

February 19, 2003

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Federal Elections Commission  
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Washington, DC 20463

RE: American Academy of Ophthalmology Political Committee  
(OPHTHPAC), Identification Number C00196246

Dear Mr. Norton:

As the Director of OPHTHPAC, I am writing to request an advisory opinion on the solicitation of medical residents in ophthalmology (Members-In-Training).

The American Academy of Ophthalmology (AAO) is a 501(c)(6) with a membership of 27,000 physicians worldwide specializing in ophthalmology. Academy members are Eye M.D.s or D.O.s, doctors of medicine or osteopathy who specialize in the eyes and vision. The majority of Academy members are practicing physicians, who are comprehensive Eye M.D.s. These Eye M.D.s provide the full spectrum of eye care, from prescribing glasses and contact lenses to the medical and surgical treatment of a wide variety of eye conditions. The Academy has sixteen categories of membership of which OPHTHPAC solicits 14,988 eligible domestic dues-paying members.

To be a Member of the Academy a physician must hold a degree of Doctor of Medicine, Doctor Osteopathy (or equivalent medical degree as determined by the Board of Trustees) who holds a valid and unrestricted license to practice medicine in the United States, Canada, or the country in which the practice of medicine is regularly conducted, and who has satisfactorily completed an entire program of formal residency training in ophthalmology of at least three (3) years duration. Candidates for membership within the Academy must affirmatively accept the invitation to become a member.

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COUNSEL  
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**Members-In-Training** are physicians holding a degree of Doctor of Medicine, Doctor of Osteopathy (or equivalent medical degree as determined by the Board of Trustees) and who are engaged on a full-time basis in an ophthalmology residency training program conducted either in the United States or in Canada that is acceptable to the Board of Trustees, or who has satisfactorily completed such a training program and is engaged on a full-time basis either in an ophthalmology fellowship training program conducted in the United States or in Canada or in a postgraduate educational course of training leading to an advanced degree at an accredited college or university in the United States or in Canada, or a foreign medical graduate who is otherwise eligible for International Membership and is engaged on a full-time basis in a postgraduate ophthalmology training program in the United States or in Canada.

While **Members-In-Training** are not granted voting rights under the Academy's Bylaws and are not required to pay dues, they have an enduring and independently significant attachment to the organization as follows:

- **Members-In-Training** are professionals who have completed their medical training (four years at a college or university earning a BS or BA and 4 years at an accredited medical school to earn their MD or DO) and are completing a residency program training in the specialty of choice.
- The Academy's Annual Meeting is the premier educational opportunity for ophthalmologists. Attendance at this meeting is a benefit for all members of the Academy, including **Members-In-Training**.
- **Members-In-Training** receive the full benefits of membership
  - \* Voluntary participation in Congressional Advocacy Day annual legislative fly-in
  - \* Participation in Residency Advocacy Program
  - \* Special interest groups/subspecialty programs
  - \* Free Annual Meeting registration
  - \* Subscription to *Ophthalmology*
  - \* Subscription to *EyeNet*
  - \* Access to the "Members Only" section of the website
  - \* Listing in the Academy's member directory
  - \* Continuing Medical Education (CME) credit reporting service
  - \* Discounts on products, programs, materials and services

- Upon successful completion of the residency program Members-In-Training are invited to become an Active Member/Fellow of the Academy with full voting rights and representation to the Board of Trustees through the Young Ophthalmologists Committee.

We do not believe that the 'student member' category applies to professional members of this type. Their age and education places them beyond the traditional definition of a student and therefore requires special consideration of their eligibility in OPHTHPACs restricted class.

OPHTHPAC would like guidance from the Federal Election Commission on the solicitation of Members-In-Training as professional members of a professional trade association. Please let me know if you need additional information.

Thank you for your consideration of this request for an advisory opinion.

Sincerely,



Steven L. Miller  
Director, OPHTHPAC and Political Affairs  
OPHTHPAC Political Committee

Encl. American Academy of Ophthalmology Bylaws  
American Academy of Ophthalmology Articles of Incorporation  
OPHTHPAC Political Committee Bylaws



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# Articles of Incorporation, Bylaws, Code of Ethics, and Procedural Rules

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**ARTICLES OF INCORPORATION  
AMERICAN ACADEMY OF OPHTHALMOLOGY, INC.**

**ARTICLE I. NAME**

The name of this corporation shall be: American Academy of Ophthalmology, Inc. ("Academy").

**ARTICLE II. PURPOSES AND POWERS**

The Academy is organized and shall be operated to promote the common professional interests of its members, all as contemplated and permitted by Section 501(c)(6) of the Internal Revenue Code of 1986, and, in connection therewith, but only to the extent consistent with and in furtherance of that purpose, to promote and advance the science and art of medicine related to the eye and related structures, to support and enhance education in ophthalmology and in allied fields, to facilitate and improve prevention, diagnosis, and treatment of disorders affecting the eye and related structures, and to do and engage in any and all activities that may be necessary or incidental to any or all of the foregoing purposes.

For such purposes and not otherwise, and subject always to the further provision of these Articles, the Academy shall have and exercise only such powers as are required by and are consistent with the foregoing purposes, including the power to acquire and receive funds and property of every kind and nature whatsoever, whether by purchase, conveyance, lease, gift, grant, bequest, legacy, devise, in trust, or otherwise, and to own, hold, manage, administer, and to make gifts, grants, and contributions of, and to expend, convey, transfer, and dispose of, any and all funds and property and the income therefrom in furtherance of the purposes of the Academy hereinabove set forth, or any of them, and to lease, mortgage, encumber, and use the same, and such other powers which are consistent with the foregoing purposes and which are afforded to the Academy by the Minnesota Nonprofit Corporation Act. Provided, however, that all such powers of the Academy shall be exercised only so that the operations of the Academy shall be exclusively within the contemplation of Section 501(c)(6) of the Internal Revenue Code of 1986; and provided finally, however, that the Academy shall not carry on any activity not permitted to be carried on by a corporation that is exempt from federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 as an organization described in Section 501(c)(6) of the Internal Revenue Code of 1986.

**ARTICLE III. NO PECUNIARY GAIN**

The Academy shall not, incidentally or otherwise, afford or pay any pecuniary gain or remuneration to its members, Trustees, or officers as such, and no part of the net income or net earnings of the Academy shall, directly or indirectly, be distributable to or otherwise inure to the benefit of any member, Trustee, or officer of, or any other person having a personal and private interest in the activities of, the Academy; provided, however, that the Academy may pay reasonable compensation for services rendered and property and supplies furnished to the Academy in furtherance of its purposes described in Article II hereof.

**ARTICLE IV. REGISTERED OFFICE**

The registered office of the Academy shall be at 50 South Sixth Street, Minneapolis, Minnesota, 55402, but the Academy may have such other offices and conduct its affairs in such other places, within or without the State of Minnesota and in foreign countries, as the Board of Trustees of the Academy deems appropriate.

**ARTICLE V. BOARD OF TRUSTEES**

The Board of Trustees shall manage and direct the business and affairs of the Academy. The number, qualifications, term of office, method of appointment or election, powers, authority, and duties of the Trustees of the Academy, the time and place of their meetings, and such other provisions with respect to them as are not inconsistent with the express provisions of the Academy's Articles of Incorporation shall be as specified in the Bylaws of the Academy.

**ARTICLE VI. NO PERSONAL LIABILITY**

Members, Trustees, and officers of the Academy shall not be personally liable for the payment of any debts or obligations of the Academy of any nature whatsoever, nor shall any of the property of the members, Trustees, and officers be subject to the payment of the debts or obligations of the Academy to any extent whatsoever.

**ARTICLE VII. NO CAPITAL STOCK**

The Academy shall have no capital stock.

**ARTICLE VIII. DISSOLUTION**

The Academy may be dissolved in accordance with the laws of the State of Minnesota. Upon dissolution of the Academy, and after the payment of all liabilities and obligations of the Academy and all costs and expenses incurred by the Academy in connection with such dissolution, and subject always to the further provisions of this Article VIII and to Article X hereof, all remaining assets shall be distributed to and among such one or more organizations as are then exempt from federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 as organizations described in Sections 170(c)(2) and 501(c)(3) of the Internal Revenue Code of 1986, all in such amounts or proportions as shall be determined by the Board of Trustees of the Academy, by the affirmative vote of at least a majority of the total number of Trustees of the Academy. Notwithstanding anything apparently or expressly to the contrary hereinabove contained in this Article VIII and subject always to Article X hereof, (a) any assets then held by the Academy in trust or upon condition or subject to an executory or special limitation, if the condition or limitation occurs by reason of the dissolution of the Academy, shall revert or be returned, transferred, or conveyed in accordance with the terms and provisions of such trust, condition, or limitation; and (b) if the dissolution of the Academy is required by the laws of the State of Minnesota then in existence to be conducted under court supervision, the dissolution of the Academy shall be so conducted, and its assets not described in clause (a) of this sentence shall be transferred or conveyed to such one or more organizations described in the preceding sentence of this Article VIII as the court may determine.

## ARTICLE IX. MEMBERS

The Academy shall have members who shall be classified among the voting and nonvoting classes and have the rights and privileges from time to time provided in the Bylaws of the Academy. The power to adopt, amend, revise, and repeal the Bylaws is reserved to the voting members of the Academy, as provided in the Bylaws of the Academy.

## ARTICLE X. AMERICAN ACADEMY OF OPHTHALMOLOGY CHARITABLE, EDUCATIONAL AND SCIENTIFIC FUND

The Academy shall have a fund, separate and apart from all other funds and properties of the Academy, known as the "American Academy of Ophthalmology Charitable, Educational and Scientific Fund" (hereinafter referred to as the "Fund"), which is organized and shall be operated exclusively to perform and to assist in carrying out, the Academy's charitable, educational, and scientific purposes and functions described in Article II hereof, all as contemplated and permitted by Sections 170(c)(2), 501(c)(3) and 509(a)(3) of the Internal Revenue Code of 1986. Within the framework and limitations of the foregoing, the Fund is established and shall be operated exclusively to engage in, advance, support, and administer charitable, educational, and scientific activities, causes, and projects of the Academy of every kind and nature whatsoever, and, but only if and to the extent consistent with the foregoing purposes, to aid, assist, and contribute to the support of corporations, associations, trusts, foundations, and institutions that are organized and operated exclusively for one or more purposes described in Sections 170(c)(2) and 501(c)(3) of the Internal Revenue Code of 1986, that are described in Section 501(c)(3) of the Internal Revenue Code of 1986, and that are exempt from federal income taxes under Section 501(a) of the Internal Revenue Code of 1986.

For such purposes and not otherwise, the Fund shall have and exercise only such powers as are required by and are consistent with the foregoing purposes, including the power to acquire and receive funds and property of every kind and nature whatsoever, whether by purchase, conveyance, lease, gift, grant, bequest, legacy, devise, or otherwise and whether in trust or otherwise, and to own, hold, expend, make gifts, grants, and contributions of, and to convey, transfer, and dispose of any funds and property and the income therefrom in furtherance of the purposes of the Academy hereinabove set forth, or any of them, and to lease, mortgage, encumber, and use the same, and such other powers that are consistent with the foregoing purposes and that are afforded to nonprofit corporations by the Minnesota Nonprofit Corporation Act. Provided, however, that all such powers of the Fund shall be exercised only so that the activities of the Fund shall be exclusively within the contemplation of Sections 170(c)(2), 501(c)(3), and 509(a)(3) of the Internal Revenue Code of 1986; and provided further, however, that the Fund shall not carry on any activity not permitted to be carried on by an organization that is described in Sections 501(c)(3) and 509(a)(3) of the Internal Revenue Code of 1986 and is exempt from federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 or by an organization that is described in, and contributions to which are deductible for federal income tax purposes under Section 170(c)(2) of the Internal Revenue Code of 1986.

The Fund shall not, incidentally or otherwise, afford or pay any pecuniary gain, dividends, or other pecuniary

remuneration to the Academy or to members of the Academy as such, and no part of the net income or net earnings of the Fund shall, directly or indirectly, be distributable to or inure to the benefit of the Academy or any member of the Academy or any other individual. No part of the activities of the Fund shall be the carrying on of propaganda, or otherwise attempting, to influence legislation, and the Fund shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of, or in opposition to, any candidate for public office.

The governing body of the Fund shall be the Board of Trustees of the Academy, and the day-to-day business and affairs of the Fund shall be conducted by the persons who are from time to time the officers and employees of the Academy and charged with such responsibilities. The Board of Trustees of the Academy may create, and appoint members to, one or more advisory committees to advise it with respect to the Fund.

Upon dissolution of the Academy or upon simultaneous or earlier termination of the Fund, and notwithstanding anything apparently or expressly to the contrary contained in Article VIII hereof, all assets and properties of the Fund remaining after the payment of all liabilities of the Fund shall be distributed to and among such one or more organizations as are then exempt from federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 as organizations described in Sections 170(c)(2) and 501(c)(3) of the Internal Revenue Code of 1986, all in such amounts or proportions as shall be determined by the Board of Trustees of the Academy, by the affirmative vote of at least a majority of the total number of Trustees of the Academy. Notwithstanding anything apparently or expressly to the contrary contained in the first sentence of this final paragraph of Article X, (a) if the dissolution of the Academy is required by the laws of the State of Minnesota then in existence to be conducted under court supervision, the dissolution of the Academy shall be so conducted, and the assets of the Fund in the last sentence of this paragraph of Article X shall be transferred or conveyed to such one or more organizations described in the preceding sentence of this Article X as the court may determine as are then in existence and are described in Sections 170(c)(2) and 501(c)(3) of the Internal Revenue Code of 1986, in such proportions as shall be determined, and (b) if any assets or properties are then held by the Fund in trust or upon condition or subject to any executory or special limitation and if the condition of limitation occurs by reason of the termination of the Fund or the dissolution of the Academy, such assets or properties shall revert or be returned, transferred, or conveyed in accordance with the terms and provisions of such trust, condition, or limitation.

## ARTICLE XI. REFERENCES

All references in Articles II, VIII, and X hereof to a particular section of the Internal Revenue Code of 1986 shall mean and include, as now enacted or as hereafter amended, such section and any provision of federal law as is or may hereafter be applicable, cognate to such section. All references in Articles II and X hereof to the Minnesota Nonprofit Corporation Act shall mean and include, as now enacted or as hereafter amended, Chapter 317A of the Minnesota Statutes and any provisions of Minnesota law as are or may hereafter be applicable, cognate to such provisions.

**BYLAWS OF THE  
AMERICAN ACADEMY OF OPHTHALMOLOGY, INC.**

**ARTICLE I. MEMBERSHIP**

**1.01. Classes of Membership.** There shall be the following classes of membership in the Academy: Active Fellows, Life Fellows, Honorary Fellows, Inactive Fellows, Active Osteopathic Fellows, Life Osteopathic Fellows, Inactive Osteopathic Fellows, Active Members, International Members, Associate Members, Life Members, Life International Members, Life Associate Members, Members-in-Training, International Members-in-Training, Inactive Members, and Industry Members.

**1.02. Active Fellows.** A physician who holds a degree of Doctor of Medicine, Doctor of Osteopathy, or equivalent medical degree as determined by the Board of Trustees of the Academy, who holds a valid and unrestricted license to practice medicine in the United States, Canada, or the country in which the practice of medicine is regularly conducted, and who has been certified by the American Board of Ophthalmology, the Royal College of Physicians and Surgeons of Canada or a medical specialty board acceptable to the Board of Trustees shall be eligible to apply for membership as an Active Fellow. The Board of Trustees may waive the requirements that a candidate for Active Fellowship be licensed to practice medicine or be certified by a medical specialty board, if the physician has contributed significantly to the progress of medicine in its relation to diseases of the eye or related structures.

**1.03. Life Fellows.** A physician who has been an Active Fellow of the Academy in good standing for thirty-five (35) years, and whose license to practice medicine is valid and unrestricted at the end of that thirty-five (35) year period, is eligible to become a Life Fellow.

