. (April 1977; August 1977; November 1977; January 1978; September 1979)

12. Question: If a district branch covers a large area, can one of its chapters act on an ethics complaint?

Answer: The Procedures would allow the executive council of the district branch to appoint a special hearing body composed of chapter members that would investigate the complaint and make recommendations to the council as long as at least one member of the hearing panel is a member of the district branch ethics committee. However, only the council can make an official decision on the merits of the complaint. (April 1977; October 1989)

13. Question: What are the expectations of a complainant in an ethics hearing?

Answer: The complainant should be heard, and the complaint be taken seriously even though it may eventually be found to be without merit. While the complainant can be accompanied by an attorney to the hearing and can ask the attorney for advice, the attorney should not be allowed to argue the client's complaint or cross-examine the respondent or his/her witnesses. The complainant can gain nothing from the procedure of a tangible nature. He or she can gain only appreciation for assisting us in maintaining the integrity of our profession. (June 1977)

14. Question: What are the "rights" of a member against whom a formal complaint has been filed?

Answer: A member complained against has the right to be informed of the complaint, to be notified in advance of any hearing or investigation, to have legal counsel, to bring witnesses in his/her defense, to be allowed to present his/her defense in detail, to expect the hearing panel and

the decision-making body to make a decision that is fair and without malice, and to be notified of the decision and the avenue of appeal. The respondent and/or the respondent's attorney have a right, in most cases, to confront his/her accusers and to cross-examine those accusers and other witnesses against him or her. There is a significant issue here—the member's right of confrontation versus the concern as to the harm this might do to a complainant—so each hearing chairperson will decide the form the cross-examination will take, whether by direct questioning or by written inquiry. (June 1977; October 1989)

If the district branch decides to attempt to resolve the complaint using the Educational Option, the respondent must be informed that the district branch wishes to proceed in this manner, that the respondent is entitled to proceed instead under the Enforcement Option, among other requirements. (See Procedures, Paragraphs 26-33) (May 2003)

15. Question: If a component committee, council, or task force of the APA comes across evidence of unethical behavior of a member, should the component make a formal ethics complaint as a matter of routine?

Answer: Yes, with one exception. If the component was gathering confidential information for another purpose and had advised the member of this confidentiality, the component should not make a formal complaint unless the unethical behavior is of such magnitude as to constitute a severe and immediate risk to the public or other members. (September 1977)

16. Question: Do APA Fellows and Members and International Members and Fellows (who live in other countries) have to follow the ethics principles of the APA?

Answer: Yes. The Bylaws make no exception in the requirement to abide by the *Principles of Medical Ethics*. However, the APA is not able to enforce the provisions of its Annotations to the *Principles of Medical Ethics* beyond the geographic boundaries of its district branches (in the United States and Canada). International Fellows and Members, and other Fellows and Members living in other countries are expected to follow the ethics codes of the country where they live or practice. (October 1977; July 1999, APA Board of Trustees)

17. Question: Does a patient-complainant have to give permission to a respondent to reveal information about the treatment relationship?

Answer: No. To bring a complaint is to consent to an investigation. In such a circumstance, the psychiatrist may ethically reveal only that information relevant to the hearing of the complaint. (November 1977) Although the complainant (patient) may not have to give an informed consent to the respondent to discuss the respondent-complainant's relationship, the complainant does have to sign an informed consent that may be provided to the respondent (if the respondent is the holder of the medical records) to release records for review by the ethics committee. (September 2003)

18. Question: If the public press reports the conviction of a member psychiatrist of a crime or the loss of a malpractice suit that raises a very serious question about moral competency to practice, what is the responsibility of the district branch?

Answer: If no other member of the district branch nor anyone else makes a formal complaint, it would be appropriate for an officer of the district branch to do so. (January 1978; January 1979)

19. Question: Can the district branch send to the APA Secretary a code number rather than the name of the respondent? If the member has been found innocent, can the district branch expunge its records of the complaint?

