

# **San Francisco Psychoanalytic Institute & Society Ethics and Impairment Committee Guidelines**

## **Introduction**

The purpose of the Ethics and Impairment Committee (EIC) is to promote the integrity of SFPI&S and its members, which includes candidates of our organization.

The Committee has responsibility for 1) providing consultation to members of SFPI&S, or to members of the public, on ethics issues in general, and on specific ethical matters involving a SFPI&S member; 2) providing consultation to members of SFPI&S, and to members of the public, regarding issues of mental or physical impairment in general, and on specific matters of mental or physical impairment of a SFPI&S member; 3) investigating any written complaint of an ethical breach by or impairment on the part of a SFPI&S member, in the conduct of professional activities, including psychoanalysis, psychotherapy, supervision and / or teaching; 4) arriving at a determination as to the appropriate disposition of an investigated case; and 5) providing education for members regarding issues of ethics and impairment.

## **Structure of the Ethics and Impairment Committee**

The Ethics and Impairment Committee consists of two co-chairs appointed by the President of SFPI&S, and approximately ten members appointed by the co-chairs, in consultation with the President, drawn from the active membership of SFPI&S. The term of each co-chair is three years, renewable for a second, three-year term at the President's discretion. The co-chair terms will be staggered to avoid the simultaneous retirement of both co-chairs.

Members of the Committee are appointed for three-year terms, renewable for an additional three-year term at the discretion of the co-chairs, and staggered so that approximately the same number of members retires each year. Service on the Committee is limited to six years, with these exceptions: 1) a member of the Committee who is appointed a co-chair, may serve up to two additional three year terms as the co-chair; or 2) a member may be re-appointed following a three year hiatus from the Committee. The original co-chairs and members may serve an additional one or two years in order to serve the purpose of optimally staggering their terms.

In the event that one or both co-chairs recuse themselves or are otherwise unavailable to act in the role of co-chair for a given ethics or impairment complaint, the President of SFPI&S will appoint, from the membership of the Ethics and Impairment Committee, one or two acting co-chairs for that specific complaint.

Two candidates will serve as voting members of the Committee, in addition to the approximately ten graduate members of the Ethics and Impairment Committee. These would be preferably a senior and a junior candidate, who would serve staggered terms, to avoid the simultaneous retirement of both candidates.

The Ethics and Impairment Committee will meet regularly, generally on a monthly basis, to perform its functions and to study and discuss matters of ethical concern and matters relating to impaired psychoanalysts.

### **Implementation Guidelines Regarding Complaints about Ethics or Impairment**

#### a) Filing of a written complaint

The Ethics and Impairment Committee cannot take any action nor investigate any matter without a written complaint. This does not limit, however, the availability of a co-chair to discuss general questions or concerns, without identifying information, regarding ethics violations or psychoanalyst impairment initiated from members of SFPI&S or from the public. Such informal discussions will remain confidential unless the laws of the State of California mandate reporting to one or more agencies. As used in these implementation guidelines the term "complaint" shall include a complaint regarding an alleged ethical violation or, in the case of impairment, a request for investigation and intervention.

The co-chair(s) will provide consultation to an individual contemplating filing a written complaint, and will provide the individual with a copy of the San Francisco Psychoanalytic Institute & Society Ethics and Impairment Committee Guidelines ("SFPI&S EIC Guidelines") and a copy of the "Principles and Standards of Ethics for Psychoanalysts" of the American Psychoanalytic Association.

If the individual wants the Committee to go forward with consideration of a complaint, the individual must submit a signed, written complaint to the co-chairs that details the nature of the complaint. The complainant will also be asked to sign a release of confidential information. (See, Appendix A).

#### b) Formal complaint

When the EIC receives a formal, written complaint and signed release of confidential information, a co-chair will inform the respondent analyst as to the nature of the complaint, and will provide a copy of the written complaint to the respondent. The Co-chairs and President have several options available at this point.

1) If the Co-chairs and President decide by majority vote that there is not prima facie evidence of an ethics violation or impairment, they may drop the matter at this point. The respondent analyst is informed of the decision of the Co-chairs and President.