**1.04. Honorary Fellows.** A person who the Board of Trustees determines has singularly aided the progress of medicine in its relation to diseases of the eye or related structures is eligible to become an Honorary Fellow.

**1.05. Inactive Fellows.** An Active Fellow who is no longer engaged in the active practice of medicine by reason of disability or retirement, and whose license to practice medicine is valid and unrestricted at the time of disability or retirement, is eligible to become an Inactive Fellow.

**1.06. Active Osteopathic Fellows.** A physician who holds a degree of Doctor of Osteopathy, who holds a valid and unrestricted license to practice medicine in the United States, Canada, or the country in which the practice of medicine is regularly conducted, and who has been certified by the American Osteopathic Board of Ophthalmology, shall be eligible to apply for membership as an Active Osteopathic Fellow.

**1.07. Life Osteopathic Fellows.** A physician who has been an Life Osteopathic Fellow or an Active Member of the Academy in good standing for thirty-five (35) years, and whose license to practice medicine is valid and unrestricted at the end of that thirty-five (35) year period, is eligible to become an Osteopathic Life Fellow.

**1.08. Inactive Osteopathic Fellows.** An Osteopathic Fellow who is no longer engaged in the active practice of medicine by reason of disability or retirement, and whose license to practice medicine is valid and unrestricted at the time of disability or retirement, is eligible to become an Inactive Osteopathic Fellow.

**1.09. Active Members.** A physician who holds a degree of Doctor of Medicine, Doctor of Osteopathy, or equivalent medical degree as determined by the Board of Trustees, who holds a valid and unrestricted license to practice medicine in the United States, Canada, or the country in which the practice of medicine is regularly conducted, and who has satisfactorily completed an entire program of formal residency training in ophthalmology of at least three (3) years duration, shall be eligible to apply for membership as an Active Member.

**1.10. International Members.** A physician who holds a degree of Doctor of Medicine, Doctor of Osteopathy, or equivalent medical degree as determined by the Board of Trustees, who holds a valid and unrestricted license to practice medicine in a country other than the United States in which the practice of medicine is regularly conducted, and limits such practice to ophthalmology or a related field, and who has satisfactorily completed an entire program of formal ophthalmology training of at least three (3) years duration or its equivalent, shall be eligible to apply for membership as an International Member. For purposes of this section, a person's presence in the United States for twenty-four (24) months or less may, upon a recommendation approved by two-thirds (2/3rds) of the members of the Board of Trustees present and voting, be disregarded in determining where the person's practice of medicine is regularly conducted.

**1.11. Associate Members.** A person who holds a degree of Doctor of Medicine, Doctor of Osteopathy, or Doctor of Veterinary Medicine, and who is not an ophthalmologist but is engaged in a field allied with or in a basic science related to ophthalmology, or a person who, in the judgment of the Board of Trustees, has made significant contributions to ophthalmology, shall be eligible for nomination to receive an invitation for membership as an Associate Member. A person thought to be an eligible candidate for invitation may be nominated by three (3) Active or Life Fellows, on the form prescribed by the Board of Trustees. If the Board of Trustees, in its sole discretion, determines that the candidate should be invited for membership as an Associate Member, an acceptance form prescribed by the Board of Trustees shall be furnished to the candidate.

**1.12. Life Members; Life International Members; Life Associate Members.** A person who has been an Active Member, International Member, or Associate Member in good standing of the Academy or predecessor organizations for thirty-five (35) years, and whose license to practice medicine (if applicable) is valid and unrestricted at the end of that thirty-five (35) year period, is eligible to become a Life Member in the appropriate life category.

**1.13. Members-in-Training.** A physician who holds a degree of Doctor of Medicine, Doctor of Osteopathy, or equivalent medical degree as determined by the Board of Trustees, and who is engaged on a full-time basis in an ophthalmology residency training program conducted either in the United States or in Canada that is acceptable to the Board of Trustees, or who has satisfactorily completed such a training program and is engaged on a full-time basis either in an ophthalmology

fellowship training program conducted in the United States or in Canada or in a postgraduate educational course of training leading to an advanced degree at an accredited college or university in the United States or in Canada, or a foreign medical graduate who is otherwise eligible for International Membership and is engaged on a full-time basis in a postgraduate ophthalmology training program in the United States or in Canada, shall be eligible to apply for membership as a Member-in-Training.

**1.14. International Members-in-Training.** A physician who holds a degree of Doctor of Medicine, Doctor of Osteopathy, or equivalent medical degree as determined by the Board of Trustees, and who is engaged on a full-time basis in an ophthalmology residency, fellowship, or equivalent training program outside the United States and Canada that is acceptable to the Board of Trustees, or who has completed a residency training program outside the United States or Canada that is acceptable to the Board of Trustees and is engaged on a full-time basis in an ophthalmology fellowship program outside the United States or Canada, shall be eligible to apply for membership as an International Member-in-Training.

**1.15. Inactive Members.** An Active Member, International Member, or Associate Member who is no longer engaged in the active practice of medicine (if applicable) by reason of disability or retirement, and whose license to practice medicine is valid and unrestricted at the time of disability or retirement, is eligible to become an Inactive Member.

**1.16. Industry Member.** A person who holds a degree of Doctor of Medicine, Doctor of Osteopathy, Doctor of Veterinary Medicine, or Doctor of Philosophy in science, and who is not an ophthalmologist but is engaged in full-time research in a science related to ophthalmology, shall be eligible for nomination to receive an invitation for membership as an Industry Member. A person thought to be an eligible candidate for invitation may be nominated by three (3) Active or Life Fellows, on the form prescribed by the Board of Trustees. If the Board of Trustees, in its sole discretion, determines that the candidate should be invited for membership as an Industry Member, an acceptance form prescribed by the Board of Trustees shall be furnished to the candidate. A person's status as an Industry Member, once effective as provided in Section 1.15, shall automatically terminate as of the second ensuing January 1 unless the person earlier ceases to be such a member or within thirty (30) days before the second ensuing January 1 date, files with the Executive Vice President a certification form prescribed by the Board of Trustees, attesting to the person's continued satisfaction of all the requirements for eligibility for nomination to membership in that class for an additional period of two (2) calendar years. Subsequent biennial extensions shall be subject to the same certification requirement.

**1.17. Membership Applications and Acceptance Forms.** Each candidate for membership as an Active Fellow, an Active Osteopathic Fellow, an Active Member, an International Member, a Member-in-Training, or an International Member-in-Training shall file with the Executive Vice President the appropriate Academy membership application form, completed as prescribed thereon, and shall pay the application fee in effect at that time. Each person who has been nominated for invitation to become an Associate Member or an Industry

Member, and who is furnished by or under the direction of the Board of Trustees the appropriate Academy membership acceptance form to accept membership in one of those classes, may accept the invitation by filing with the Executive Vice President the acceptance form, completed as prescribed thereon, and paying the fee in effect at that time. All information submitted on or with an application form, a nomination form, or an acceptance form shall be subject to review and verification by or under the supervision of the Board of Trustees.

**1.18. Becoming a Fellow or Member.** Except as provided in Section 1.19, a candidate for membership shall become a Fellow or Member in the respective membership class upon recommendation by the Board of Trustees and election thereto by the affirmative vote of three-fourths (3/4ths) of the Voting Fellows and Members present and voting at any annual or special business meeting of the Academy and upon payment of all applicable dues and assessments for the then current year.

**1.19. Transfers of Membership Class.** The membership of a Fellow or Member who is eligible to become a Life Fellow, a Life Osteopathic Fellow, a Life Member, a Life International Member, or a Life Associate Member in accordance with these Bylaws shall automatically be converted to membership in the respective Life membership class without any application, request, or other action by the Fellow or Member and without any recommendation, vote, or other approval by the Board of Trustees or the Voting Fellows and Members. A person who becomes a Life Fellow, a Life Osteopathic Fellow, a Life Member, a Life International Member, or a Life Associate Member shall continue to have and enjoy all of the privileges and responsibilities associated with the person's former membership class.

A Fellow or Member who is eligible to become an Inactive Fellow, Inactive Osteopathic Fellow, or Inactive Member may become an Inactive Fellow, Inactive Osteopathic Fellow, or Inactive Member, as the case may be, by requesting and obtaining the approval of the Board of Trustees for transfer to the appropriate Inactive membership class.

An Inactive Fellow, Inactive Osteopathic Fellow, or Inactive Member who satisfies all of the requirements for eligibility to apply for membership in the person's membership class may seek reinstatement to the former membership class by submitting to the Board of Trustees a request for reinstatement and other information and verifications that the Board of Trustees may specify. Reinstatement of an Inactive Fellow, Inactive Osteopathic Fellow, or Inactive Member to the person's former membership class shall be within the sole discretion of the Board of Trustees and shall be effective upon the person's payment of all applicable dues and assessments for the then current year.

A Fellow or Member is eligible for transfer to a membership class other than a Life or an Inactive membership class, and other than reinstatement to the person's former membership class from an Inactive membership class, without reapplication for membership, upon (1) establishing to the satisfaction of the Board of Trustees, in its sole discretion, that the person satisfies all of the requirements for eligibility to apply for membership in the other membership class, and (2) completion of the training program, in the case of a Member-in-Training or an International Member-in-Training, and, unless otherwise specified by the Board of Trustees, upon submission to the

Board of Trustees of a request on the form prescribed by it for transfer to another membership class. The Fellow or Member eligible to apply for transfer to another membership class shall become a Fellow or Member of that membership class upon approval by the Board of Trustees and upon payment of all applicable dues and assessments for the then current year.

**1.20. Voting and Holding Office in the Academy.** The only classes of membership entitled to vote on any matter or to attend any annual or special business meeting of the Academy shall be Active Fellows, Active Osteopathic Fellows, Life Fellows, Life Osteopathic Fellows, Active Members, and Life Members. Only Active Fellows, Active Osteopathic Fellows and Life Fellows shall be eligible for nomination, election, or appointment as an Elected or Appointed Officer or as a Trustee-at-Large of the Academy or as the Chair or Vice Chair of the Council.

**1.21. Fees, Dues and Assessments.**

(a) The application fees and the dues, assessments, and other fees for each class of membership shall be established annually by the Board of Trustees.

(b) Annual dues shall be established on the basis of the calendar year. The dues for a calendar year shall be payable on or before January 1 of that year and shall be considered delinquent if not paid by June 30 of that year. Assessments and fees shall be payable at the time or times determined by the Board of Trustees.

(c) No dues shall be payable by Life Fellows, Life Osteopathic Fellows, Life Members, Inactive Fellows, Inactive Osteopathic Fellows or Inactive Members, but these classes of Fellows and Members shall pay service fees and assessments that the Board of Trustees determines to be equitable. A person in a life membership category who requests in writing that no membership services be received other than insurance benefits that may have accrued, or written notice of the dates and places of the annual meetings of the Academy, or the privilege of attending the annual meetings without registration fee, shall be entitled to have any service fees and assessments otherwise payable by the person waived. Life Fellows, Life Osteopathic Fellows, or Life Members requesting waiver of service fees and assessments may subscribe to Academy publications for fees that the Board of Trustees determines to be equitable. No dues, assessments, fees or other charges shall be payable by either Past Presidents of the Academy or by Honorary Fellows, who shall be entitled to receive, upon request, those Academy membership services and publications approved by the Board of Trustees.

**1.22. Termination of Membership.**

(a) A Fellow or Member whose required dues, assessments, or other fees for a calendar year are not paid in full by June 30 of that year shall be considered "delinquent." If the delinquency is not removed by December 31 of that year, membership shall automatically terminate on the last day of that year, unless membership is extended in a manner determined by the Board of Trustees. A Fellow or Member whose membership has been terminated may reapply for membership as provided in Sections 1.17 and 1.18.

(b) A Fellow or Member may resign by written notice to the Executive Vice President. The resignation is effective without

acceptance when the notice is received. But the resignation does not relieve the Fellow or Member from any obligation to the Academy for accrued but unpaid dues, assessments, or fees.

(c) The membership of a Fellow or Member who ceases to meet any requirement for eligibility and who does not transfer to another membership class as provided in these Bylaws, shall automatically terminate on the date on which the Fellow or Member ceases to meet the eligibility requirement. If a Fellow's or Member's license to practice medicine, or the conduct of the Fellow's or Member's practice of medicine, is in any manner and to any extent whatsoever revoked, conditioned, suspended, limited, qualified, subjected to the terms of probation, or restricted by a court, department, board, or administrative agency, membership in the Academy shall automatically terminate on the effective date of that action. The foregoing shall not apply to an adverse action with respect to a Fellow's or Member's medical practice or license by reason of the failure or refusal of the Fellow or Member either to accept assignment of benefits payable by a patient's third-party payor as payment in full for professional services rendered to the patient or to participate in one (1) or more public or private health plans or if the adverse action with respect to the Fellow or Member's medical practice or license is solely the result of a voluntary recognition by the Fellow or Member of a physical, mental or emotional impairment. The Board of Trustees may, effective at any time, revoke membership in the Academy of any person whose application or nomination form for membership in the Academy or acceptance form to accept an invitation for membership in the Academy contains, or is accompanied or supported by information that contains, in the judgment of the Board of Trustees, a substantial misstatement or omission of a material fact. For this purpose, a "material fact" includes any fact required by the instructions on the respective forms.

**1.23. Code of Ethics.** The Academy's Code of Ethics is applicable only to the Academy and Fellows and Members of the Academy. The Academy's Code of Ethics, as the same exists on the date of the adoption of these Bylaws and as thereafter amended or revised, is incorporated in and made a part of these Bylaws to the same extent and with the same effect as though it were set forth verbatim in this Section 1.23. The Academy's Code of Ethics may be amended or revised from time to time as provided in Section 9.01. Each candidate for membership and each Fellow and Member in the Academy shall comply with the Code of Ethics as a condition of initial and continued membership in the Academy.

**1.24. Membership Certificates; Use of Academy Name and Symbols.** The Academy shall issue to each Fellow or Member of the Academy a certificate of membership status. Each membership certificate remains the property of the Academy and shall be returned to the Academy upon request. A Fellow or Member of the Academy may indicate membership status by: (a) displaying the certificate at an office used by the Fellow or Member for the practice of medicine; and (b) a factual statement on stationery, in advertisements, and in resumes, biographical sketches and the like, using the name of the Academy or a recognizable abbreviation of the name. The name of the Academy and a logo of the Academy shall not be used by a Fellow or Member on any other certificate or material displayed, prepared, or distributed by the Fellow or Member, or on any other sign or display used by or for a Fellow or Member, without the Academy's prior written permission.

**1.25. Forfeiture of Certain Rights Upon Conviction of a Felony.** Any Fellow or Member who is or has been convicted of a felony shall be ineligible for service on any Academy committee, shall not serve as a representative of the Academy in any other capacity, and shall not sponsor, present or participate in any meeting or program of or sponsored by the Academy, except with the express permission of the Board of Trustees. In addition, any Fellow or Member who is or has been convicted of a felony shall automatically forfeit all points that may have been earned toward any Achievement Award Program prior to the date of conviction. For purposes of this Section, the terms "convicted" and conviction" include a criminal proceeding in which a finding or verdict of guilt is entered, or a criminal proceeding in which the individual enters a plea of guilty or nolo contendere.

**1.26. Terms.** For all purposes of these Bylaws references to medical practice and the practice of medicine include osteopathic practice and the practice of osteopathic medicine.

## **ARTICLE II. MEETINGS AND VOTE OF FELLOWS AND MEMBERS**

**2.01. Annual Meetings.** An annual meeting of the Fellows and Members of the Academy shall be held each year at the place and on the date designated by the Board of Trustees. There shall be at least one (1) business meeting of the Voting Fellows and Members of the Academy at each annual meeting.