Answer: The APA believes that the use of code numbers and initials presents serious administrative problems. This information is kept in a secure place at APA headquarters, so fear of loss of confidentiality is unwarranted. A file is created after the original material is destroyed so that we can maintain a history of ethics issues involving our profession. The district branch can expunge its record if it chooses, but might also wish to maintain such history. (April 1978; June 1978)

20. Question: When a member transfers from our district branch to another, can information about a finding of unethical conduct be sent to the second district branch?

Answer: With the written permission of the transferring member, the transferring district branch can send information about an ethical charge and the results of the investigation to the new district branch executive council as confidential correspondence. Unless the member is suspended or expelled, he or she remains an APA member and does not lose the right to transfer. However, the receiving district branch has a right to challenge the transfer. (May 1978)

21. Question: Our district branch ethics committee is investigating an ethics complaint against one of our members. The member is moving to another district branch. Do we drop the investigation or pass the information on to the new district branch?

Answer: This question presents problems. The member might use moving and transferring as a way of avoiding the investigation and possible censure by peers. To pass the information on to the new district branch for continued investigation would create a very difficult problem for the new district branch, the complainant, and witnesses. Further, at this time, the information the first district branch received is to be considered confidential. (April 1978) Therefore, the APA Board of Trustees has made the following addition to the *Operations Manual*:
A transfer from one district branch to another will be delayed until resolution of any charge of unethical conduct. (May 1978)

22. Question: Should a member who is mentally ill and, as a result, has behaved unethically be suspended or expelled?

Answer: We would recommend the member be placed on Inactive Status and encouraged to seek treatment under the "impaired physician" act adopted in many states. Because he or she may also have had his or her medical license suspended or revoked, return to active membership would require that the local licensing body had returned his or her medical license. The district branch would want to assure itself that the member had recovered and was again capable of

ethical practice. The ultimate goal of such proceedings is rehabilitation of our colleague. The APA Board of Trustees has made the following addition to the *Operations Manual*:

When a member has had a license suspended or revoked because of physical or mental illness or substance abuse, he or she will not be dropped from membership in the APA, but may be placed on Inactive Status until recovery. This will be handled administratively in the APA Central Office, with the concurrence of the district branch and the Chair of the APA Membership Committee. (May 1978; July 1999)

23. Question: What should the composition of a district branch ethics committee be?

Answer: That is up to the district branch to decide. The committee should consist of members whose judgment is respected, obviously, but there are no specific requirements. Some district branches use their executive council, but it is more common to establish a standing committee. The APA Ethics Committee membership is defined in the *Operations Manual* as follows: six members, appointed for 3 years, with one to be a Past President of the APA. (August 1978; May 2003)

24. Question: If a complainant refuses to participate in a formal hearing, should the complaint be dropped?

Answer: Not necessarily. While not willing to participate in a formal hearing, the complainant might present written information sufficient to proceed or point the way to other evidence that would be relevant. The role of the complainant is not that of a prosecutor but that of a person bringing a potential problem to our attention (see Questions 5, 6, 13, and 14). (February 1979)

25. Question: When a member is suspended from membership in the district branch and in the APA, what privileges does he or she lose?

Answer: A suspended member will lose privileges cited in the Bylaws. He or she will lose the right to vote, to nominate candidates for office, to propose referenda and amendments to the Bylaws, and to serve on components, including the APA Board of Trustees and the APA Assembly. He or she may not hold elected office and may not initiate referenda to change actions of the Board of Trustees.. If the suspended member is a Fellow or Life Fellow, the Fellowship will be suspended for the same period of time. The suspended member will be expected to pay dues and assessments and will remain eligible for the other benefits of membership. Suspension may also result in the loss of other district branch privileges. (September 1981; March 1985; July 1993; May 2003)

26. Question (Part A): On occasion, a member charged with unethical behavior may settle out of court with the complainant in a parallel civil suit. Part of the settlement requires the complainant not to pursue the ethical charge. Should the APA establish a rule that participation by a member in such agreements is unethical in itself?