2) If the Co-chairs and President decide by majority vote that there is prima facie evidence of an ethics violation, they will proceed to appoint an ad hoc committee of three members of the Committee on Ethics and Impairment to investigate the allegations.

3) The Co-chairs and President may decide by majority vote that there is no prima facie evidence of an ethics violation, but there is prima facie evidence suggestive of impairment. In this case, they may, prior to the appointment of an ad hoc committee, request that a designated analyst attempt to arrive at a negotiated resolution with the respondent analyst. Any such resolution would have to be approved by majority of the two Co-chairs and the President of SFPI&S. In the event that the designated analyst and the respondent analyst are unable to come to a resolution satisfactory to the respondent analyst, the Co-chairs, and the President, then an ad hoc committee would be formed to proceed with further investigation of the allegations.

4) The Co-chairs and President may decide by majority vote that there is prima facie evidence of an ethics violation or issue of psychoanalyst impairment, but that the investigation cannot proceed further because the information is from a third party or is otherwise inadequate.

For situations Nos. 2, 3, and 4, the respondent analyst is provided with a copy of the SFPI&S EIC Guidelines and a copy of the American Psychoanalytic Association's "Principles and Standards of Ethics for Psychoanalysts" and "Provisions for Implementation of the Principles and Standards of Ethics for Psychoanalysts". In addition, a waiver of confidentiality is requested. (See Appendix B.)

Written records concerning all written complaints regarding ethics or impairment will be kept in accordance with our policies regarding record keeping, confidentiality and disclosure. (See sections e, f, and g below for specific policies).

c) Ad hoc committee (informal proceedings)

An ad hoc investigating committee is comprised of three members of the Ethics and Impairment Committee, appointed by the Co-chairs. The Co-chairs will designate one member of the ad hoc committee as Chair of that committee. The respondent analyst may ask that any person involved in the initial contact not be on the ad hoc committee. The purpose of the committee is to investigate the complaint and to recommend an appropriate disposition. Possible dispositions for ethical complaints are: exoneration,

dismissal without prejudice, dismissal with prejudice, censure without public notice, censure with public notice, suspension, separation from the rolls, and permanent expulsion. (See, Appendix C for definition of above categories). Possible dispositions for impairment complaints are: dismissal of complaint, implementation of an individualized plan for remediation and/or treatment, or mandatory restriction of psychoanalytic activities. (See, Appendix D for definition of these categories).

Lawyers for any individual or entity are not permitted to be present at the proceedings before the ad hoc committee, nor are formal notes taken. Either side, however, may use an attorney for purposes of consultation. The proceedings are confidential, except as detailed in the sections on records and on confidentiality and disclosure (see below). The Executive Director will be notified and involved to the extent that staff support is necessary to administer any proceedings.

Upon the completion of its investigation, the ad hoc committee will recommend a disposition to the Co-chairs and the President. The disposition must then be approved by majority of the two Co-chairs and by the President. Dispositions of censure with public notice, suspension, separation from the rolls, and permanent expulsion determined by majority vote of the President and two Co-chairs will be referred by the President to the Board for approval. If the disposition is not so approved, it may be referred for formal proceedings (see d, below). If approved by the Board, the approved disposition is presented to the respondent analyst by the Chairperson of the ad hoc committee, and by one or both Co-chairs of the EIC.

Dispositions of exoneration, dismissal without prejudice, dismissal with prejudice, censure without public notice determined by majority vote of the President and two Co-chairs is presented to the respondent analyst by the Chairperson of the ad hoc committee, and by one or both Co-chairs of the EIC.

Either the respondent analyst or the Chair of the ad hoc committee, in consultation with the Co-chairs of the EIC, may terminate the informal proceedings at any time, and request that the matter proceed to formal proceedings.

Five members of the full Ethics and Impairment Committee not involved with the ongoing negotiations must be held in reserve in case of failure of the ad hoc committee and the parties to the complaint to achieve a resolution.