**2.02. Special Meetings.** Special scientific and business meetings of the Fellows and Members of the Academy may be called by the Board of Trustees.

**2.03. Mid-Year Forum.** The Board of Trustees may convene a Mid-Year Forum each year for the purpose of considering and developing recommendations to the Board of Trustees with respect to issues referred by the Board of Trustees to the Issue Analysis Group and such other issues as the Board of Trustees determines. All members of the Issue Analysis Group, all Trustees, all Senior Secretaries, all Secretaries, all Councilors, and other Fellows and Members designated by the Board of Trustees shall be invited to participate. The Board of Trustees will determine the schedule, the agenda, and the operational rules and procedures.

**2.04. Notice.** At least ninety (90) days prior notice of the time and place of each annual business meeting of the Academy, including the names of all nominees of the Board of Trustees in accordance with Section 5.01, shall be given to all Fellows and Members by publication in an official publication of the Academy or by another method designated by the Board of Trustees. Except as otherwise provided in these Bylaws, any item of business may be transacted at an annual business meeting if the item of business is referred to in the notice of the annual meeting. An item of business not referred to in the notice of the annual business meeting shall not be considered or acted upon at an annual business meeting unless

(a) it may be considered in accordance with Section 9.01 or (b) in the case of items of business not described in Section 9.01, it is proposed as an item of new business by a Voting Fellow or Member upon at least thirty (30) days prior notice to the Executive Vice President or is proposed as an item of new business by the Board of Trustees. At least thirty (30) days prior notice shall be given of the time, place, and purpose of any special meeting of the Fellows and Members of the Academy. No business may be transacted at a special business

meeting of the Voting Fellows and Members of the Academy other than that specified in the notice of the meeting.

**2.05. Order of Business.** At each annual business meeting of the Voting Fellows and Members of the Academy, the order of business shall be:

- (a) call to order;
- (b) report of the President;
- (c) report of the Executive Vice President;
- (d) election of Fellows and Members;
- (e) new business;
- (f) announcements and notices; and
- (g) adjournment.

The order of business of each annual business meeting may be amended by an affirmative vote of a majority of the Voting Fellows and Members present and voting at the meeting. The order of business at a special meeting and at a Mid-Year Forum shall be as specified in the notice of the meeting or the Forum.

**2.06. Quorum.** At any annual or special business meeting of the Voting Fellows and Members of the Academy, a quorum is one hundred and fifty (150) Voting Fellows and Members, except as otherwise required by the Articles of Incorporation or these Bylaws. For any action of the Voting Fellows and Members taken by mail ballot, a quorum is one hundred and fifty (150) valid mail ballots of Voting Fellows and Members timely returned to the Academy.

**2.07. Vote.** If a quorum is present at a business meeting of the Voting Fellows and Members, a majority vote of the Voting Fellows and Members present and voting shall be required to constitute action by the Voting Fellows and Members on any matter that properly comes before the meeting, unless otherwise provided by applicable law, the Articles of Incorporation, or these Bylaws. There shall be no voting by proxy by the Fellows and Members of the Academy. Elections and votes on proposed amendments or revisions of the Articles of Incorporation, these Bylaws, the Code of Ethics, or the Procedural Rules shall be conducted by mail ballot as provided in Sections 5.02 and 9.01.

**2.08. Procedural Rules, Parliamentary Authority, and Rules of Order.** The Board of Trustees may from time to time adopt, revise or amend, subject to subsequent ratification by the Voting Fellows and Members, Procedural Rules that are not inconsistent with the Articles of Incorporation or these Bylaws relating to the presentation of papers at sessions of the Academy; notices of meetings of, quorum requirements for, and means of taking actions by the Board of Trustees, Secretariats, and committees; procedures applicable to contested elections for the positions of Elected Officers and Trustees-at-Large of the Academy and Chair and Vice Chair of the Council; procedures for voting by mail ballot for the election of persons to the positions of Elected Officers and Trustees-at-Large of the Academy and Chair and Vice Chair of the Council; procedures for voting by mail ballot on proposed amendments or revisions in the Academy's Articles of

Incorporation, these Bylaws, the Code of Ethics, or the Procedural Rules; and other matters that do not relate to the rights or responsibilities of Fellows or Members of the Academy. The deliberations of the Fellows and Members of the Academy, the Board of Trustees, the Council, and all committees shall be governed by the rules contained in the then-current edition of *Robert's Rules of Order Newly Revised* in all cases in which those Rules are not inconsistent with the Articles of Incorporation, these Bylaws, the Procedural Rules, the Operational Procedures, customary practices, and procedures of the Academy.

### ARTICLE III. BOARD OF TRUSTEES

**3.01. Authority.** The Board of Trustees shall manage and direct the business and affairs of the Academy. The Board of Trustees shall have all power, responsibility, and authority conferred upon the board of directors of a nonprofit corporation by Chapter 317A of the Minnesota Statutes, as now enacted or hereafter amended, except as that power, responsibility, or authority may be limited by the Articles of Incorporation or these Bylaws. The Board of Trustees shall have the final responsibility and authority for all actions and policies that are recommended or adopted by the Council or committees of the Academy or of the Board of Trustees, or the Academy's Officers, representatives to professional and governmental organizations, agents, or employees; and no action, policy, or recommendation shall be the action, policy, or recommendation of the Academy unless it is expressly adopted, ratified, or approved by the Board of Trustees or as provided for in Section 6.02. The Board of Trustees may, by action approved by the affirmative vote of at least a majority of the members of the Board of Trustees, delegate any of its powers, responsibility, or authority to any one (1) or more committees of the Board of Trustees or any Elected or Appointed Officer of the Academy, subject always to the direction and control of the Board of Trustees.

**3.02. Composition of the Board of Trustees.** The Board of Trustees shall be composed of:

- (a) the persons who are from time to time the Elected and Appointed Officers of the Academy referred to in Section 4.01 of these Bylaws;
- (b) the most recent living Past President of the Academy able to serve on the Board of Trustees;
- (c) the Chair of the Council;
- (d) the Vice Chair of the Council;
- (e) the Chair of the Academy Foundation;
- (f) six (6) Trustees-at-Large; and
- (g) not more than three (3) Public Trustees.

Not more than one-fourth (¼th) of the members of the Board of Trustees shall at the same time serve as officers or members of the governing board of any one (1) other ophthalmologic organization, other than an organization that is an affiliate or subsidiary of the Academy.

### 3.03. Terms.

(a) Each Elected Officer and Appointed Officer shall serve on the Board of Trustees for a term contemporaneous with the person's tenure as an Elected Officer or an Appointed Officer in accordance with Article IV.

(b) Effective January 1, 1993, the position theretofore known as "Director-at-Large" shall automatically become the position of "Trustee-at-Large," and each person then serving on the Board of Trustees as a Trustee-at-Large shall serve out the unexpired portion of the term to which the person was elected and shall be ineligible for re-election to the Board of Trustees as a Trustee-at-Large. Each successor Trustee-at-Large shall serve on the Board of Trustees for one (1) full term of four (4) years, or until a successor is elected, except that the terms of the successor Trustees-at-Large shall be staggered so that the terms of no more than two (2) expire each year. A Trustee-at-Large shall be ineligible for re-election to the Board of Trustees for a second term as a Trustee-at-Large.

(c) The Chair of the Council shall serve on the Board of Trustees for one (1) full term of two (2) years, or for such shorter term as the person serves as Chair of the Council, and shall be ineligible for re-election to the Board of Trustees for a second term as Chair of the Council.

(d) The Vice Chair of the Council shall serve on the Board of Trustees for one (1) full term of two (2) years, or for such shorter term as the person serves as Vice Chair of the Council, and shall be ineligible for re-election to the Board of Trustees for a second term as Vice Chair of the Council.

(e) The Chair of the Foundation shall serve on the Board of Trustees for one (1) full term of three (3) years, or for such shorter term as the person serves as Chair of the Foundation, shall be eligible for one additional three (3) year term

(f) Each Public Trustee appointed by the Board of Trustees shall serve on the Board of Trustees for one (1) full term of three (3) years, except that the terms of the Public Trustees may be staggered by the Board of Trustees so that not all of the terms of Public Trustees expire in the same year. A Public Trustee shall be eligible for re-appointment to the Board of Trustees.

(g) A person who serves on the Board of Trustees for less than one-half (½) of a full term shall not be considered to have served a full term for purposes of determining the person's eligibility for continued service on or for re-election to the Board of Trustees. A person's term as a Trustee on the Board of Trustees commences on whichever is applicable of January 1 of the calendar year following the year in which the person is elected to the Board of Trustees or the date on which the person automatically becomes an ex officio member of the Board of Trustees.

### 3.04. Duties and Responsibilities of Trustees.

(a) The Past President serving on the Board of Trustees, the Chair of the Council, the Vice Chair of the Council, the Chair of the Academy Foundation, and each Public Trustee shall have all of the duties and responsibilities as Trustees prescribed by these Bylaws and that the President or the Board of Trustees may determine.

(b) The Trustees-at-Large shall have all of the duties and responsibilities prescribed by these Bylaws and that the President or the Board of Trustees may determine; and in the event of vacancies in the Offices of both the President and President-Elect, for any reason, the most senior Trustee-at-Large, or in the absence or disability of that person, the second most senior Trustee-at-Large, shall assume the duties and responsibilities of the President for the unexpired term.

(c) Each Trustee shall be entitled to one (1) vote on all matters coming before the Board of Trustees, except as the contrary is provided in the Procedural Rules, and except further that only the Elected Officers, the Appointed Officers, the Past President serving on the Board of Trustees, the Trustees-at-Large, and the Chair and Vice Chair of the Council, and the Chair of the Academy Foundation shall be entitled to vote on matters involving matters of governance, rules, or procedures of the Academy or matters described in Section 5.03.

**3.05. Meetings.** The Board of Trustees shall hold at least three (3) regularly scheduled meetings each year and may hold additional special meetings at the call of the President or any five (5) Trustees. All meetings of the Board of Trustees shall be held on dates and at times and places designated by or in a manner determined by the Board of Trustees.

#### **ARTICLE IV. OFFICERS**

##### **4.01. Elected and Appointed Officers.**

(a) The Elected Officers of the Academy shall be:

- (1) President;
- (2) President-Elect;
- (3) Secretary for Annual Meetings;
- (4) Senior Secretary for Clinical Education;
- (5) Senior Secretary for Advocacy; and
- (6) Senior Secretary for Ophthalmic Practice.

(b) The Appointed Officers of the Academy shall be:

- (1) Editor; and
- (2) Executive Vice President.

##### **4.02. Terms of Office.**

(a) The President shall serve for a term of one (1) year, or until a successor is elected.

(b) The President-Elect shall serve for a term of one (1) year, or until a successor is elected.

(c) The Secretary for Annual Meeting shall serve as an Elected Officer for one (1) full term of three (3) years, or until a successor is elected, and shall be eligible for re-election to the same Office for one (1) additional full term.

(d) Each Senior Secretary shall serve for one (1) full term of three (3) years, or until a successor is elected, except that the terms of the Senior Secretaries shall be staggered so that the term of only one (1) of them expires each year. A Senior Secretary shall be eligible for re-election to the same Office for one (1) additional full term.

(e) The Editor shall serve as an Appointed Officer for one (1) full term of one (1) year, or until a successor is appointed, and shall be eligible for re-appointment to the same Office by the

Board of Trustees for additional, successive terms of one (1) year each, with a maximum of eight (8) terms.

(f) The Executive Vice President shall serve as an Appointed Officer for a term determined in the manner provided for in Section 4.10 of these Bylaws.

(g) A person who serves in an Elected Office for less than one-half (½) of a full term shall not be considered to have served a full term for purposes of determining the person's eligibility for re-election to the same Office. The term of each Elected Officer shall commence on January 1 of the calendar year following the year in which the Officer is elected, except that the term of the President shall commence either on the date on which the person is succeeded as President-Elect or on January 1 of the calendar year following the year in which the person is elected to the Office of President in accordance with Section 4.11, as the case may be.

**4.03. The President** shall be the Chair of the Board of Trustees of the Academy; shall preside at all annual and special meetings of the Fellows and Members of the Academy; shall act as a representative of the Academy to the medical community at large and federal, state, and local governmental and private agencies and organizations; shall work with the Executive Vice President to ensure that basic Academy policies and programs are formulated and executed; shall serve no more than one (1) term as President, except as the contrary is provided in Section 4.04; may create Special Committees and appoint interim Academy representatives to civic, professional, and governmental organizations as may be required to execute the business and affairs of the Academy; may attend meetings of all committees of the Academy and the Council, other than the Academy's Nominating Committee; and shall have all other duties and responsibilities prescribed by these Bylaws, the Procedural Rules, and the Operational Procedures and that the Board of Trustees may determine. A person who has served as President of the Academy is ineligible for nomination, election, or service as President-Elect of the Academy.

**4.04. The President-Elect** shall automatically become the President of the Academy upon expiration of the President's term; shall, in the absence or disability of the President perform the duties and responsibilities of the President; shall fill any vacancy in the Office of President for the unexpired portion of the President's term and also serve a full term as President; shall serve no more than one (1) term as President-Elect; shall work with the President and the Executive Vice President to ensure that basic Academy policies and programs are formulated and executed; shall be the presiding officer of each plenary session of the Council and in that capacity shall convene and close the meeting, but shall not conduct the business of each plenary session of the Council; may attend meetings of all committees of the Academy, other than the Nominating Committee; and shall have all other duties and responsibilities prescribed by these Bylaws, the Procedural Rules, and the Operational Procedures and that the President or the Board of Trustees may determine.

**4.05. The Secretary for Annual Meeting** shall be responsible for the annual meeting, scientific programs, and scientific exhibits and shall have all other duties and responsibilities prescribed by these Bylaws and that the Board of Trustees may determine.

**4.06. The Senior Secretary for Clinical Education** shall coordinate the programs and activities of the Academy's

Clinical Education Group and shall have all other duties and responsibilities that the Board of Trustees may determine.

**4.07. The Senior Secretary for Advocacy** shall coordinate the programs and activities of the Academy's Advocacy Group and shall have all other duties and responsibilities that the Board of Trustees may determine.

**4.08. The Senior Secretary for Ophthalmic Practice** shall coordinate the programs and activities of the Academy's Ophthalmic Practice Group and shall have all other duties and responsibilities prescribed by these Bylaws and that the Board of Trustees may determine.

**4.09. The Editor of *Ophthalmology*** shall be responsible for publication of the Academy's journal *Ophthalmology*, shall be appointed by the Board of Trustees, and shall have all other duties and responsibilities prescribed by these Bylaws and that the Board of Trustees may determine.

**4.10. The Executive Vice President** shall be an Active or Life Fellow of the Academy and shall be elected to, and may be removed from, office upon the affirmative vote of two-thirds (2/3rds) of the members of the Board of Trustees. The term of office and compensation of, and other provisions with respect to, the Executive Vice President, to the extent not inconsistent with these Bylaws, shall be as specified in a contract with the Executive Vice President approved by the Executive Committee. In addition to the other powers, duties, and responsibilities, and authority of the Executive Vice President provided for in these Bylaws, the Executive Vice President shall serve as the Chief Executive Officer, Treasurer, and Secretary of the Academy and shall have and exercise all powers, duties, and responsibilities usually incident to each and all of those offices, may attend all meetings of the Academy and the Council and their respective committees, and shall have all other powers, duties, and responsibilities prescribed by these Bylaws, the Procedural Rules, and the Operational Procedures for the Council and that the Board of Trustees or the Executive Committee may determine.

**4.11. Other Officers.** The Board of Trustees shall have authority to elect or appoint, remove, with or without cause, and replace all other Officers or agents that the Trustees may deem appropriate. Each Officer or agent elected or appointed by the Board of Trustees shall have the duties and responsibilities set forth in the person's contract, if any, approved by or in a manner determined by the Executive Committee or the Board of Trustees, as the case may be, or in resolution of the Board of Trustees electing or appointing the person as an Officer or agent. A person's election or appointment to any Office or other position by the Board of Trustees shall not in itself create contract rights between the person and the Academy, and a person's removal from the Office or other position shall be without prejudice to the contract rights, if any, of the person removed. Officers or agents elected or appointed by the Board of Trustees may, unless otherwise determined by the Board of Trustees, attend meetings of the Board of Trustees.

