

CODE OF ETHICS OF THE AMERICAN SOCIETY OF PLASTIC SURGEONS®

(PLEASE NOTE: All complaints regarding possible ethical misconduct must be in writing and sent to: ASPS Ethics Committee, Dept.-7, 444 East Algonquin Road, Arlington Heights, IL 60005-4664.)

PREAMBLE

As stated in its *Bylaws*, the American Society of Plastic Surgeons® (ASPS®), is organized:

To benefit humanity by advancing the art and science of plastic and reconstructive surgery; to promote the highest standard of professional skill and competence among plastic surgeons; to promote the exchange of information among plastic surgeons; to promote the highest standard of personal conduct among plastic surgeons and physicians; to provide the public with information about the scientific progress in plastic and reconstructive surgery; to promote the purpose and effectiveness of plastic surgeons as is consistent with the public interest.

Membership in ASPS is granted by the voting membership of ASPS to those surgeons who are competent practitioners of the art and science of plastic surgery. Competence in plastic surgery involves attainment and maintenance of high standards of medical and ethical conduct. Medical competence is fostered by successful completion of the examinations of the American Board of Plastic Surgery, Inc. Ethical competence is fostered by the adoption and enforcement of a *Code of Ethics*, adherence to which is prerequisite for admission to and maintenance of membership in ASPS. Members are expected to act in accord with the *General* and *Specific Principles* of the *Code of Ethics* of ASPS in all contacts with patients, peers and the general public. Further, members are individually responsible and accountable for their actions and words, as well as the use of their names by any individual or entity. Members shall be subject to disciplinary action, including expulsion, for violation of any of the *General* or *Specific Principles* of this Code.

Section-1: General Principles

- I. The principal objective of the medical profession is to render services to humanity with full respect for human dignity. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion.
- II. Physicians should strive continually to improve medical knowledge and skill, and must make available to their patients and colleagues the benefits of their professional attainments. Physicians have an affirmative duty to disclose new medical advances to patients and colleagues.
- III. Physicians should practice a method of healing founded on a scientific basis, and should not voluntarily associate professionally with anyone who violates this principle.
- IV. The medical profession should safeguard the public and itself against physicians deficient in moral character or professional competence. Physicians should observe all laws, uphold the dignity and honor of the profession, and accept its self-imposed disciplines. They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession.
- V. Physicians may choose whom to serve. In emergency situations, however, physicians should render service to the best of their ability. Having undertaken the care of a patient, a physician may not neglect the patient; and until the patient has been discharged, a physician may discontinue services only after giving adequate notice.
- VI. Physicians should provide services under the terms and conditions which permit the free and complete exercise of sound medical judgment and skill. Nothing contained in this provision shall be construed to limit price competition among physicians.
- VII. In the practice of medicine, a physician should receive professional income only for:
 - (A) Medical services actually rendered or supervised by the physician;
 - (B) Sale of medically-related products approved by the physician;
 - (C) Services provided by ancillary personnel known to and associated with the physician.No physician shall pay nor receive a commission for referral of patients.
- VIII. A physician should seek consultation upon request, in doubtful or difficult cases or whenever it appears that the quality of medical service may be enhanced thereby.
- IX. A physician may not reveal a patient's confidence, any observed characteristics of the patient, or any information obtained from the patient in a professional capacity, unless required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or of the community.

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- X. The honored ideals of the medical profession imply that the responsibilities of the physician extend not only to the individual, but also to society. Activities, which have the purpose of improving both the health and well-being of the individual and the community, deserve the interest and participation of the physician.
- XI. To assist the public in obtaining medical services, physicians are permitted to make known their services through advertising. Advertising, however, entails the risk that the physician may employ practices that are false, fraudulent, deceptive, or misleading. Regulation is, therefore, necessary and in the public interest. Subsection-II of the *Specific Principles* permits public dissemination of truthful information about medical services, while prohibiting false, fraudulent, deceptive or misleading communications, and restricting direct solicitation.