In the unusual event that the President and EIC Co-chairs by majority vote determine that it is not possible to form an ad hoc committee that is sufficiently impartial to fairly investigate and come to a determination, special arrangements can be made to proceed to investigate the complaint utilizing the services of the Ethics Committee of another American Psychoanalytic Association Institute or the Ethics Committee of the American Psychoanalytic Association.

d) Formal proceedings

If a resolution to the complaint that is acceptable to the respondent, the Co-chairs, and the President is not achieved in the manner outlined in section c) above, then a committee of five members of the Ethics and Impairment Committee, who were not members of the ad hoc committee, will be formed to conduct an evidentiary hearing and to render a decision. In the event of recusals, non-Ethics and Impairment Committee members of SFPI&S may be asked to participate.

This is a formal hearing, and both sides may be represented by counsel. The respondent analyst will be provided with the following, as specified in the "Provisions for Implementation of the Principles and Standards of Ethics for Psychoanalysts" of the American Psychoanalytic Association:

- 1) The opportunity to be notified of, and to address, the charges;
- 2) the right to be represented by legal counsel;
- 3) the right to a hearing, including the right to call, examine and cross-examine witnesses, or reasonable alternatives thereto;
- 4) notice of not less than 30 days of the date, place, and time of the hearing, the witnesses expected to testify thereat; and the member's procedural rights at the hearing;
- 5) the right to submit a written statement at the end of any hearing;
- 6) the right to have a record made of the hearing proceedings and to have a copy of the record upon payment of reasonable charges;
- 7) that relevant evidence will not be excluded from any hearing solely on the grounds that it would not be admissible in a court of law; and
- 8) the right to receive a) the written final decision or recommendation of the ethics and impairment committee or other hearing body, including a statement of the basis therefore, and b) if the hearing body makes a recommendation to its local group or other body of the local group, a written final decision of the group, including a statement of the basis for the decision.

The Chair of the ad hoc committee will present to the formal Committee a summary of the findings and the work of the ad hoc committee to date. The formal committee will proceed according to the Implementation Regulations of SFPI&S regarding ethics and impairment, including presenting their decision to the Board for ratification.

Possible dispositions for ethical complaints are: exoneration, dismissal without prejudice, dismissal with prejudice, censure, suspension, separation from the rolls, and permanent expulsion. (See, Appendix C for definition of above categories). Possible dispositions for impairment complaints are: dismissal of complaint, implementation of an individualized plan for remediation and/or treatment, or mandatory restriction of psychoanalytic activities. (See, Appendix D for definition of these categories).

#### e) Reporting requirements and procedures

It will be the responsibility of the Co-chairs of the SFPI&S EIC to advise the President of the SFPI&S as to when, what and to whom previously confidential information is to be released to be in compliance with California state law as detailed in section 805 of the Business and Professions Code. Under this code section, a report must be filed with the appropriate licensing entity (includes M.D., psychologist, MFT and LCSW) when a disciplinary action of membership expulsion or membership suspension is imposed. A disciplinary action of membership expulsion or membership suspension may occur at the conclusion of the informal procedures process if neither the respondent analyst nor the SFPI&S as represented by the two co-chairs of the EIC and the SFPI&S president request the formal procedures process for sanction determination. A disciplinary action of membership expulsion or membership suspension may occur at the conclusion of the Formal Procedures Process.

Any disciplinary action of membership expulsion or membership suspension, or of suspension or termination of faculty status, will be reported to the American Psychoanalytic Association if the respondent analyst is also a member of the American Psychoanalytic Association. According to the Provisions for Implementation of the Principles and Standards of Ethics for Psychoanalysts of the American Psychoanalytic Association, an automatic review will be initiated. If requested, File Information as defined below in section (f) will be transmitted in a confidential manner. The respondent analyst will be informed of the disclosure and the method of confidential disclosure to the American Psychoanalytic Association.