#### **ARTICLE V. NOMINATIONS, ELECTIONS, REMOVALS, AND VACANCIES**

**5.01. Nominations for Elected Officers, Trustees-at-Large, Council Chair and Council Vice Chair.** Prior to each annual business meeting of the Voting Fellows and Members of the Academy, the Board of Trustees, acting on the recommendations of the Nominating Committee for

candidates as Elected Officers and Trustees-at-Large, on the recommendations of the Council for candidates as Chair and Vice Chair of the Council, and on the recommendation of any Trustee for any of those Offices or positions, shall nominate:

(a) one (1) Eligible Fellow for each vacancy to occur on the ensuing January 1 in an Elected Office,

(b) one (1) Eligible Fellow for each vacancy to occur on the ensuing January 1 in the position of Trustee-at-Large,

(c) one (1) nominee for any vacancy to occur on the ensuing January 1 in the position of Chair of the Council, and

(d) one (1) nominee for any vacancy to occur on the ensuing January 1 in the position of Vice Chair of the Council.

The Board of Trustees shall cause to be published the names of all persons nominated in accordance with these Bylaws in the official notice of the annual business meeting. In the event of the death or withdrawal from candidacy of any nominee before the election, the Board of Trustees shall designate a substitute nominee, at any time before the election without notice, except that in the event of the death or withdrawal from candidacy of any nominee for the position of Chair or Vice Chair of the Council before the election, the Council, acting at a time and in a manner approved by the Board of Trustees, shall submit to the Board of Trustees a recommendation for a substitute nominee. Other candidates for a vacancy to occur on the ensuing January 1 in any Elected Office, in the position of Trustee-at-Large, or in the positions of Chair or Vice Chair of the Council may be nominated by a written petition signed by at least fifty (50) Voting Fellows and Members and filed with the Executive Vice President at least sixty (60) days prior to the date of the annual business meeting. Only a Councilor in the same Council Section as the nominee named in the notice shall be eligible for nomination by petition for the position of Chair or Vice Chair of the Council. A person shall not be nominated for, be elected to, or simultaneously hold more than one (1) Office or position on the Board of Trustees.

**5.02. Election.** After each annual business meeting of the Academy, an election to fill each vacancy that will occur on the ensuing January 1 in an Elected Office, in the position of Trustee-at-Large, or in the positions of Chair or Vice Chair of the Council shall be conducted by mail ballot of the Voting Fellows and Members in accordance with the Procedural Rules.

**5.03. Removal.** Any Elected or Appointed Officer of the Academy and any other Trustee may be removed from the person's Office or position by the affirmative written ballot of four-fifths (4/5ths) of the Academy members on the Board of Trustees, whenever, in their judgment, the removal will serve the best interests of the Academy; provided, however, that the removal shall be without prejudice to contract rights of the person removed. A person's election or appointment to any Office or other position shall not create contract rights between the person and the Academy.

**5.04. Vacancies.** A vacancy in any Office or Trusteeship other than President, or in the positions of Chair or Vice Chair of the Council, shall be filled by the affirmative vote of a majority of the remaining members of the Board of Trustees, although less than a quorum, upon the recommendation of the Nominating Committee or any Trustee until whichever is the earlier to

occur of the expiration of the Officer's term or the last day of the calendar year in which the next annual business meeting of the Academy is held. A successor shall be elected in the manner set forth in these Bylaws to fill the vacancy for the portion of an unexpired term that continues after the end of the calendar year in which the meeting is held. If a vacancy occurs in the Office of President-Elect, the Nominating Committee shall, in accordance with Section 5.01 of these Bylaws, recommend for election at the next annual business meeting both a President and a President-Elect for terms commencing on January 1 of the ensuing calendar year. If a vacancy occurs in the position of Chair of the Council, the vacancy shall be filled by the Board of Trustees, acting on the recommendation of the Council until whichever is the earlier to occur of the expiration of the Chair's term or the last day of the calendar year in which the next annual meeting of the Council is held. If a vacancy occurs in the position of Vice Chair of the Council, the vacancy shall be filled by the Board of Trustees, acting on the recommendation of the Council until whichever is the earlier to occur of the expiration of the Vice Chair's term or the last day of the calendar year in which the next annual meeting of the Council is held.

#### ARTICLE VI. COMMITTEES OF THE BOARD OF TRUSTEES

**6.01. Standing Committees** of the Board of Trustees shall be the Executive Committee and the Nominating Committee.

**6.02. Executive Committee.** The Executive Committee shall be composed of:

- (a) the President, as the Chair;
- (b) the Past President serving on the Board of Trustees;
- (c) the President-Elect;
- (d) the Trustee-at-Large most senior in service who has not previously served on the Executive Committee;
- (e) the Executive Vice President;
- (f) the Chair of the Council in even-numbered years and the Vice Chair of the Council in odd-numbered years;
- (g) the Senior Secretaries for Clinical Education, Advocacy and Ophthalmic Practice.

The Executive Committee shall, subject at all times to the direction and control of the Board of Trustees, manage and direct the business and affairs of the Academy in the intervals between meetings of the Board of Trustees, serve as the Finance Committee of the Board of Trustees, and have all other power, responsibility, and authority that the Board of Trustees may determine. The Committee shall hold at least four (4) regularly scheduled meetings each year and may hold additional special meetings at the call of its Chair or a majority of its members. All meetings of the Executive Committee shall be held on dates and at times and places designated by or in a manner determined by the Executive Committee.

**6.03. Nominating Committee.** The Nominating Committee shall be composed of:

- (a) the Past President of the Academy serving on the Board of Trustees, as Chair;

- (b) the two (2) most senior Trustees-at-Large not serving the last year of their term and who are not serving on the Executive Committee;

- (c) two (2) Senior Secretaries and the Secretary serving on the Board of Trustees who have not served on the previous year's Nominating Committee;

- (d) one (1) Councilor from each Council Section who is not serving on the Board of Trustees and who is appointed to the Nominating Committee by the affirmative vote of at least a majority of the total number of Councilors of the Council Section, except that if the Academy has more than two (2) Council Sections, the Board of Trustees shall determine by rotation one (1) Councilor from each of only two (2) Council Sections to serve on the Nominating Committee, provided that no Council Section shall be represented for more than two (2) consecutive years; and

- (e) the Executive Vice President, who shall be a nonvoting member of the Committee.

This Committee shall function as the nominating committee of the Board of Trustees for candidates for all Elected Officers and Trustees-at-Large. It shall recommend candidates to fill a vacancy in the position of Trustee-at-Large and in any Office in the Academy, other than the Office of President, except as otherwise provided in Section 5.04 of these Bylaws, and other than the positions of Chair of the Council and Vice Chair of the Council. No member of the Nominating Committee shall participate in any discussion or vote concerning that member's potential or actual recommendation by the Committee to any Elected Office or other position on the Board of Trustees. The Committee shall meet at the call of its Chair.

**6.04. Other Committees.** The Board of Trustees and the President shall have the authority to establish and appoint other Standing Committees and Special Committees of the Academy and of the Board of Trustees, in each instance with the composition, power, responsibility, and authority that the Board of Trustees may determine.

#### ARTICLE VII. COUNCIL AND COUNCIL SECTIONS

**7.01. Establishment.** In order to provide a mechanism for the development of advice to the Board of Trustees by encouraging and facilitating liaison, open communications, cooperation, and coordination between and among the Academy and ophthalmologic organizations and their members, and, in turn, between and among them and the Board of Trustees, the Academy shall have a Council composed of representatives of ophthalmologic organizations. Representation of organizations in the Council is voluntary. The actions of the Academy, its Board of Trustees, and its Fellows and Members do not bind the organizations represented on the Council to any obligation that they do not voluntarily assume. The Council shall have and exercise the duties and responsibilities prescribed by these Bylaws and as determined by the Board of Trustees.

**7.02. Duties and Responsibilities.** The Council shall serve as an advisory body to the Board of Trustees and in connection therewith shall, at the call of the Board of Trustees, hold annual and other plenary and sectional meetings of the Council and of its Sections to consider matters requested by the Board of Trustees and additional issues of common interest and

concern to the represented organizations, their respective members and the Academy; and shall:

(a) solicit suggestions and comments from the Councilors and the organizations represented in the Council with respect to the programs and activities of the Academy and forward those suggestions and comments to the Board of Trustees, the Executive Committee, and the Academy's operational Groups, as appropriate,

(b) initiate proposals to address the needs and concerns of represented organizations,

(c) respond to requests for information and advice on specific issues from the Board of Trustees, the Executive Committee, the Issue Analysis Group, the Academy's operational Groups, and the Executive Vice President,

(d) serve as liaison between and among the Academy and organizations represented in the Council, to assure that the Academy is aware of the needs and concerns of those organizations and that the represented organizations are aware of and are supportive of the programs and activities of the Academy,

(e) assist to develop unity within ophthalmology and cooperation among providers of eye care services,

(f) assist in the development of issues to be considered at each Mid-Year Forum in ways requested by the Board of Trustees, and

(g) have other duties and responsibilities that the Board of Trustees or the Executive Committee may determine.

**7.03. Operational Procedures.** The Board of Trustees, after discussion with the Council, shall adopt Operational Procedures that are not inconsistent with the Articles of Incorporation, Bylaws, Code of Ethics, and Procedural Rules, to provide for:

(a) the criteria for and the selection of organizations to be represented in the Council and in each Council Section,

(b) the manner of determining the numerical representation of each organization in the Council,

(c) the manner of selecting, electing, and filling vacancies among Councilors and Alternate Councilors,

(d) the duties and responsibilities of Councilors and Alternate Councilors,

(e) the floor privileges of Councilors, Alternative Councilors, and other persons attending meetings of the Council and Council Sections,

(f) the establishment, functions, and composition of committees of the Council, and

(g) other matters pertaining to the conduct of the affairs of the Council and its Sections.

#### **7.04. Composition.**

(a) The Council shall be composed of one (1) or more representatives of each organization represented in the Council, and these representatives shall be designated as Councilors. Only Voting Fellows and Members of the Academy shall be eligible to be Councilors. The Council shall be divided into Sections as provided for in this Article VII.

(b) The Council shall have a Section for State Ophthalmologic Societies composed of one (1) or more Councilors representing each state, the District of Columbia, and Puerto Rico. The Council also shall have a Section for Subspecialty Societies and Specialized Interests, which may be composed of one (1) or more Councilors representing each national scientific, educational, ophthalmologic subspecialty, other allied organizations in ophthalmology, and national special interest organizations of ophthalmologists. The organizations and the number of Councilors representing them shall be determined in accordance with the Operational Procedures for the Council.

(c) The Board of Trustees may establish one (1) or more additional Council Sections whenever it determines that this is desirable.

**7.05. Terms of Councilors.** Each Councilor shall serve one (1) full term of three (3) years, or until a successor is elected or appointed, commencing January 1 of the ensuing calendar year, except that the terms of the Councilors shall be staggered so that the terms of only approximately one-third (1/3rd) of them expire each year. A Councilor who serves for one (1) full term on the Council shall be eligible to serve as a Councilor for no more than one (1) additional full term. A person who serves as a Councilor for less than one-half (1/2) of a full term shall not be considered to have served a full term for purposes of determining the person's eligibility for re-election as a Councilor.

**7.06. Duties of Councilors.** Each Councilor shall attend each Mid-Year Forum and each meeting of the Council and of the Council Section on which the Councilor serves, and shall have the other duties and responsibilities prescribed in the Operational Procedures for the Council.

#### **7.07. Council and Council Section Leadership.**

The Council shall have a Chair and a Vice Chair. Their successors shall be proposed and recommended to the Board of Trustees in the manner provided in the Operational Procedures. Each Council Section also shall have a Deputy Section Leader, who shall assist the Chair or Vice Chair respectively, and shall be elected annually by the affirmative vote of at least a majority of the Councilors in the Section present and voting at a meeting. The Chair, Vice Chair, and Deputy Section Leaders shall have the duties and responsibilities provided in the Operational Procedures for the Council.

#### **ARTICLE VIII. INDEMNIFICATION**

The Academy shall indemnify its Trustees, Officers, Secretariat and committee members, Councilors, employees, and each person serving at the request of the Academy as a representative to another organization as a member, director, trustee, or officer of or delegate to the other organization, against such liabilities, costs, and expenses, in such manner,

under such circumstances, and to such extent as is required or permitted by applicable Minnesota law, as that law exists from time to time. The Academy may purchase and maintain insurance against the financial obligations described above.

#### **ARTICLE IX. AMENDMENTS AND REVISIONS**

**9.01. General.** The Articles of Incorporation of the Academy, these Bylaws, and the Academy's Code of Ethics may be amended or revised, and any proposed amendment or revision of the Procedural Rules may be ratified, by mail ballot conducted in accordance with the Procedural Rules after the annual business meeting of the Fellows and Members of the Academy referred to in this Section 9.01, provided that:

(a) in the case of a proposed amendment or revision of the Articles of Incorporation, the Board of Trustees, by the affirmative vote of two-thirds (2/3rds) of the Trustees present and voting at a meeting, adopts resolutions setting forth the proposed amendment or revision and recommending that it be presented to the Fellows and Members at their next annual business meeting; and

(b) in the case of a proposed amendment or revision of these Bylaws or the Academy's Code of Ethics, either (i) the Board of Trustees, by the affirmative vote of two-thirds (2/3rds) of the Trustees present and voting at a meeting, adopts resolutions setting forth the proposed amendment or revision and recommending that it be presented to the Voting Fellows and Members at their next annual business meeting, or (ii) one percent (1%) of the total number of Voting Fellows or Members submit to the Executive Vice President, at least ninety (90) days prior to the date of the next annual business meeting of the Voting Fellows and Members, a petition signed by them setting forth the proposed amendment or revision to be presented to the Voting Fellows and Members at their next annual business meeting; and

(c) in the case of a proposed amendment or revision of the Procedural Rules, the Board of Trustees, by the affirmative vote of two-thirds (2/3rds) of the Trustees present and voting at a meeting, adopts resolutions setting forth the proposed amendment or revision and recommending that it be submitted to the Voting Fellows and Members at their next annual business meeting for ratification;

(d) notice of the proposed wording of the amendment or revision is given to all Voting Fellows and Members at least thirty (30) days prior to the date of the annual business meeting of the Voting Fellows and Members at which the proposals are to be presented; and

(e) if a proposed amendment or revision of the Articles of Incorporation or these Bylaws or the Code of Ethics is amended solely to correct a grammatical error at the annual business meeting of the Voting Fellows and Members by the affirmative vote of at least two-thirds (2/3rds) of the Voting Fellows and Members present and voting, the amended version of the proposed amendment or revision shall be the version submitted to the Voting Fellows and Members for action by mail ballot; and

(f) each proposed amendment or revision of the Articles of Incorporation or these Bylaws or the Code of Ethics is adopted if it receives the affirmative vote of two-thirds (2/3rds) of the

Voting Fellows and Members who timely submit valid mail ballots; and

(g) each proposed amendment or revision of the Procedural Rules is ratified if it receives the affirmative vote of at least a majority of the Voting Fellows and Members who timely submit valid mail ballots.