Section-2: *Specific Principles*

- I. Each member may be subject to disciplinary action, including expulsion, if:
 - (A) The member's right to practice medicine is limited, suspended, terminated, or otherwise affected in any state, province, or country for violation of a medical practice act or other statute or governmental regulation or the member is disciplined by any medical licensing authority.
 - (B) The member fails to inform ASPS that the member's right to practice medicine has been limited, suspended, terminated, or otherwise affected in any state, province, or country for violation of a medical practice act, other statute or governmental regulation or, the member has been disciplined by any medical licensing authority.
 - (C) The member exhibits medical incompetence.
 - (D) The member is convicted of (or pleads guilty to) a felony or any crime relating to or arising out of the practice of medicine or involving moral turpitude.
 - (E) The member engages in sexual misconduct in the practice of medicine.
 - (F) The member is involved in improper financial dealings including, but not limited to:
 - 1. Dividing a fee for medical service with another person licensed to practice medicine who is not a partner or associate of his or hers, unless
 - (a) The patient consents to employment of the other person licensed to practice medicine under a full disclosure that a division of fees will be made; and
 - (b) A division is made in proportion to the services actually performed and responsibility assigned to each; and
 - (c) The total fee charged by all persons licensed to practice medicine is not increased solely by reason of provision for the division of fees.
 - 2. Payment and/or acceptance of rebates or referral fees to or from any person, including agents and employees of the member, in exchange for the referral of patients. Nothing in this Principle shall be construed to prohibit a member from participating in a referral service, in which the member's paid participation is disclosed, where permitted by state law.
 - 3. Charging exorbitant fees, particularly of a non-contractual nature (e.g., emergency care). Fees are exorbitant when they are wholly disproportionate to the services rendered. The reasonableness of fees depends upon the novelty and difficulty of the procedures involved; the skill required to provide proper care; the time and labor required; the fee charged for similar services by similarly situated peers; and whether or not the patient had agreed in advance to the fee.
 - 4. Except in instances of emergencies or urgent and life threatening disease or injury, nothing in this Principle shall be construed to prohibit a member from requiring prepayment of professional fees for all elective surgical operations.
 - (G) The member, either personally or through a partner or associate or any physician or other affiliated health care provider, uses or participates in the use of any form of public or private communication* (including computer imaging and electronic communications) containing a false, fraudulent, deceptive, or misleading statement or claim, including a statement or claim which:
 - 1. Contains a misrepresentation of fact, or omits to state any material fact* necessary to make the statement, considered as a whole, not deceptive or misleading.

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2. Contains photographs, images, or facsimiles of persons that falsely or deceptively portray a physical or medical condition, injury, disease, including obesity, or recovery of relief therefrom.
 3. Contains photographs, images, or facsimiles of persons who have received the services advertised, but who have experienced results that are not typical of the results obtained by the average patient, without clearly and noticeably disclosing that fact.
 4. Contains photographs, images, or facsimiles of persons before and after receiving services, which use different light, poses, or photographic techniques to misrepresent the results achieved by the individual.
 5. Contains a testimonial pertaining to the quality and efficacy of medical care if the experience of the endorser does not represent the typical experience of other patients or if, due to the infrequency and/or complexity of such care, results in other cases cannot be predicted with any degree of accuracy.
 6. Is intended or is likely to create false or unjustified expectations of favorable results.
 7. Contains a representation or statement of opinion as to the superior quality of professional services which is not susceptible to verification by the public or contains a statement representing that the member possesses skills or provides services superior to those of other physicians with similar training unless such representation can be factually substantiated.
 8. Appeals primarily to layperson's fears, anxieties, or emotional vulnerabilities.
 9. Contains, in reference to any matter material to a patient's decision to utilize a member's services, a representation of fact or implication that is likely to cause an ordinary prudent person to misunderstand or be deceived, or fails to contain reasonable warnings or disclosures necessary to make a representation or implication not deceptive.
 10. Contains a prediction of future success or guarantees that satisfaction or a cure will result from the performance of the member's services.
 11. States or implies that a member is a board-certified specialist unless the member is certified by a board recognized by the American Board of Medical Specialties.
 12. Concerns illegal transactions.
 13. Is not identified as a paid advertisement or solicitation unless it is apparent from the context that it is a paid advertisement or solicitation.
 14. Relates to professional fees other than:
 - (a) A statement of the fixed fee charged for a specific professional service, provided that the description of such service would not be misunderstood or deceptive and that the statement indicates whether additional fees may be incurred for related professional services which may be required in individual cases, and
 - (b) A statement of the range of fees for specifically described professional services, provided that there is reasonable disclosure of relevant variables and considerations affecting fees so that the statement would not be misunderstood or be deceptive, including, without limitation, an indication whether additional fees may be incurred for related professional services which may be required in individual cases.
 15. Is intended or is likely to attract patients by use of exaggerated claims.
- (H) The member performs an unjustified surgical operation or a surgical operation that is not calculated to improve or benefit the patient.
- (I) The member practices or advertises under a trade name which is false, fraudulent, deceptive or misleading.
- (J) The member performs a surgical operation or operations (except on patients whose chances of recovery would be prejudiced by removal to another hospital) under circumstances in which the responsibility for diagnosis or care of the patient is delegated to another who is not qualified to undertake it.
- (K) The member participates in a charity raffle, fund raising event, contest or other promotion in which the prize is any procedure* or gift certificate or other document redeemable for all or part of the cost of a procedure*. Nothing in this Section 1(K) shall prohibit a member from offering discounted fees to patients or participating in a charity raffle, fund raising event, contest or other promotion in which the prize is a gift certificate or other document redeemable for health care products or for an in-office consultation.