If the disposition of a case is other than suspension or expulsion by a local group, or suspension or termination of a member's faculty status in an accredited Institute, the American Psychoanalytic Association shall undertake a review of the case if formal request for such review is made to the President of the American Psychoanalytic Association, by the member(s) charged, the complainant, or the local group, within 60 days after notification of the group's decision.

Any disciplinary action of membership suspension, expulsion or censure with public notice resulting from an ethics or impairment complaint investigation is to be published in the SFPI&S Newsletter stating the name of the respondent analyst, the disciplinary action imposed, and specification of which Principle of Ethics had been found to have been violated prompting the disciplinary action. In the case of the finding of analyst impairment, it may be sufficient to state the analyst's name and the action of membership suspension or expulsion due to impairment.

#### f) Record Keeping

The Co-chairs of the EIC shall see to it that minutes of the Committee's meetings will be written, approved, maintained to be available to all members of the EIC and

members of the Board of Trustees.

General correspondence will be stored by the Co-chairs of the EIC.

SFPI&S will maintain secure files in such a manner as to safeguard confidentiality in regards to specific named respondent analysts as detailed below. As a matter of procedure, each member and candidate will be assigned his/her own file. Files will be empty if the candidate or member of SFPI&S is not a named respondent to a formal written complaint of unethical conduct or impairment. In cases of a formal written complaint of unethical conduct or impairment, at the conclusion of either an Informal Proceeding and/or Formal Proceeding, the following documents will be placed in the file of the named respondent: The original complaint, all signed waivers, releases, acknowledgement of findings, written agreements, official correspondence and a brief written summary consisting of (a) the procedural process followed and (b) the disposition and its basis in cases of allegations of unethical conduct, the resolution and its basis in cases of questions of impairment. This information is collectively referred to as "File Information". The written summary will be disclosed to the respondent prior to its placement in the sealed confidential file. All notes and other written information pertaining to the investigation will be destroyed upon securing the File Information as described above.

The seal to these records may be broken only with the agreement of the President and the EIC Co-chairs under the conditions specified in Section (g) below. A record regarding the breaking of the seal shall be added to the records and shall include the names of the officers authorizing the examination of the records, the date, and the purpose. The records shall be re-sealed after the reexamination has been completed. All information shall be treated as confidentially as possible while utilizing the information appropriately in conducting the business of the SFPI&S. It is unethical for any member of the SFPI&S serving in any capacity to unnecessarily violate the confidentiality of materials related to ethics investigations.

#### g) Confidentiality and disclosure

All information and records pertaining to a charge of unethical conduct or impaired behavior of a member, its investigation and any decisions rendered shall be kept confidential, except as set forth herein. Disclosure is authorized in the following instances:

1. Information may be disclosed to those staff who need the information to assure the effective administration of these procedures.
2. Self Disclosure and Informed Entry to Confidential Files:  
SFPI&S Applications for Membership, Faculty Appointment, elected offices

(President, Society chair, EC chair, etc.), chairmanships of Society and Institute committees, and Training Analyst Appointment will include the following question: "Has there ever been a finding of censure, suspension, separation from the rolls, or expulsion by the SFPI&S EIC in relation to an allegation of ethical misconduct, or a question of impaired status?" A "Yes" answer should direct the applicant to a statement to include the following content and information, "full consideration of your application will include a confidential review of any existing records concerning allegation of ethical misconduct or the question of impairment according to the Confidentiality and Disclosure policies of the EIC Procedures." The applicant will be required to initial this statement to indicate acknowledgement and acceptance of the intent to enter the confidential file.

If the applicant proceeds with the application process having answered "Yes" and having initialed the disclosure statement, the member reviewing the application will refer the matter to the Co-Chairs of the EIC. The confidential file will be reviewed as described in the last paragraph of Section (f) above. The Co-Chairs of the EIC and the President of SFPI&S will agree by majority vote as to the appropriate disclosure of information from the confidential file to be conveyed orally to the Chairperson of the Committee receiving the application.

3. The EIC will disclose a decision concerning a charge of unethical conduct and/or psychoanalyst impairment when required by law to other appropriate ethical bodies, licensing authorities, professional societies and governmental entities. The respondent analyst will be informed of any such disclosure. (See section e above).