**9.02. Amendments Related to Legal or Tax-Exempt Status.** Notwithstanding the provisions of Section 9.01, if any amendment or revision of the Articles of Incorporation or these Bylaws, or both, is required to enable the Academy to maintain its status as a nonprofit corporation under applicable Minnesota law, as that law exists from time to time, or its status as an organization described in Section 501(c)(6) of the Internal Revenue Code of 1986, as now enacted or as hereafter amended, the Board of Trustees shall have the power and authority to amend the Articles of Incorporation or these Bylaws, or both, as the case may be, by adopting the amendments or revision by the affirmative vote of two-thirds (2/3rds) of the Trustees present and voting at a meeting; provided, that no amendment or revision shall substantially change the purposes of the Academy or the rights, privileges, duties, and responsibilities of the Fellows and Members and the Board of Trustees unless the amendment or revision is noticed, approved, and adopted in accordance with the provisions of Section 9.01.

**CODE OF ETHICS OF THE  
AMERICAN ACADEMY OF OPHTHALMOLOGY, INC.**

**PREAMBLE**

The Code of Ethics of the American Academy of Ophthalmology applies to the American Academy of Ophthalmology and to its Fellows and Members, and is enforceable by the American Academy of Ophthalmology.

**A. PRINCIPLES OF ETHICS**

The Principles of Ethics form the first part of this Code of Ethics. They are aspirational and inspirational model standards of exemplary professional conduct for all Fellows or Members of the Academy in any class of membership. They serve as goals for which Academy Fellows and Members should constantly strive. The Principles of Ethics are not enforceable.

**1. Ethics In Ophthalmology.** Ethics address conduct and relate to what behavior is appropriate or inappropriate, as reasonably determined by the entity setting the ethical standards. An issue of ethics in ophthalmology is resolved by the determination that the best interests of patients are served.

**2. Providing Ophthalmological Services.** Ophthalmological services must be provided with compassion, respect for human dignity, honesty and integrity.

**3. Competence of the Ophthalmologist.** An ophthalmologist must maintain competence. Competence can never be totally comprehensive, and therefore must be supplemented by other colleagues when indicated. Competence involves technical ability, cognitive knowledge, and ethical concerns for the patient. Competence includes having adequate and proper knowledge to make a professionally appropriate and acceptable decision regarding the patient's management.

**4. Communication with the Patient.** Open communication with the patient is essential. Patient confidences must be safeguarded within the constraints of the law.

**5. Fees for Ophthalmological Services.** Fees for ophthalmological services must not exploit patients or others who pay for the services.

**6. Corrective Action.** If a member has a reasonable basis for believing that another person has deviated from professionally-accepted standards in a manner that adversely affects patient care or from the Rules of Ethics, the member should attempt to prevent the continuation of this conduct. This is best done by communicating directly with the other person. When that action is ineffective or is not feasible, the member has a responsibility to refer the matter to the appropriate authorities and to cooperate with those authorities in their professional and legal efforts to prevent the continuation of the conduct.

**7. An Ophthalmologist's Responsibility.** It is the responsibility of an ophthalmologist to act in the best interest of the patient.

**B. RULES OF ETHICS**

The Rules of Ethics form the second part of this Code of Ethics. They are mandatory and descriptive standards of minimally-acceptable professional conduct for all Fellows or

Members of the Academy in any class of membership. The Rules of Ethics are enforceable.

**1. Competence.** An ophthalmologist is a physician who is educated and trained to provide medical and surgical care of the eyes and related structures. An ophthalmologist should perform only those procedures in which the ophthalmologist is competent by virtue of specific training or experience or is assisted by one who is. An ophthalmologist must not misrepresent credentials, training, experience, ability or results.

**2. Informed Consent.** The performance of medical or surgical procedures shall be preceded by appropriate informed consent.

**3. Clinical Trials and Investigative Procedures.** Use of clinical trials or investigative procedures shall be approved by adequate review mechanisms. Clinical trials and investigative procedures are those conducted to develop adequate information on which to base prognostic or therapeutic decisions or to determine etiology or pathogenesis, in circumstances in which insufficient information exists. Appropriate informed consent for these procedures must recognize their special nature and ramifications.

**4. Other Opinions.** The patient's request for additional opinion(s) shall be respected. Consultation(s) shall be obtained if required by the condition.

**5. The Impaired Ophthalmologist.** A physically, mentally or emotionally impaired ophthalmologist should withdraw from those aspects of practice affected by the impairment. If an impaired ophthalmologist does not cease inappropriate behavior, it is the duty of other ophthalmologists who know of the impairment to take action to attempt to assure correction of the situation. This may involve a wide range of remedial actions.

**6. Pretreatment Assessment.** Treatment shall be recommended only after a careful consideration of the patient's physical, social, emotional and occupational needs. The ophthalmologist must evaluate the patient and assure that the evaluation accurately documents the ophthalmic findings and the indications for treatment. Recommendation of unnecessary treatment or withholding of necessary treatment is unethical.

**7. Delegation of Services.** Delegation is the use of auxiliary health care personnel to provide eye care services for which the ophthalmologist is responsible. An ophthalmologist must not delegate to an auxiliary those aspects of eye care within the unique competence of the ophthalmologist (which do not include those permitted by law to be performed by auxiliaries). When other aspects of eye care for which the ophthalmologist is responsible are delegated to an auxiliary, the auxiliary must be qualified and adequately supervised. An ophthalmologist may make different arrangements for the delegation of eye care in special circumstances, so long as the patient's welfare and rights are the primary considerations.

**8. Postoperative Care.** The providing of postoperative eye care until the patient has recovered is integral to patient management. The operating ophthalmologist should provide those aspects of postoperative eye care within the unique competence of the ophthalmologist (which do not include those permitted by law to be performed by auxiliaries). Otherwise, the operating ophthalmologist must make arrangements before surgery for referral of the patient to

another ophthalmologist, with the patient's approval and that of the other ophthalmologist. The operating ophthalmologist may make different arrangements for the provision of those aspects of postoperative eye care within the unique competence of the ophthalmologist in special circumstances, such as emergencies or when no ophthalmologist is available, so long as the patient's welfare and rights are the primary considerations. Fees should reflect postoperative eye care arrangements with advance disclosure to the patient.

**9. Medical and Surgical Procedures.** An ophthalmologist must not misrepresent the service that is performed or the charges made for that service.

**10. Procedures and Materials.** Ophthalmologists should order only those laboratory procedures, optical devices or pharmacological agents that are in the best interest of the patient. Ordering unnecessary procedures or materials or withholding necessary procedures or materials is unethical.

**11. Commercial Relationships.** An ophthalmologist's clinical judgment and practice must not be affected by economic interest in, commitment to, or benefit from professionally-related commercial enterprises.

**12. Communications to Colleagues.** Communications to colleagues must be accurate and truthful.

**13. Communications to the Public.** Communications to the public must be accurate. They must not convey false, untrue, deceptive, or misleading information through statements, testimonials, photographs, graphics or other means. They must not omit material information without which the communications would be deceptive. Communications must not appeal to an individual's anxiety in an excessive or unfair way; and they must not create unjustified expectations of results. If communications refer to benefits or other attributes of ophthalmic procedures that involve significant risks, realistic assessments of their safety and efficacy must also be included, as well as the availability of alternatives and, where necessary to avoid deception, descriptions and/or assessments of the benefits or other attributes of those alternatives. Communications must not misrepresent an ophthalmologist's credentials, training, experience or ability, and must not contain material claims of superiority that cannot be substantiated. If a communication results from payment by an ophthalmologist, this must be disclosed unless the nature, format or medium makes it apparent.

**14. Interrelations Between Ophthalmologists.** Interrelations between ophthalmologists must be conducted in a manner that advances the best interests of the patient, including the sharing of relevant information.

**15. Conflict of Interest.** A conflict of interest exists when professional judgment concerning the well-being of the patient has a reasonable chance of being influenced by other interests of the provider. Disclosure of a conflict of interest is required in communications to patients, the public, and colleagues.

### **C. ADMINISTRATIVE PROCEDURES**

The Administrative Procedures form the third part of this Code of Ethics. They provide for the structure and operation of the Ethics Committee; they detail procedures followed by the Committee and by the Board of Trustees of the Academy in

handling inquiries or challenges raised under the Rules of Ethics. All ophthalmologists who are Fellows or Members of the Academy in any class of membership are required to comply with these Administrative Procedures; failure to cooperate with the Ethics Committee or the Board of Trustees in a proceeding on a challenge may be considered by the Committee and by the Board of Trustees according to the same procedures and with the same sanctions as failure to observe the Rules of Ethics.

#### **1. Ethics Committee.**

**(a) The Committee.** The Board of Trustees appoints at least five (5), but not more than nine (9), ophthalmologists who are Voting Fellows or Members of the Academy to serve three (3) year, staggered terms as members of the Ethics Committee. The Board of Trustees makes its appointments to the Committee from among respected ophthalmologists who will, to the extent practicable, assure that the Committee's composition is balanced as to relative age, diversity and experience, and as to the emphasis of the appointees upon practice, education, research or other endeavors within ophthalmology. Membership on the Ethics Committee may be terminated by the Board of Trustees at any time and for any reason. Vacancies on the Committee are filled by the Board of Trustees. Committee members are reimbursed for expenses. The Ethics Committee is responsible for (i) developing and implementing an educational program regarding professional ethics and the Code of Ethics of the American Academy of Ophthalmology, especially among ophthalmologists and ophthalmologists-in-training who are Fellows or Members of the Academy; (ii) responding to each inquiry regarding ethics and, if appropriate, making a recommendation to the Board of Trustees regarding action, such as the development of an advisory opinion interpreting the Rules of Ethics in this Code; (iii) investigating each challenge regarding ethics and recommending whether the Board of Trustees should make a determination that a Fellow or Member of the Academy has failed to observe the Rules of Ethics in this Code, and recommending an appropriate sanction; (iv) serving as a resource for the American Academy of Ophthalmology, its members and its Board of Trustees regarding professional ethics and ethical issues; and (v) assessing the Principles of Ethics, Rules of Ethics and Administrative Procedures in this Code periodically and recommending any amendments to the Board of Trustees.

**(b) The Chair of the Committee.** Upon nomination by the President-Elect of the Academy, the Board of Trustees appoints one (1) member of the Ethics Committee as the Committee's Chair to serve, at the will of the Board of Trustees, as the principal administrative officer responsible for management of the promulgation, interpretation and enforcement of this Code of Ethics. The Board of Trustees appoints as the Chair a distinguished ophthalmologist who possesses recognized integrity and broad experience. The Chair of the Committee is responsible directly and exclusively to the Board of Trustees; the Chair is reimbursed for expenses and, upon the approval of the Board of Trustees, may be paid for services; and the Chair is provided, upon the approval of the Board of Trustees, with staff, legal counsel and other resources necessary to fulfill the responsibilities of administering this Code. The Chair presides at, and participates in, all meetings and hearings of the Ethics Committee, except that the Chair need not participate at hearings at which the Committee considers the possible failure of a Fellow or Member of the Academy to observe the Rules of

Ethics in this Code. The Chair is responsible for ensuring that these Administrative Procedures are followed. The Chair maintains liaison with entities, both public and private, which are interested or involved in medical ethics, particularly as they relate to ophthalmology.

**(c) The Vice Chair of the Committee.** Upon nomination by the President-Elect of the Academy, the Board of Trustees appoints one (1) member of the Committee as the Committee's Vice Chair to serve, at the will of the Board of Trustees, in the place of the Chair when the Chair is unable to serve.

**(d) Meetings of the Committee.** Meetings of the Ethics Committee are called upon at least seven (7) days' written notice to Committee members, which notice includes a copy of the agenda for the meeting. A quorum consists of a majority of all the appointed Committee members. Voting is by majority of those present at a meeting (or by a majority of those submitting votes in a mail vote). Mail voting without a meeting is permitted where all Committee members submit mail votes or abstentions. Voting by proxy is not permitted. A member of the Committee must decline to participate in the consideration of, or the decision in, any matter before the Committee in which the member has a personal interest.

**(e) Indemnification and Insurance.** All Ethics Committee members, staff, and other individuals engaged in investigations at the written request of the Chair, are indemnified and defended by the Academy against liability arising from Committee-related activities to the extent provided by the Bylaws of the Academy for Trustees, Officers, committee members, employees and agents. The Academy maintains indemnification insurance against such liability.

## 2. Inquiries and Challenges.

**(a) Preliminary Review.** The Chair preliminarily reviews each submission involving this Code of Ethics to consider whether it may be an inquiry (e.g., a request for issuance by the Board of Trustees of an advisory opinion interpreting the Rules of Ethics in this Code) or a challenge (i.e., a request for a finding by the Board of Trustees that a Fellow or Member of the Academy has failed to observe the Rules of Ethics in this Code). A submission involving this Code of Ethics, whether or not it is designated or phrased as an inquiry or challenge, may be construed by the Chair or the Committee as either an inquiry or a challenge in the light of information in the submission. Inquiries may be considered without regard to their means or form of submission. Challenges relating to information not in the public domain are not considered unless they are submitted in writing and signed by their submitters. Inquiries or challenges may be submitted by ophthalmologists (whether or not they are Fellows or Members of the Academy), other physicians, health care institutions, health care reimbursers, allied health professionals, patients or organizations representing any of these.

**(b) Preliminary Disposition.** Upon preliminary review of a submission involving this Code of Ethics, the Chair may conclude, in the Chair's sole discretion, that the submission (i) contains insufficient information on which to base an investigation or (ii) is patently frivolous or inconsequential. For example, the Chair may conclude that a submission does not present an issue of interpretation of the Rules of Ethics in this Code adequate to constitute a valid and actionable inquiry and to justify bringing the submission before the Committee

for investigation and recommendation to the Board of Trustees on issuance of an advisory opinion. Similarly, the Chair may conclude that a submission does not present an issue of the failure of a Fellow or Member of the Academy to observe the Rules of Ethics in this Code adequate to constitute a valid and actionable challenge and to justify bringing the submission before the Committee for investigation and recommendation to the Board of Trustees on a determination of failure to observe the Rules of Ethics. If the Chair so concludes, the submission is disposed of by notice from the Chair to its submitter, if the submitter is identified. Each such preliminary disposition by the Chair of a submission involving this Code of Ethics shall be reported to the Ethics Committee.

**(c) Investigation.** For each submission involving this Code of Ethics that the Chair concludes is a valid and actionable inquiry or challenge, the Committee conducts an investigation into its specific facts or circumstances to whatever extent is necessary in order to clarify, expand or corroborate the information provided by the submitter. The Chair may supervise each investigation and may conduct an investigation personally. The Chair may be assisted in the conducting of an investigation by other Ethics Committee members or by Committee staff. The Chair may also be assisted by any other individual, such as a member of the Council of the Academy, (i) whose location, professional position or expertise might facilitate the investigation, (ii) whose assistance is requested in writing by the Committee Chair, and (iii) who agrees in writing to follow the Administrative Procedures of this Code, but only when all three (3) of those conditions are fulfilled. A Fellow or Member of the Academy who is the subject of a valid and actionable challenge is informed in writing at the beginning of the Committee's investigation as to (i) the nature of the challenge, (ii) the obligation to cooperate fully in the Committee's investigation of the challenge, and (iii) the opportunity to request a hearing on the challenge before the Ethics Committee. Investigations involving challenges are conducted in confidence, with all written communications sealed and marked "Personal and Confidential," and they are conducted objectively, without any indication of prejudgment. An investigation may be directed toward any aspect of an inquiry or challenge, which is relevant or potentially relevant. The investigation may include one (1) or more site visits and informal interviews with the Fellow or Member who is the subject of the challenge.