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- (L) The member seeks or obtains a patent for any invention or discovery of a method or process for performing a surgical procedure, except if the method or process is performed by or as a necessary component of a machine or composition of matter or improvement thereof which is itself patentable subject matter.
- (M) The member exhibits unprofessional conduct as defined in the *General* or *Specific Principles* of this Code.

II. Advertising

- (A) Subject to the limitations of Section-2, I, G, a member may advertise through public communications media such as professional announcements, telephone and medical directories, computer bulletin boards, Internet web pages and broadcast and electronic media. The following are examples of the types of useful information that could be included in ethical advertising. The list is illustrative and should not be interpreted as excluding other relevant information consistent with the ethical guidelines established herein.
 - 1. A statement of regular E-mail or Web site addresses and telephone numbers of the member's offices.
 - 2. A statement of office hours regularly maintained by the member.
 - 3. A statement of language, other than English, fluently spoken by the physician or a person in the physician's office.
 - 4. A statement as to specialty board certification or a statement that the physician's practice is limited to specific fields.
 - 5. A statement that the member provides services under specified private or public insurance plans or health care plans.
 - 6. A statement of names of schools and postgraduate clinical training programs from which the member has graduated together with the degrees received.
 - 7. A listing of the member's publications in educational journals.
 - 8. A statement of teaching positions currently or formerly held by the member together with pertinent dates.
 - 9. A statement of the member's affiliations with hospitals or clinics.
 - 10. A statement that the member regularly accepts installment payments of fees, credit cards and/or other available financing options.
- (B) A member shall not compensate or give anything of value directly or indirectly to a representative of the press, radio, television, or other communication medium in anticipation of or return for recommending the member's services or for professional publicity. A member may pay the reasonable cost of advertising permitted by this Code. A member shall approve all advertisements before dissemination or transmission, and shall retain a copy or record of all such advertisements in their entirety for one year after its dissemination. A member shall be held personally responsible for any violation of the *Code of Ethics* incurred by a public relations, advertising or similar firm which he or she retains, or any entity that advertises on the member's behalf.
- (C) A member may use photographs of models in his or her advertisements. If photographs of models who have not received the services advertised are displayed in a manner that would suggest the model received the services advertised, the advertisement shall clearly and noticeably state that the model has not received the advertised services.

III. Solicitation

- (A) Solicitation means in-person communication to specific individuals to attract them as patients.
- (B) A member shall refrain from engaging in systematic verbal solicitation of patients in person, by telephone, or through agents.
- (C) A member shall not initiate contact with a prospective patient knowing that the physical, emotional, or mental state or degree of education of the person solicited is such that the person could not exercise reasonable judgment in employing a plastic surgeon.
- (D) A member who has given unsolicited, in-person advice to a layperson that the individual should have medical or health care shall not accept employment resulting from that advice if:
 - 1. The advice embodies or implies a statement or claim that is false, fraudulent, deceptive or misleading within the meaning of Article-I, Section-G.

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2. The advice involves the use by the member of undue influence, coercion, duress, harassment, intimidation, unwarranted promises of benefits, over-persuasion, overreaching, or pressure for immediate response.
3. The member has been given notice that the individual non-patient does not want to receive communication from the member.