Answer: This “back door exit” from ethical complaints concerns us and, if used to stifle a bona fide complaint, is unethical.

26. Question (Part B): Even though the complainant drops the charge, can the process be continued?

Answer: If the alleged behavior is known to others, such as district branch officers, and from sources other than that provided by the original complainant, another complaint may be brought by whoever has that information. Obviously, the original complainant would not be available to provide information or to appear at a hearing. (March 1988)

27. Question (Part A): For an ethics charge, is there a time limit between the alleged behavior and complaint beyond which the complaint cannot be accepted?

Answer: In 2002, the APA Board of Trustees and the APA Assembly adopted a “statute of limitations” for an ethics complaint. The following appears in the Procedures: To be considered, a complaint alleging unethical conduct must be received within ten (10) years of the alleged conduct. In the case of a minor patient, the ten (10) years will not begin until the patient reaches age of majority.) (November 2002)

27. Question (Part B): If the district branch determines that the alleged complaint occurred prior to the ten (10) year statute of limitations, can a complainant ask that the APA review this decision?

Answer: Yes. However, the review is only to determine that the statute of limitations was applied appropriately. Such a review will be done by the APA Secretary. (November 2002)

28. Question: What is the effect of a respondent’s refusal to participate in the investigation or hearing? Is that, in itself, unethical?

Answer: The investigation and hearing can proceed with the evidence at hand and reach its conclusion in the absence of the respondent’s participation, although the right of appeal is not lost. A charge of unethical conduct upon this action itself would not be sufficient to constitute a sustainable complaint. (October 1977)

29. Question: We have learned from the Board of Medical Examiners that a member has been found guilty of sexual misconduct with a patient. The Board revoked his license, stayed the revocation, suspended his license for 6 months, and gave him 7 years of probation. Can the district branch suspend him without going through all the repetitive procedures?

Answer: APA policy does not allow automatic suspension at the time of license suspension, but requires an investigation. Thus, while a fair procedure must be followed, it is likely this will not have to be exhaustive under the circumstances. (January 1988)

30. Question: A serious ethical allegation about a member was received shortly after he resigned from our district branch and the APA, presumably because he was aware of the impending complaint. Should we publish that he resigned while under investigation?

Answer: The name of any member who resigns from the APA after an ethics complaint against him or her is received shall be reported in *Psychiatric News* and in the district branch newsletter or other usual means of communication with its membership. (July 1993)

31. Question: Do you go forward with a complaint alleging unethical behavior by a psychiatrist before he or she was an APA member? (September 2003)

Answer: No.

32. Question: Our district branch is quite large and has a heavy volume of complaints. Thus, we have divided the ethics committee into several hearing panels, all of whose members belong to the ethics committee. Paragraph 10 of the Procedures gives to a panel only the responsibility to determine if there has been a violation, and the recommendation of the ethics committee is required for the penalty. This would overburden us. Can you clarify?**Answer:** This requirement for a panel to recommend only the finding of unethical conduct but not the penalty was meant for panels not entirely comprised of ethics committee members. If all of the panel members are on the ethics committee, they may recommend the sanction, too. (April 1990)

33. Question: Although we found a member not to have behaved unethically, we feel he is impaired. Can the district branch ethics committee refer him to an impaired physician committee?

Answer: While the rules protecting confidentiality in the processing of ethical complaints do not address this, we believe a discreet referral to an impaired physician committee is permissible. (June 1990)

34. Question: Should our district branch executive council discuss matters from the ethics committee in executive session? Should minutes be kept and, if so, how complete?