## 3. Proceedings on Inquiries.

**(a) Hearing on an Inquiry.** In the course of an investigation involving an inquiry, the Committee may conduct a public administrative hearing to receive the views of those who are interested in, or may be affected by, issuance by the Board of Trustees of an advisory opinion interpreting the Rules of Ethics in this Code. Thirty (30) days' written notice of the hearing is given to the Fellows and Members of the Academy and to others who, in the opinion of the Committee, may be interested in, or affected by, issuance of an advisory opinion. The notice may include a tentative proposed advisory opinion. The hearing is conducted by the Committee with any three (3) or more Committee members participating. The Chair of the Committee serves as the Hearing Officer to preside at the hearing and assure that these Administrative Procedures are followed. The Hearing Officer may issue an appropriate procedural or evidentiary ruling in the course of the hearing and may be assisted by legal counsel. The Hearing Officer presents at the hearing the issues raised by the inquiry, the

results of the investigation up to the time of the hearing, and any tentative proposed Committee recommendation to the Board of Trustees for an advisory opinion. Information is offered through witnesses who may be assisted by legal counsel and are subject to questioning by the Committee. Any information may be considered which is relevant or potentially relevant. A transcript or audio recording of the hearing is made. The official record of the hearing becomes part of the investigation of the inquiry.

**(b) Recommendation on an Inquiry.** Upon completion of an investigation involving an inquiry, the Ethics Committee may develop an advisory opinion, which is submitted to the Board of Trustees for approval.

**(c) Advisory Opinion.** The Board of Trustees issues an advisory opinion interpreting the Rules of Ethics in this Code (i) upon the recommendation of the Ethics Committee arising from an inquiry and following an investigation or (ii) upon the recommendation of the Committee arising from its own initiative. A representative of the Committee presents to the Board of Trustees, for its review, the recommendations of the Committee and its record of the investigation. Once issued by the Board of Trustees, the advisory opinion is promulgated by publication to the Fellows and Members of the Academy. Advisory opinions are compiled by the Ethics Committee; and the compilation is periodically made available to the Fellows and Members of the Academy.

#### **4. Proceedings on Challenges.**

**(a) Hearing on a Challenge.** In the course of an investigation involving a challenge, the Committee conducts a private adjudicative hearing if one is requested by the Fellow or Member of the Academy who is the subject of the challenge or at the Committee's own initiative. The Fellow or Member who is the subject of the challenge shall be given at least thirty (30) days notice of his right to request a hearing. If a hearing is requested, thirty (30) days written notice of the date, time and location of the hearing is given to the Fellow or Member. The hearing is conducted by the Committee with any three (3) or more Committee members participating, other than the investigator and any other Committee member who assisted substantially in the investigation of the challenge, and any Committee member whose professional activities are conducted at a location in the approximate area of that of the Fellow or Member of the Academy who is the subject of the challenge. The Chair of the Ethics Committee may be one (1) of the three (3) or more Committee members conducting the hearing unless the individual is disqualified by reason of circumstances described in the preceding sentence. Those Committee members participating in the hearing elect from their number a Hearing Officer to preside at the hearing and assure that these Administrative Procedures are followed. The Hearing Officer may issue any appropriate procedural or evidentiary rulings in the course of the hearing and may be assisted by legal counsel. The Hearing Officer, or a person or persons designated by the Hearing Officer, shall summarize for the Ethics Committee the results of the investigation up to the date of the hearing which are believed to support a finding that the Fellow or Member has failed to observe the Rules of Ethics, and may make such other introductory factual remarks as the Hearing Officer or the Hearing Officer's designate deems appropriate. A person designated by the Ethics Committee shall present the facts indicating that the Fellow or Member has failed to observe the Rules of Ethics, including

documentary evidence and the testimony of witnesses. Those witnesses shall be available in person or by telephone for questioning by the members of the Ethics Committee and its legal counsel and by the Fellow or Member or the Fellow's or Member's legal counsel or other representative. The Fellow or Member subject to the challenge may be assisted at the hearing, at their sole cost and expense, by legal counsel or other representative selected by the Fellow or Member. The Fellow or Member or legal counsel or other representative may present documentary evidence and the testimony of witnesses in the Fellow's or Member's defense. Those witnesses shall be available in person or by telephone for questioning by the Fellow or Member or legal counsel or other representative and by the members of the Ethics Committee and its legal counsel. Any information may be considered which is relevant or potentially relevant. The Fellow or Member may submit a written statement at the close of the hearing. A transcript or audio recording of the hearing is made. The hearing is closed to all except the Committee, the Chair, the Fellow or Member of the Academy who is the subject of the challenge, their respective witnesses (when testifying and at other times as determined by the Hearing Officer) and counsel or, in the case of the Fellow or Member, other representative, staff and official reporter. The official record of the hearing becomes a part of the record of the investigation of the challenge.

**(b) Recommendation on a Challenge.** Upon completion of an investigation involving a challenge, the Ethics Committee recommends whether the Board of Trustees should make a determination that the Fellow or Member of the Academy who is the subject of the challenge has failed to observe the Rules of Ethics in this Code. When the Committee recommends a determination by the Board of Trustees of non-observance, the Committee also recommends imposition by the Board of Trustees of an appropriate sanction. A copy of the recommendation and a statement of the basis for the recommendation shall be provided to the Fellow or Member. If the Committee so recommends, a proposed determination with a proposed sanction is prepared and is presented by a representative of the Committee to the Board of Trustees along with the record of the Committee's investigation. If the Committee recommends against a determination of non-observance, the challenge is dismissed, with notice to the Fellow or Member of the Academy who is the subject of the challenge and to the submitter of the challenge, and a summary report is made to the Board of Trustees. In the sole discretion of the Committee and with the written consent of the Fellow or Member who was the subject of the challenge, the Committee may recommend to the Board of Trustees that the fact of the dismissal of the challenge (and, in appropriate cases, the reasons for the dismissal) be publicized, and the Board of Trustees may, in its sole discretion, determine the nature, extent and manner of such publicity.

**(c) Determination of Non-Observance.** The Board of Trustees makes the determination whether a Fellow or Member of the Academy has failed to observe the Rules of Ethics in this Code and imposes an appropriate sanction upon the recommendation of the Ethics Committee arising from a challenge and following an investigation. The Board of Trustees reviews the recommendation of the Committee based upon the record of the investigation. The Board of Trustees may accept, reject or modify the Committee's recommendation, either with respect to the determination of non-observance or with respect to the sanction. If the Board of Trustees makes a determination of non-observance, this

determination and the imposition of a sanction are promulgated by written notice to the affected Fellow or Member of the Academy and to the submitter of the challenge, if the submitter agrees in advance and in writing to maintain in confidence whatever portion of the information is not made public by the Board of Trustees. Additional publication occurs only to the extent provided in the sanctions themselves. If the Board of Trustees does not make a determination of non-observance, the challenge is dismissed, with notice to the affected Fellow or Member and to the submitter of the challenge.

**(d) Alternative Disposition.** Before the Committee makes any recommendation to the Board of Trustees as to a determination that a Fellow or Member of the Academy has failed to observe the Rules of Ethics in this Code, the Committee may extend to the Fellow or Member an opportunity to submit a proposed alternative disposition of the matter in whole or in part upon terms and conditions suggested by the Ethics Committee. The terms and conditions may include sanctions and restrictions which are the same as, different from, or more or less restrictive than the sanctions contained in the following lettered paragraph, but shall in all cases include a written assurance by the Fellow or Member that the possible non-observance has been terminated and will not recur. The decision of the Ethics Committee on whether to extend such an opportunity is entirely within the Committee's own discretion, based upon its investigation of the challenge and upon its assessment of the nature and severity of the possible non-observance when viewed from the point of view of what is in the best interests of patients of the Fellow or Member of the Academy who is the subject of the challenge. If an opportunity to submit a proposed alternative disposition is extended by the Ethics Committee, an alternative disposition will be considered only if the Fellow or Member of the Academy submits to the Ethics Committee the proposed alternative disposition within thirty (30) days of the date of the Ethics Committee's notice to the Fellow or Member that it is extending such an opportunity. If the Fellow or Member timely submits a proposed alternative disposition that is accepted by the Board of Trustees and Ethics Committee, the matter shall be resolved on the basis of the alternative disposition, and notice shall be given to the submitter of the challenge, only if the submitter agrees in advance and in writing to maintain the information in confidence.

**(e) Sanctions.** Any of the following sanctions may be imposed by the Board of Trustees upon a Fellow or Member of the Academy who, the Board of Trustees has determined, has failed to observe the Rules of Ethics in this Code, although the sanction applied must reasonably relate to the nature and severity of the non-observance, focusing upon reformation of the conduct of the Fellow or Member and deterrence of similar conduct by others:

**(i) Reprimand to the Fellow or Member of the Academy, with publication of the determination and with or without publication (at the discretion of the Board of Trustees) of the Fellow's or Member's name;**

**(ii) Suspension of the Fellow or Member from the Academy for a designated period, with publication of the determination and with or without publication (at the discretion of the Board of Trustees) of the Fellow's or Member's name; or**

**(iii) Termination of the Academy membership of the Fellow or Member, with publication of the determination and of the Fellow's or Member's name.**

In addition to and not in limitation of the foregoing, in any case in which the Board of Trustees determines that a Fellow or Member has failed to observe the Rules of Ethics, the Board of Trustees may impose the further sanction that the Fellow or Member shall not be entitled to sponsor, present, or participate in a lecture, poster, film, instruction course, panel, or exhibit booth at any meeting or program of or sponsored by the Academy (A) for a period of up to five (5) calendar years from and after the effective date a sanction described in clause (i) or (ii) of this paragraph 4(e) is imposed for the first time upon the Fellow or Member, or (B) at any time from and after the effective date a sanction described in clause (i) or (ii) of this paragraph 4(e) is imposed for a second time upon the Fellow or Member, or (C) at any time from and after the effective date a sanction described in clause (iii) of this paragraph 4(e) is imposed upon the Fellow or Member.

Fellows or Members of the Academy who are suspended are deprived of all benefits and incidents of membership during the period of suspension, except continued participation in Academy insurance programs. If the Fellow or Member is suspended with publication of the Fellow's or Member's name or terminated, and the appeal (if any) sustains the determination on which the sanction is based, the Board of Trustees may authorize the Ethics Committee to communicate the determination and transfer a summary or the entire record of the proceeding on the challenge to an entity engaged in the administration of law or a governmental program or the regulation of the conduct of physicians, in a proceeding that relates to the subject matter of the challenge, provided, however, that the entity is a federal or state administrative department or agency, law enforcement agency, physician licensing authority, medical quality review board, professional peer review committee, or similar entity; and the Chair of the Ethics Committee may appear if requested as a witness to that determination and record. Except in the instance of communication of the determination and transfer of the record, or in the instance of request of the record by the Fellow or Member of the Academy who was the subject of the challenge, the entire record, including the record of any appeal, is sealed by the Ethics Committee and the Board of Trustees and no part of it is communicated by the members of the Board of Trustees, the members of any appellate body, the members of the Ethics Committee, the staff or any others who assisted in the proceeding on the challenge, to any third parties. Fellows or Members of the Academy whose membership has been terminated as provided in this paragraph 4(e) may not reapply for membership in any class.

**(f) Appeal.** Within thirty (30) days of receipt of notice of a determination by the Board of Trustees that a Fellow or Member of the Academy has failed to observe the Rules of Ethics in this Code and of imposition of a sanction, the affected Fellow or Member may submit to the Board in writing a request for an appeal. The Board of Trustees establishes an appellate body consisting of at least three (3), but not more than five (5), ophthalmologists who are Voting Fellows or Members of the Academy and who did not participate in the Ethics Committee's investigation or in the Board of Trustees' determination. The appellate body conducts and completes the appeal within ninety (90) days after receipt of the request for an appeal. The purpose of the appeal is to provide an objective

review of the original challenge, the investigation and recommendation of the Ethics Committee, and the determination of the Ethics Committee, and the determination of the Board of Trustees, but not, however, the sanction imposed. The appeal is limited to a review of the Ethics Committee and the Board of Trustees' application of the Rules of Ethics in this Code to the facts established in the investigation of the challenge and to a review of the procedures followed to ascertain whether they were consistent with those detailed in these Administrative Procedures. An appeal may not take into consideration any matters not included as part of the record of the Ethics Committee's investigation and the Board of Trustees' determination. The appeal consists of a review by the appellate body of the entire record of the proceeding on the challenge and written appellate submission of the Fellow or Member of the Academy who was the subject of the challenge and of the Board of Trustees. Written appellate submissions and any reply submissions may be made by authorized representatives of the Fellow or Member and of the Board of Trustees. Submissions are made according to whatever schedule is established by the appellate body. The decision of the appellate body either affirms or overrules the determination of the Board of Trustees on non-observance of the Rules of Ethics in this Code by a Fellow or Member of the Academy. The decision does not address the sanction imposed by the Board of Trustees. The decision of the appellate body, including a statement of the reasons for the decision, is reported to the Board of Trustees. The decision is binding upon the Board of Trustees, the Fellow or Member who is subject of the challenge, the Ethics Committee and all other persons.

**(g) Resignation.** If a Fellow or Member of the Academy who is the subject of a challenge resigns from the Academy at any time during the pendency of the proceeding of the challenge, the challenge is dismissed without any further action by the Ethics Committee, the Board of Trustees or an appellate body established after an appeal; the entire record is sealed; and the Fellow or Member may not reapply for membership in any class. The Board of Trustees may authorize the Ethics Committee to communicate the fact and date of resignation, the name and address of the Fellow or Member who resigned, and the fact that a challenge pursuant to the Code of Ethics was pending at the time of the resignation. Such communications shall not reveal the nature of the challenge. In addition, the Board of Trustees may authorize the Ethics Committee to communicate the fact and date of resignation, and the fact and general nature of the challenge on which a proceeding was pending at the time of the resignation, to, and at the request of, an entity engaged in the administration of law or the regulation of the conduct of physicians, in a proceeding that relates to the subject matter of the challenge, provided, however, that entity is a law enforcement agency, physician licensing authority, medical quality review board, professional peer review committee, or similar entity.

**(h) Overriding Reporting Requirement.** Notwithstanding anything expressly or apparently to the contrary contained in this Code, the Academy shall report such information, to such agency or agencies, and in such form and manner and frequency as may from time to time be prescribed by the Health Care Quality Improvement Act of 1986 and by regulations promulgated thereunder, all as from time to time amended, as a condition to the continued availability to the Academy of the protection from liability for damages afforded by such Act.

**PROCEDURAL RULES OF THE  
AMERICAN ACADEMY OF OPHTHALMOLOGY, INC.**

The following Procedural Rules have been adopted as provided for in Section 2.08 of the Bylaws of the Academy:

**A. STANDING COMMITTEES OF THE ACADEMY**

- (a) Bylaws and Rules
- (b) Ethics
- (c) Appeals
- (d) Insurance
- (e) Editorial
- (f) Membership Advisory
- (g) Other Standing Committees established by the Board of Trustees.

**B. ISSUE ANALYSIS GROUP**

The Issue Analysis Group shall be composed of

- (1) the President-Elect, as Chair;
- (2) the Executive Vice President;
- (3) one (1) representative of the Clinical Education Group who is not serving on the Board of Trustees;
- (4) one (1) representative of the Advocacy Group who is not serving on the Board of Trustees;
- (5) one (1) representative of the Ophthalmic Practice Group who is not serving on the Board of Trustees;
- (6) one (1) representative of the Council Section for State Ophthalmologic Societies who is not serving on the Board of Trustees;
- (7) one (1) representative of the Council Section for Subspecialty Societies and Specialized Interests who is not serving on the Board of Trustees; and
- (8) members-at-large.

The representative of the Clinical Education Group, the representative of the Advocacy Group, and the representative of the Ophthalmic Practice Group shall each serve for a term of two (2) years, initially be appointed by the President, and subsequently be appointed by the Senior Secretary for the respective Group. The representative of the Council Section for State Ophthalmologic Societies and the representative of the Council Section for Subspecialty Societies and Specialized Interests shall each serve for a term of two (2) years and be appointed by the Council Section in which the representative serves. The terms of the members of the Issue Analysis Group shall be staggered so that, as nearly as possible, the terms of no more than one-half (1/2) expire each year. Members-at-large whose knowledge and experience will add to the Group's deliberations may be added to the Group with appointment by the President with the approval of the Executive Committee for a specified period. The Issue Analysis Group shall analyze issues of importance to the Academy and its Fellows and Members, conduct appropriate research and analysis, and develop recommendations to the Board of Trustees on selected issues, including broad strategic directions, positions, programs, and allocation of resources. The Issue Analysis Group shall meet on the call of the Board of Trustees.