IV. Expert Testimony (11/96)

It is in the public interest that medical expert testimony be readily available, objective and unbiased. Members have an obligation to testify as expert witnesses when appropriate. However, members may not accept compensation contingent upon the outcome of the litigation. Members whose testimony, including testimony as to credentials or qualifications, is false, deceptive, or misleading may be subject to disciplinary action, including expulsion. Further to help limit false, deceptive and/or misleading testimony, members serving as expert witnesses must:

1. Have recent and substantive experience in the area in which they testify, including, without limitation, experience in the relevant subspecialty or the particular procedure performed on the plaintiff;
2. Thoroughly review the medical facts and testify to their content fairly, honestly and impartially,
3. Be familiar with the standards of practice prevailing at the time of the occurrence,
4. Provide evidence-based testimony regarding the standard of care, citing peer-reviewed plastic surgery literature where possible and identifying personal opinion as such;
5. Demonstrate (or be prepared to demonstrate) a causal relationship between an alleged substandard practice and a medical outcome;
6. Neither condemn performance that clearly falls within the standard of care in the community nor endorse or condone performance that clearly falls outside of such standard of care; and
7. Not testify that a maloccurrence is malpractice.

V. Conflicts of Interest

A physician's clinical judgment and practice must not be affected by economic interest in, commitment to, or benefit from professionally related commercial enterprises or other actual or potential conflicts of interest. Disclosure of professionally-related commercial interests and any other interests that may influence clinical decision-making is required in communications to patients, the public, and colleagues. When a physician's interest conflicts so greatly with the patient's interest as to be incompatible, the physician should make alternative arrangements for the care of the patient.

In the context of physician ownership interest in a commercial venture, the physician has an obligation to disclose the ownership interest to the patient or referring colleagues prior to utilization; the physician's activities must be in strict conformance with the law; and the patient should have free choice to use the physician's facility or therapy or to seek the needed services elsewhere.

VI. Enforcement

Any member charged with a violation of any ethical standard set forth herein may be subject to disciplinary measures, including censure, suspension or expulsion, as described in Article-XVIII of the Society's *Bylaws*.

VII. Glossary* (10/99)

For purposes of this Code and unless the context otherwise requires,

- A. "Material fact" is one of which a member of the public ought to reasonably be informed of before selecting a qualified plastic surgeon.
- B. "Private communication" includes any information, written or otherwise, that is disseminated by a physician and not made known to the general public.
- C. "Procedure" includes any medical service that requires a primary consultation on the part of a physician, and an informed consent on the part of a patient.
- D. "Public communication" includes any information transmitted orally, in writing, or through electronic media, the primary purpose of which is to notify the public, including a segment thereof, or a person, of the availability of a member or any other health care provider affiliated with a member or his organization, to practice medicine.

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- E. “Public communications media” includes, but is not limited to, television, radio, motion picture, computer bulletin boards, Internet web pages, telephone, telegram, letter, handbill, circular, newspaper, magazine, book, list, directory, business card, professional announcement card, office sign, letterhead, telephone directory listing or professional notice.
- F. “Recent and substantive experience” means that the member is familiar with the practice of plastic surgery and the particular procedure performed at the time of the occurrence that is the subject of legal action and was engaged in the practice of plastic surgery for a period of not less than three years prior to the date of the occurrence.
- G. “Solicitation” is an in-person communication to a specific individual to attract him or her as a patient.

STATEMENT OF PRINCIPLE OF INFORMED CONSENT

The American Society of Plastic Surgeons recognizes the physician-patient relationship as one of shared decision-making. Through a process of communication and dialogue the physician provides information that allows a patient and/or the patient’s authorized representative to make individual choices about his or her medical treatment.

Shared decision-making is at the heart of the doctor-patient relationship and is based on the ethical principles of respect for individual autonomy and dignity.

The process by which physicians and patients make decisions together is informed consent. For any surgical operation or treatment, relevant information must be provided, discussed, and understood by the patient and/or the patient’s authorized representative. Relevant information for proper informed consent for any procedure may include:

- Nature of the surgery or treatment
- Indications for the operation
- Expected benefits
- Consequences and side effects of the operation
- Potential risks and adverse outcomes with their probability and severity
- Alternatives to the procedure being considered, and their benefits, risks, and consequences
- Outcome anticipated

The patient and/or the patient’s legally authorized representative(s) should sign a written consent form before any surgical procedures are performed.