4. The EIC may disclose information concerning a charge of unethical conduct and/or psychoanalyst impairment at the respondent analyst's request.

5. Information may be disclosed as necessary to execute the disposition and discipline determined by the EIC in the investigation of a complaint of unethical conduct or psychoanalyst impairment.

6. The EIC has the responsibility, in accordance with the bylaws of SFPI&S, to publish in the Newsletter any finding of unethical behavior if an investigation has resulted in a sanction of suspension, separation from the rolls, censure with public notice or expulsion being imposed.

#### h) Resignation

The President is not required to accept the resignation from SFPI&S of any member who is the subject of a pending ethics complaint. In addition, even after a member has resigned and the resignation has been accepted, an ethics investigation of that member may be undertaken within one year of the resignation should additional information come to light.

i) Duty to serve

The Ethics and Impairment Committee believes that recusal from either the ad hoc or the formal Committee should be done only in the most serious conflicts of interest. Since respondent analysts frequently are widely known, it can be very difficult to form a committee when all contacts are used as a reason not to serve. It should be a matter of conscience to everyone to serve if at all possible, and the major criterion is whether, despite various contacts with the respondent analyst, an analyst judges that he or she can fairly decide the case, based on the evidence.

j) Oversight by the President of SFPI&S

Annually, or more often if useful, the Co-chairs of the Ethics and Impairment Committee will review with the President all the activities of the Ethics and Impairment Committee. This is to ensure that the interests of SFPI&S have been adequately served.

APPENDIX A

SAN FRANCISCO PSYCHOANALYTIC INSTITUTE AND SOCIETY

AUTHORIZATION FOR RELEASE OF CONFIDENTIAL PSYCHIATRIC INFORMATION

I, the undersigned, have read the San Francisco Psychoanalytic Institute & Society Ethics and Impairment Committee Guidelines for dealing with complaints of unethical conduct and psychoanalyst impairment, as well as the American Psychoanalytic Association's "Principles and Standards of Ethics for Psychoanalysts." I agree to the use of the procedures described in these documents in the investigation of the charge I have made against \_\_\_\_\_ and request that appropriate action be taken.

I authorize SFPI&S to provide a copy of my complaint to \_\_\_\_\_. I further authorize \_\_\_\_\_ to disclose confidential psychiatric information, limited to the information necessary to address the allegations in my complaint, to such persons as the Society and its Ethics and Impairment Committee may deem necessary for the resolution of my complaint. I understand that this release of information may include information pertaining to my diagnosis and treatment, including drug and/or alcohol abuse, if such information is relevant to the allegations of my complaint. This disclosure of information authorized herein is required for the investigation and possible proceedings regarding unethical conduct or psychoanalyst impairment violations. This authorization shall remain valid until SFPI&S completes its investigation and proceedings arising out of the investigation.

A copy of this authorization shall be as valid as the original. I understand that I have a right to receive a copy of this authorization if requested.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

APPENDIX B

SAN FRANCISCO PSYCHOANALYTIC INSTITUTE AND SOCIETY

RESPONDENT'S WAIVER OF CONFIDENTIALITY

I, \_\_\_\_\_, understand that a complaint alleging unethical conduct and/or impairment has been filed against me. I have been provided with a copy of, and read, the San Francisco Psychoanalytic Institute & Society Ethics and Impairment Committee Guidelines for dealing with complaints of unethical conduct and/or psychoanalyst impairment, as well as the "Principles and Standards of Ethics for Psychoanalysts" and "Provisions for Implementation of the Principles and Standards of Ethics for Psychoanalysts" of the American Psychoanalytic Association. I understand that SFPI&S will handle this complaint pursuant to its Bylaws and Guidelines, including the provisions relating to confidentiality and disclosure contained in paragraph (g) of the SFPI&S EIC Guidelines. I give permission to SFPI&S to contact the following people as part of its investigation.