**C. ELIGIBILITY REQUIREMENTS FOR SECRETARIAT AND COMMITTEE MEMBERS AND REPRESENTATIVES TO ORGANIZATIONS**

1. All Secretariat and committee members and representatives to organizations shall be Voting Fellows or Members of the Academy except as otherwise provided in this Paragraph C.

2. Individuals holding other classifications of membership in the Academy and nonmembers of the Academy may, with specific approval of the Board of Trustees, serve on Special Committees and as consultants to Standing Committees or to representatives to organizations; however, they shall not vote on matters of governance or procedures affecting the Academy.

3. Notwithstanding the provision of Paragraphs C.1 and C.2, with specific approval of the Board of Trustees, individuals holding other classifications of membership in the Academy and nonmembers of the Academy may serve on the American Academy of Ophthalmology Charitable, Educational and Scientific Fund Advisory Committee, and subcommittees of such Advisory Committee, and may vote on all matters affecting such Fund.

**D. DETERMINATION OF SENIORITY AND ELIGIBILITY**

For purposes of the Bylaws, seniority among persons serving in specified positions and Offices shall be determined on the basis of current term in the position or Office. Whenever the order of seniority or eligibility among persons holding specified positions or specified Offices is not clearly established, the order of seniority or the eligibility shall be determined by the Board of Trustees by lot.

**E. CONTESTED ELECTIONS**

The following rules prescribe appropriate publicity and electioneering for contested elections for Elected Officers and Trustees-at-Large of the Academy, and the Chair and Vice Chair of the Council:

1. The names of all nominees of the Board of Trustees for Elected Officers, Trustees-at-Large, and the Chair and Vice Chair of the Council will be listed in the notice of the annual business meeting in accordance with the Bylaws. The names of all nominees by petition in accordance with the Bylaws for Elected Officers, Trustees-at-Large, Chair and Vice Chair of the Council will be announced in the first issue of the Academy's regular news publication, following the receipt and verification of the names of the petitioners.

2. The editorial staff of the Academy's regular news publication will offer equal, but limited, space in the regular monthly issue of the Academy's regular news publication preceding the mail-ballot election for each candidate in a contested election to state the candidate's views and for no more than two (2) seconder(s) per candidate to offer a supporting statement.

3. All electioneering for candidates shall conform to the provisions of these Procedural Rules and to guidelines promulgated from time to time by the Board of Trustees.

4. A candidate for a contested Elected Office or other position shall have the right, upon written request to the Executive Vice President at least sixty (60) days before the annual business meeting, to make a presentation in person for no more than

five (5) minutes to the annual business meeting, and in such event, each other candidate for that contested Elected Office or other position shall be afforded the same opportunity.

#### **F. PRESENTATION OF PAPERS AT ACADEMY ANNUAL MEETING SESSIONS**

1. No Fellow, Member, or invited guest speaker shall read a paper at a scientific session of the Academy that has previously been submitted elsewhere for publication. All papers read before the Academy shall immediately become the property of the Academy and shall be submitted in writing in advance of their presentation in accordance with policies established by the Board of Trustees. These papers shall be reviewed by the Editor of *Ophthalmology*, and their subsequent publication in *Ophthalmology* shall be at the discretion of the Editor of *Ophthalmology*.

2. Every paper must be read in person by its author unless good and valid reasons for the author's absence can be shown, in which case the Board of Trustees, the Executive Vice President, or the Secretary for Annual Meeting may designate another individual to present the paper in the author's absence.

#### **G. NOTICES OF MEETINGS OF, QUORUM REQUIREMENTS FOR MEETINGS OF, AND MEANS OF TAKING ACTION BY THE BOARD OF TRUSTEES, SECRETARIATS, AND COMMITTEES**

1. **Notice.** Notice of each meeting of the Board of Trustees shall be given by or at the direction of the Executive Vice President to each Trustee not less than fourteen (14) days prior to the date on which the meeting is scheduled to be held, except that notice of a meeting to be held in the manner described in paragraph G.5. below shall be given not less than five (5) days prior to the date of the meeting. The matters to be discussed and voted upon at any duly called meeting of the Board of Trustees shall not be limited to those set forth in the notice of the meeting. Notice of any meeting may be waived by a Trustee either in writing before, at, or after the meeting or by participating in the meeting.

2. **Quorum.** Except as otherwise required by the Articles of Incorporation or the Bylaws, a majority of the Trustees is a quorum for the transaction of business by the Board of Trustees.

3. **Manner of Acting.** A majority vote of the Trustees present and voting at a meeting at which a quorum is present shall be the act of the Board of Trustees, unless the vote of a larger number is required by applicable law, the Articles of Incorporation, or the Bylaws.

4. **Written Action.** Any action that the Board of Trustees could take at a duly called meeting of the Trustees may be taken by a written action signed by all of the Trustees. The same written action need not be signed by all Trustees, and each may sign a separate counterpart of the written action.

#### **5. Electronic Communications.**

(a) A conference among Trustees by any means of communication through which the Trustees may simultaneously hear each other during the conference constitutes a meeting of the Board of Trustees if the same notice of the conference required for a meeting as provided in paragraph G.1. above is given or waived and if the number of Trustees participating in the conference is sufficient to

constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

(b) A Trustee may participate in a meeting of the Board of Trustees not described in paragraph G.5.(a) above by any means of communication through which the Trustee, other Trustees so participating, and all Trustees physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

6. **Secretariats and Committees.** The provisions of paragraph G.1. to G.5. shall apply to all meetings and actions of Secretariats and committees of the Academy.

#### **H. VOTING BY MAIL BALLOT FOR ELECTION OF ELECTED OFFICERS AND OTHER POSITIONS**

1. After each annual business meeting of the Voting Fellows and Members of the Academy, the Academy shall cause to be prepared an Official Ballot for the election of Elected Officers, Trustees-at-Large, and the Chair and Vice Chair of the Council.

2. The Official Ballot shall:

(a) designate each Elected Office or other position in which a vacancy or vacancies will occur as of the ensuing January 1, printed in the order in which the Elected Offices are specified in Section 4.01 of the Bylaws, followed by the positions of Trustees-at-Large, the Chair of the Council, and the Vice Chair of the Council;

(b) list beneath the title of each Elected Office or other position the name of each duly nominated candidate for the Elected Office or position, first listing each nominee of the Board of Trustees for the Elected Office or position (in alphabetical order if there are more than one (1)) and then listing each nominee by petition for the Elected Office or position (in alphabetical order if there are more than one (1)); and

(c) contain a space opposite each nominee's name on the Official Ballot.

3. At or as soon as practicable after the annual business meeting, the President shall appoint Tellers to assist the Academy in receiving and tallying the votes cast by mail ballot and, at the previous request of a candidate for a contested Elected Office or other position, one (1) representative of the candidate to serve as an observer during the inspection and tallying of the mail ballots.

4. Within fourteen (14) days after the annual business meeting, the Board of Trustees shall cause to be mailed to each Voting Fellow and Member of the Academy, at the address shown on the records of the Academy,

(a) a notice specifying: (i) the date (not later than thirty (30) days after the date of mailing of the notice) by which an Official Ballot must be received by the Academy to be counted, (ii) the requirements for a valid mail ballot, and (iii) the fact that the vote by mail ballot will be valid only if valid Official Ballots are received from at least one hundred and fifty (150) Voting Fellows and Members by the specified date;

(b) one statement per candidate comprising not more than five hundred (500) words, and up to two (2) supporters' statements

per candidate comprising not more than two hundred (200) words each or a cumulative total of four hundred (400) words; these statements will be included in the mailing only if received by the Executive Vice President at least sixty (60) days before the annual business meeting;

(c) an Official Ballot;

(d) a return envelope, addressed to the Academy, with a space for the name and Academy membership identification number of the Voting Fellow or Member submitting the ballot; and

(e) instructions with respect to the conduct of the election by mail ballot.

5. The instructions given in accordance with paragraph H.4.(e) shall inform each Voting Fellow and Member wishing to vote by mail ballot

(a) to mark the Official Ballot by making an appropriate mark in the space opposite the name of one (1) candidate for each Elected Office and other position, indicated on the Official Ballot;

(b) to make no other marks on the Official Ballot;

(c) to place the Official Ballot in the Ballot envelope;

(d) to insert the name and Academy membership number of the Voting Fellow or Member in the space provided on the return envelope; and

(e) to mail the return envelope to the Academy in sufficient time to permit its receipt by the Academy not later than the date specified in the written notice.

6. Within ten (10) days after the date specified in the written notice, the Academy shall verify the name and membership identification number of the Voting Fellow or Member indicated on the return envelope, and after verification, the Ballot(s) shall be removed from the return envelope, validated, and placed in a ballot box. Return envelopes received by the Academy after the date specified in the notice shall not be opened and shall be discarded. The representative, if any, of each candidate designated as an observer shall be entitled to be present.

7. A returned ballot, even if timely received by the Academy, shall not be valid for any purpose

(a) if it is not marked (blank);

(b) if the ballot does not clearly indicate each candidate for whom a vote is cast;

(c) if the ballot casts votes for more than one (1) candidate for each Elected Office, for Chair of the Council, or for Vice Chair of the Council;

(d) if the ballot casts votes for more candidates for the position of Trustee-at-Large than the number of vacancies to occur on the ensuing January 1 in the position of Trustee-at-Large;

(e) if the ballot is not the Academy's Official Ballot;

(f) if the return envelope contains the Official Ballot(s) of more than one (1) Voting Fellow or Member.

8. Within ten (10) days after the date specified in the written notice, the Tellers shall discard all ballots determined to be invalid and shall tally only the valid Official Ballots.

9. The person receiving a majority of the votes for an Elected Office or other position cast by mail on valid Official Ballots shall be elected to that office or position, except that if there are two (2) or more candidates for an Elected Office or the candidate receiving the greatest number of votes cast on valid Official Ballots for the Elected Office or other position shall be elected to that office or position. If there are three (3) or more candidates to fill two (2) vacancies to occur in the position of Trustees-at-Large, the two (2) candidates receiving the greatest number of votes cast on valid Official Ballots shall be elected to fill the vacancies.

10. The Tellers shall report to the President the results of the election of Elected Officers by mail ballot as soon as the results are tallied.

11. In case of a tie between candidates so that the person elected to fill a vacancy in an Elected Office or other position as of the ensuing January 1 cannot be determined without breaking the tie, the person deemed to be elected to fill the vacancy shall be determined by lot in the presence of the tied candidates or their representatives under the supervision of, at a time and place specified by, and in a manner determined by, the Board of Trustees.

12. The results of the election by mail ballot, including the breaking of ties, shall be announced to the membership as soon as practicable in a manner determined by the Board of Trustees.

#### **I. VOTING BY MAIL BALLOT ON PROPOSED AMENDMENTS OR REVISIONS IN ARTICLES OF INCORPORATION, BYLAWS, CODE OF ETHICS, OR PROCEDURAL RULES**

1. After each annual business meeting of the Voting Fellows and Members of the Academy at which any proposed amendments or revisions to the Articles of Incorporation, Bylaws, Code of Ethics, or these Procedural Rules have been submitted to the Voting Fellows and Members in accordance with Section 9.01 of the Bylaws, the Academy shall cause to be prepared an Official Ballot for a vote of each of the proposed amendments or revisions.

2. The Official Ballot shall designate each proposed amendment or revision to be voted on by the Voting Fellows and Members and shall contain spaces opposite each designation to provide the Voting Fellows and Members an opportunity to vote for or against each proposal.

3. At or as soon as practicable after the annual business meeting, the President shall appoint Tellers to assist the Academy in receiving and tallying the vote by mail ballot.

4. Within fourteen (14) days after the annual business meeting, the Board of Trustees shall cause to be mailed to each Voting Fellow and Member of the Academy, at the address shown on the records of the Academy,

(a) a notice specifying (i) the date (not later than thirty (30) days after the date of mailing of the notice) by which an Official Ballot must be received by the Academy to be counted, (ii) the requirements for a valid mail ballot, and (iii) the fact

that the vote by mail ballot will be valid only if valid Official Ballots are received from at least one hundred and fifty (150) Voting Fellows and Members by the specified date;

(b) one statement per amendment or revision, comprising not more than one (1) 8½ by 11 inch typewritten page that is submitted to or by or on behalf of the Board of Trustees in favor of or in opposition to a proposed amendment or revision; this statement will be included in the mailing only if it is received by the Executive Vice President at least fifteen (15) days before the annual business meeting;

(c) an Official Ballot;

(d) a return envelope, addressed to the Academy, with a space for the name and Academy membership identification number of the Voting Fellow or Member submitting the ballot; and

(e) instructions with respect to the conduct of the vote by mail ballot.

5. The instructions given in accordance with paragraph I.4.(e) shall inform each Voting Fellow and Member wishing to vote by mail ballot

(a) to mark the Official Ballot by making an appropriate mark in the spaces provided on the ballot to vote either for or against each proposed amendment or revision;

(b) to make no other marks on the Official Ballot;

(c) to place the Official Ballot in the return envelope provided;

(d) to insert the name and Academy membership identification number of the Voting Fellow or Member in the space provided on the return envelope; and

(e) to mail the return envelope to the Academy in sufficient time to permit its receipt by the Academy not later than the date specified in the written notice.

6. Within ten (10) days after the date specified in the written notice, the Academy shall verify the name and membership identification number of the Voting Fellow or Member indicated on the return envelope, and after verification, the Ballot shall be removed from the return envelope, validated, and placed in a ballot box. Return envelopes received by the Academy after the date specified in the notice shall not be opened and shall be discarded. The representative, if any, of a pro or con position in contested votes designated as an observer, shall be entitled to be present.

7. A returned ballot, even if timely received by the Academy, shall not be valid for any purpose

(a) if it is not marked (blank);

(b) if the ballot does not clearly indicate whether the Voting Fellow or Member is voting for or against the proposed amendments or revisions;

(c) if the ballot is not the Academy's Official Ballot;

(d) if the return envelope contains the Official Ballot(s) for more than one (1) Voting Fellow or Member.

8. Within ten (10) days after the date specified in the written notice, the Tellers shall discard all ballots determined to be invalid and shall tally only the valid Official Ballots.

9. A proposed amendment or revision of the Academy's Articles of Incorporation, Bylaws, or Code of Ethics, shall be adopted if it receives the affirmative vote of two-thirds (2/3rds) of the votes cast on timely and otherwise valid Official Ballots for and against the proposed amendment or revision, and a proposed amendment or revision by the Board of Trustees in these Procedural Rules shall be ratified if it receives the affirmative vote of a majority of the votes cast on timely and otherwise valid Official Ballots for and against ratification.

10. The Tellers shall report to the President the results of the vote by mail ballot as soon as the results are tallied, and the results of the vote shall be announced to the membership as soon as practicable in a manner determined by the Board of Trustees.

#### J. Online Voting

1. In lieu of voting by mail as provided under Paragraphs H and I of these Procedural Rules, each Voting Member or Fellow shall have the option to cast his or her vote online at the Academy's website. If a Voting Member or Fellow chooses to use online voting, the following procedures shall apply:

(a) the Online Ballot shall contain the same information as the Official Ballot described in Paragraphs H and I;

(b) the Voting Member or Fellow must access the Online Ballot and use his or her e-signature and membership number to log in;

(c) the Online Ballot must be completed in accordance with any instructions and submitted before the deadline specified in the Online Ballot, which deadline shall be the same as that set for the receipt of Official Ballots that are mailed; and

(d) after an Online Ballot has been submitted, the Voting Member or Fellow will not be able to access it again or make any changes to it.