Answer: Discussion should be in executive session and complete minutes should be kept, including the reasoning leading to the decision and the vote to reach a decision. (January 1991)

35. Question: Are there circumstances in which a reprimand can be published?

Answer: No. Publication is limited to suspension or expulsion (see Paragraph 35 of the Procedures). If you feel publication is indicated, you may wish to review your sanction. (February 1991)

36. Question: What material should be retained in the district branch file at the conclusion of a case?

Answer: The district branch file is the formal record of its investigation, hearing, and/or resolution of a complaint. The file will be produced if the member appeals the decision as well as if there is litigation. As such it should include the following:

- a. the final district branch decision and report of the case;
- b. any other final reports of the ethics committee, the district branch council, investigators, etc.;
- c. all correspondence to and from the respondent (and legal counsel), the complainant (and his/ her legal counsel), other witnesses and/or potential witnesses, and from the APA;
- d. all other documents and other evidence submitted by the parties or obtained by the ethics committee; and
- e. audio tapes, minutes, or other formal records of interviews or district branch committee or council meetings.

37. Question (Part A): There has been a great deal of discussion recently about using “extrinsic evidence” in processing ethics complaints. Could you clarify what this is?

Answer: Extrinsic evidence is really just information, often written, but also perhaps photographs. It is carefully defined in the Procedures (see Footnote 10); all aspects of this definition are crucial. First, the information must be “extrinsic” to the ethics proceeding; that is, it comes from some source or exists due to some purpose entirely unrelated to the ethics proceeding. Examples include an independent court or administrative (board) hearing, a medical record or a report from a state licensing board. Written reports made in the course of an ethics investigation are part of the proceeding, and thus, are not extrinsic to it.

Second, validity and accuracy must be clear; the information cannot be merely someone’s assertions. A determination by a court or a licensing board would generally be considered valid and accurate. Sworn testimony subject to cross-examination, receipts, photographs, or medical records also generally meet this requirement. A newspaper article, however, alleging that a member has done certain things, would be “extrinsic,” but is not presumptively valid and accurate, so it could not be used as extrinsic evidence (although it might actually stimulate some inquiry by the district branch). (March 2000)

37. Question (Part B): A district branch has a complaint and information that meets the requirements to be considered “extrinsic evidence.” How might this be helpful to the work of the district branch ethics committee?

Answer: Extrinsic evidence can be used in two ways. It may be just one more piece of information to be considered with others in the course of a full hearing (photographs, receipts, and medical records are often used in this way); or more importantly, it may be sufficient to eliminate the need for the district branch to conduct a full hearing on whether an ethics violation has occurred. If the document meets all criteria to be extrinsic evidence and, *standing alone*, it is sufficient to make a determination on whether there has been a violation and the nature of the violation, then a full hearing is not required.

When a district branch decides to rely on extrinsic evidence alone, care must be taken that this is the only information considered in determining whether there has been a violation and which of the *Principles* has been violated. This most commonly occurs when the district branch has detailed information from a court or licensing board. Notice to the respondent and other

procedural requirements still apply: the respondent is notified that rather than a hearing, the district branch will consider certain identified extrinsic evidence. The respondent must still be given an opportunity to be heard regarding any sanction but would not be allowed to speak or present any evidence as to whether or not there was a violation of ethics. If the district branch feels that information in addition to the extrinsic evidence is needed in determining the occurrence of a violation, then the district branch should convene a full hearing under all of the requirements listed in the Procedures. (March 2000)

38 (Part A). Question: How does the district branch determine that it will proceed using the Educational Option?

Answer: The district branch should consider several factors, namely the nature and seriousness of the alleged misconduct, and whether or not there have been previous findings of misconduct. Certainly the Educational Option may be considered for less seriousness instances of ethical misconduct, where the respondent is clearly receptive to education, and where there is a likelihood that education would lead to rehabilitation. If this option is chosen, it must be with the agreement of the respondent. In addition, this does not preclude the district branch from determining at a later date to resolve the complaint using the Enforcement Procedures. (September 2003)

38 (Part B). Question: When would a district branch choose the Enforcement Option?

Answer: The Enforcement Option should be used when there is egregious behavior, when there has been harm to the patient or to the profession; or when the respondent's behavior manifests a pattern of misconduct. (September 2003)