\_\_\_\_\_ (Relationship)

\_\_\_\_\_ (Relationship)

I understand and give permission for information obtained from the people named above to be shared with the Committee on Ethics and Impairment Committee members investigating the complaint against me, and with such other persons as SFPI&S may deem necessary, in accordance with the SFPI&S EIC Guidelines.

Dated: \_\_\_\_\_ (signed)

## APPENDIX C

### SAN FRANCISCO PSYCHOANALYTIC INSTITUTE AND SOCIETY

#### LEVELS OF SANCTION FOR ETHICAL VIOLATIONS

**Exoneration.** The charged member is cleared from blame as the evidence established no unethical conduct by the member.

**Dismissal of Complaint Without Prejudice.** This disposition permits new proceedings with respect to the same charge at a later date; i.e., when a determination on the merits cannot be made because of insufficient reliable evidence or other procedural defects.

**Dismissal of Complaint With Prejudice.** The complaint is dismissed without any finding of unethical conduct; proceedings with regard to the same complaint may not be reinstated. Where appropriate, such a dismissal may be accompanied by a letter of admonition, expressing the sense of the EIC that there may be questions about the appropriateness of the conduct of the charged member and putting the member on notice that further education, consultation, and/or supervision may be indicated.

**Censure Without Public Notice.** This disposition is an expression of disapproval that is not deemed to merit any public disclosure.

**Censure With Public Notice.** This disposition is an expression of disapproval that is deemed to merit an appropriate level of public disclosure.

**Suspension from SPFI&S.** Such suspension shall be for a stipulated period, not to exceed three years from the date of suspension.

**Separation from the Rolls.** A new application for membership in SFPI&S shall not be entertained in less than five years from date of separation.

**Permanent Expulsion from SFPI&S.**

## APPENDIX D

### SAN FRANCISCO PSYCHOANALYTIC INSTITUTE AND SOCIETY

#### DISPOSITIONS FOR FINDINGS OF PSYCHOANALYST IMPAIRMENT

Dismissal of complaint.

Individualized plan for remediation and/or treatment. This disposition would involve an individualized plan that would be formulated either in the course of informal proceedings or, if that were not possible, in the course of formal proceedings. This disposition would be predicated on the voluntary agreement and compliance of the impaired analyst, as well as the agreement by majority vote of the co-chairs of the EIC and the President of SFPI&S. Part of the individualized plan would consist of some mechanism to assess both ongoing compliance, as well as effectiveness, of the plan. Examples of measures that might be involved in such a plan would be requirement for medical or psychological treatment, treatment for drug or alcohol abuse, requirement for ongoing supervision of psychoanalytic activities, etc. Some restrictions of psychoanalytic activities might be a component of such a plan. In the extreme case, voluntary leave of absence or even resignation from SFPI&S might be involved. In the event of lack of compliance and/or effectiveness of the individualized plan, mandatory restriction of psychoanalytic activities would be invoked by the appropriate EIC ad hoc committee.

Mandatory restriction of psychoanalytic activities. This disposition would be invoked in the event that the impaired analyst was unwilling to agree voluntarily to an individualized plan for remediation and/or treatment satisfactory to the co-chairs of the EIC and the President of SFPI&S. Such measures might involve involuntary suspension from teaching at SFPI&S, suspension from supervising candidates, suspension from analyzing candidates, suspension from functioning as a Society committee member or chairmanship, etc. More extreme dispositions in this category would involve temporary or permanent expulsion from membership in SFPI&S.

#### Ethics Committee

Steven Goldberg, M.D., Co-chair  
Katherine MacVicar, M.D.  
Joseph Afterman, M.D.  
Gloria Sax Burk, M.D.  
Marcia Dillon, M.D.  
Robert Epstein, M.D.

Karen Johnson, M.D.  
Audrey Kavka, M.D., Co-chair  
Melissa Nelken, J.D.  
Paul Ransohoff, D.M.H.  
Gary Whitmer, M.S.W.  
Harriet Wolfe, M.D.  
Susan Warshaw, Ph.D., Candidate Member