2. Properly submitted Online Ballots shall be counted in the same manner as if they were valid mail ballots. If a Voting Member or Fellow votes both by a mail ballot and by an Online Ballot, the Online Ballot will be discarded and of no effect.

#### K. CONFLICT OF INTEREST RULE

1. **Conflict; procedure when conflict arises.** For purposes of this paragraph K., each Trustee and each member of a Secretariat or committee of the Academy shall be deemed an "Insider." If a proposed contract or other transaction between the Academy and an Insider, or between an Insider and an organization affiliated with the Academy, or between the Academy and an organization in or of which an Insider is a director, trustee, officer, employee, or legal representative or has a "material financial interest" as defined in paragraph K.2. below, is to be considered by the Board of Trustees, a Secretariat, or any committee of the Academy when an Insider is a member of the body considering the proposed contract or other transaction, the Insider shall, before the matter is considered by the body, disclose to the body the nature of the Insider's interest, shall

not participate in any discussions or deliberations of the body with respect to the proposed contract or other transaction, shall not vote on the proposed contract or other transaction, and shall not be counted in determining the presence of a quorum at any meeting of the body at which the proposed contract or other transaction is discussed.

2. For purposes of the rule contained in paragraph K.1. above, an Insider has a material financial interest in an organization in which the Insider, or the Insider's spouse, parents, children, brothers, or sisters, or spouses of the Insider's children, brothers, or sisters have a material financial interest, but an Insider does not have a material financial interest in a resolution fixing the Insider's compensation or fixing the compensation of another person as a Trustee, Elected Officer, Appointed Officer, employee, or agent of the Academy, even though the Insider is also receiving compensation from the Academy.

**AMERICAN ACADEMY OF OPHTHALMOLOGY**

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**DRAFT OF RESOLUTION FOR ADOPTION BY BOARD OF DIRECTORS  
TO ESTABLISH A FEDERAL POLITICAL COMMITTEE**

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**RESOLVED**, That this corporation hereby establishes, as a ["standing" or "special"] committee of this corporation a separate segregated fund (the "Committee") of this corporation pursuant to Section 441b(b)(2)(C) of the Federal election Campaign Act of 1971, as amended (the "Act"), and Section 102.1(c) of the Internal Revenue Code of 1954, as amended (the "Code"), which Committee is organized and shall be operated as follows:

- 1. The Committee shall be known and identified as the "American Academy of Ophthalmology, Inc. Political Committee." The name of the Committee may be abbreviated to "OPHTHPAC" on letterhead and checks of the Committee and otherwise as permitted by the Act.**
- 2. The Committee shall be a "political committee" (as defined in Section 431(4) of the Act) and a "political organization" (as defined in Section 100.5(b) of the Code). The Committee shall not be a "principal campaign committee" (as defined in Section 431(6) of the Act).**
- 3. The Committee is organized and shall be operated exclusively to solicit, receive, and make "contributions" (as defined in Section 431(8)(A) of the Act and in Section 100.7(a)(1) of the code) and "expenditures" (as defined in Section 431(9)(A) of the Act and Section 100.8(a)(1) of the Code), including "independent expenditures" (as defined in Section 431(17) of the Act), for the purpose of influencing the "election" (as defined in Section 431(1) of the Act) of persons who have indicated an interest in, and understanding of, and a favorable attitude toward the views and objectives of the Committee and this corporation and who are "candidates" (as defined in Section 431(2) of the Act) for "Federal office" (as defined in Section 431(3) of the Act), all thereof solely to the extent permitted by both the Act and the Code.**
- 4. The Committee shall have a Chairman, a Treasurer, and an Assistant Treasurer. Membership of the Committee shall be determined by recommendation to, and approval by, the Executive Committee of this corporation. The Chairman, Treasurer, Assistant Treasurer and any other officers of this Committee shall be selected by nomination and majority vote of the Committee.**
- 5. The Executive Committee of this corporation shall be responsible for supervising and directing the affairs of the Committee, for establishing policies and guidelines for the Committee which are deemed necessary or appropriate by the Executive Committee,**

for recommending criteria for use in determining which candidates should be supported by the Committee for election to Federal office, for assisting the Treasurer to determine whether particular candidates satisfy those criteria, and for exercising all other duties and responsibilities prescribed by the Board of Directors of this corporation.

6. The Chairman of the Committee shall have the duties and responsibilities which are prescribed by this resolution or by the Executive Committee.
7. The Treasurer of the Committee shall authorize all expenditures by the Committee or may authorize the Assistant Treasurer to authorize those expenditures; shall keep all funds and accounts of the Committee separate and segregated from, and shall ensure that such funds and accounts are not commingled with, the funds and accounts of this corporation or of any other person; shall prepare, file, keep, and preserve all statements, reports, books, records, and other documents, when and as required by the Act or other applicable federal or state law to be prepared, filed, kept, or preserved by or with respect to the Committee; shall keep accurate accounts of all moneys of the Committee received or disbursed (including written journals required by the act for permissible disbursements of petty cash); shall endorse for deposit all notes, check, and drafts received by the Committee; shall deposit all moneys, notes, checks, and drafts in the name of, and to the credit of, the Committee in depositaries from time to time designated by the Executive Committee; shall collect and invest all amounts owing to the Committee; shall disburse the assets and funds of the Committee only in the manner permitted by the Act, making proper vouchers therefor; shall render to the Executive Committee periodic financial statements of the Committee; shall provide a suitable fidelity bond, at the cost of the Committee, in an amount and written by a company acceptable to the Executive Committee; shall have and perform all powers, duties and responsibilities usually incident to the office of Treasurer; shall have all other duties and responsibilities what are prescribed by this resolution or b the Executive Committee; and shall have the right, if not contrary to or inconsistent with the Act or other applicable federal or state law, to delegate all or any part of these duties and responsibilities to the Assistant Treasurer of the Committee or to one or more other persons.
8. The Assistant Treasurer of the Committee shall, in the absence or disability of the Treasurer of the Committee, and during any vacancy in the office of the Treasurer of the Committee, serve as, and have and exercise all of the duties and responsibilities prescribed above for the Treasurer of the Committee; and shall have all other duties and responsibilities which are delegated or prescribed by the Treasurer or prescribed by the Executive Committee.
9. The Executive Committee of this corporation and the Chairman, the Treasurer, and the Assistant Treasurer of the Committee may be assisted in the performance of their duties and responsibilities to or with respect to the Committee by the staff of this corporation.

10. No contribution or expenditure shall be accepted or made by or on behalf of the Committee in the absence or disability of the Treasurer or during any period in which the office of the Treasurer is vacant, unless the Assistant Treasurer is then acting as Treasurer of the Committee; as provided in paragraphs 4 and 9 above.
11. The Committee may maintain one or more accounts, as the campaign depositary or depositaries of the Committee with depositaries which are permissible as campaign depositaries under the Act and which are designated from time to time by the Executive Committee. At least one of those accounts shall be a checking account or transaction account.
12. The principle office of the Committee shall be located in the city of San Francisco, CA. All books and records of the Committee and copies of all statements, reports, and other documents required by the Act or other applicable federal or state law to be prepared, filed, kept, or preserved by or for the Committee shall be located at that office.
13. The Board of Directors of this corporation shall have the right, exercisable at any time and from time to time, to amend, modify, revoke, or repeal this resolution in whole or in part and to disband the Committee.



**FEDERAL ELECTION COMMISSION**

Washington, DC 20463

March 6, 2003

Steven L. Miller, Director  
ORTHPAC  
American Academy of Ophthalmology  
1101 Vermont Avenue, N.W.  
Suite 700  
Washington, D.C. 20005-3570

Dear Mr. Miller:

This refers to your letter dated February 19, 2003, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation of Members-in Training of the American Academy of Ophthalmology ("AAO" or "Academy") for contributions to AAO's separate segregated fund, the AAO Political Committee ("ORTHPAC").

You state that the Academy is a 501(c)(6) organization with a worldwide membership of 27,000 physicians specializing in ophthalmology. The Academy has sixteen categories of membership of which ORTHPAC solicits 14,988 eligible dues-paying members. You describe the criteria for a physician to be a "Member of the Academy," which include the holding of a medical degree and the completion of a three-year ophthalmology residency. You also describe the criteria for a membership category known as "Member-In-Training." This category consists of holders of medical degrees who are currently engaged in a full-time ophthalmology residency.

Members-In-Training are not granted voting rights under the Academy Bylaws and do not have a dues obligation. You contend, nevertheless, that they have an enduring and independently significant attachment to the organization by virtue of their professional choice and training, because of educational benefit provided to them in connection with the Academy's annual meeting, and because they receive "the full benefits of membership" such as voluntary participation in the annual legislative fly-in, participation in certain specialized programs, subscriptions, CME credit reporting service, and discounts. You ask whether Members-In-Training are "members" for the purposes of the Act and regulations, and therefore solicitable for contributions to ORTHPAC, pursuant to 2 U.S.C. 441b(b)(4)(C) and 11 CFR 114.1(e) and 114.7.

The Act authorizes the Commission to issue an advisory opinion request in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). Commission regulations explain that such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c). The regulations further explain that the Office of General Counsel shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. 11 CFR 112.1(d).

You have submitted various governing documents of the Academy, including the Bylaws and the Code of Ethics. This Office has also reviewed the Academy's web site. In view of the above requirements as to a complete advisory opinion request, please provide responses to the following requests for information.

- (1) Please clarify whether the Bylaws provisions addressing "Members" and "Members of the Academy" apply to Members-In-Training. Explain the response if the answer is not definitely "yes" or "no."
- (2) State whether and to what extent the Code of Ethics applies to Members-in-Training. Your answer should include but not be limited to:
  - (a) Whether Members-In-Training are obligated to comply with the Code of Ethics;
  - (b) Whether, and in what manner, Members-In-Training are subject to the "inquiries and challenges" of the Ethics Committee, the proceedings of the Ethics Committee and the Board of Trustees, the sanctions of the Ethics process, the appeals process, and the reporting of ethical non-compliance to Federal or State agencies, licensing authorities, review board and other entities discussed in sections C.4(e) and (h) of the Code of Ethics.
- (3) This question is aimed at obtaining information as to how the Code of Ethics has been applied to Members-in-Training. With respect to the last five calendar years:
  - (a) State how often the Ethics Committee has commenced a procedure against a Member-in-Training and how often it has conducted an investigation or any other proceeding against a Member-In-Training. With respect to that time period, state how often the Ethics Committee or the Academy has imposed sanctions or penalties on a Member-In-Training and how often it has reported the non-compliance to an entity discussed in sections B.4(e) and (h) of the Code of Ethics. Generally, describe the kinds of penalties imposed and the frequency with which the entity receiving the report from the Academy imposed penalties or sanctions.

- (b) State how these figures provided in response to question 3(a) compare to the figures for the other categories of members that include currently practicing ophthalmologists and eye care physicians (including, but not limited to, Active Fellows, Active Osteopathic Fellows, and Active Members). You need not break down the figures by individual membership category and you may discuss percentages for purposes of comparison.
- (4) State the percentage of ophthalmologists within the United States that are in all of the membership categories (combined, not each category) of the Academy. State the percentage of ophthalmology residents within the United States that are Members-In-Training of the Academy.

Upon receipt of your responses, this Office will give further consideration to your inquiry. If you have any questions about the advisory opinion process or this letter, please contact Jonathan Levin, a senior attorney in this office, at 202-694-1542.

Sincerely,

  
Rosemary C. Smith  
Acting Associate General Counsel

April 9, 2003

Rosemary C. Smith  
Acting Associate General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Dear Ms. Smith,

Steve Miller of the American Academy of Ophthalmology's Office of Federal Affairs has asked me to respond to your letter of March 6, 2003 regarding the Federal Election Campaign Act of 1971 and Commission regulations pertinent to solicitation of Academy Members for contributions to OPHTHPAC, the Academy's Political Action Committee.

In order to provide a complete advisory opinion in response to Mr. Miller's original inquiry regarding Academy Members-in-Training, you asked a series of questions in your March 6<sup>th</sup> letter to which I will respond. Your questions and my responses are noted below.

- 1) Please clarify whether the Bylaws provisions addressing "Members" and "Members of the Academy" apply to Members-in-Training.

*Yes. When distinctions between categories of members are necessary for clarity, the distinction is made in the Bylaws.*

- 2) State whether and to what extent the Code of Ethics applies to Members-in-Training.

*The Academy's Code of Ethics applies to all Academy Fellows and Members in any class of membership. Members-in-Training are obligated to comply with the Rules of the Code of Ethics and are subject to the Administrative Procedures of the Code of Ethics in all respects.*

- 3) How has the Code of Ethics been applied to Members-in-Training? With respect to the last five calendar years:

- a) State how often the Ethics Committee has commenced a procedure against a Member-in-Training...

*In the last five calendar years (Jan 1, 1998 - Dec 31, 2002), the Ethics Committee has not received a challenge to an Academy Member-in-Training, thus no proceedings have been*

OPHTHPAC  
Political Committee

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2003 APR 11 PM 3:06  
Suite 700  
1107 Vermont Ave. NW  
Washington, DC 20543-570  
Tel. 202.737.6600  
Fax 202.737.6601  
http://www.aao.org

*initiated nor have sanctions of any kind been imposed upon an Academy Member-in-Training.*

- b) State how the figures provided in response to question 3(a) compare to the figures for the other categories of members...**

*In the last five calendar years (Jan 1, 1998 - Dec 31, 2002), there have been approximately 500 submissions to the Ethics Committee (approximately 86 inquiries and 414 challenges) regarding individuals in the following categories of membership: Active Fellows, Inactive Fellows, Active Osteopathic Fellows, Active Members, International Members, and Inactive Members. Please note under paragraph 2(a) of the Administrative Procedures of the Code of Ethics that submissions "may be submitted by ophthalmologists (whether or not they are Fellows or Members of the Academy), other physicians, health care institutions, health care reimbursers, allied health professionals, patients or organizations representing any of these."*

*Regarding the approximately 86 inquiries noted above, information in response to each of the inquiries was provided by the Ethics Committee.*

*From the approximately 414 challenges noted above, approximately 278 proceedings were begun regarding Academy Fellows and Members, from which three proceedings progressed to the imposition of sanctions. Only one of the cases involving the imposition of sanctions related to patient care, thus for two of the cases there was not an overriding reporting requirement as noted in paragraph 4(h) of the Administrative Procedures of the Code of Ethics and as prescribed by the Health Care Quality Improvement Act of 1986 and by regulations promulgated thereunder and as amended.*

*With respect to the specific sanctions imposed as noted above, the first case resulted in the following sanctions:*  
*1) termination of Academy membership with publication of the determination and the Fellow's name.*

*The second case resulted in the following sanctions:*

- 1) *suspension of Academy membership for a 2-year period with publication of the determination and the Fellow's name, and*
- 2) *prohibition from sponsoring, presenting or participating in any meeting or program of the Academy for a period of five years.*

*These sanctions were reported, as required under paragraph 4(h) of the Administrative Procedures of the Code of Ethics, to the National Practitioner Data Bank (NPDB). The Academy is not privy to the actions of the NPDB, thus has no information to offer regarding the frequency with which such an entity imposes penalties and/or sanctions.*

*The third case resulted in the following sanctions:*

- 1) *reprimand to the Fellow with publication of the determination and the Fellow's name.*

*Please bear in mind that not all the approximately 278 cases noted above have been brought to a close, thus there may be proceedings that lead to the imposition of sanctions in the future. None of these however, as noted, involve Members-in-Training.*

4(a) State the percentage of ophthalmologists within the United States that are in all of the membership categories of the Academy.

93%

4(b) State the percentage of ophthalmology residents within the United States that are Members-in-Training of the Academy.

80%

I trust this information will be responsive to your inquiry. Thank you.

Sincerely yours,

*Mara Pearse Burke*

Mara Pearse Burke  
Ethics Program Manager

cc: Steven L. Miller  
American Academy of Ophthalmology  
Office of Federal Affairs