



# COMMISSIONER'S MANUAL



April 2011

Accreditation Commission  
for Acupuncture & Oriental Medicine

---

Maryland Trade Center Building #3, Suite 760  
7501 Greenway Center Drive  
Greenbelt, MD 20770-3514

# TABLE OF CONTENTS

<i>FORWARD</i> .....	1
<b>I. COMMISSIONER QUALIFICATIONS &amp; RESPONSIBILITIES</b>	
A. General Criteria for A Commissioner .....	2
B. Desired Specific Knowledge, Skills, and Characteristics .....	3
C. Diversity in Background to Consider.....	3
D. General Responsibilities .....	3
<b>II. RESPONSIBILITIES EXPLAINED.....</b>	<b>3</b>
A. Monitor Accreditation Functions .....	3
B. Establish Policies and Procedures.....	4
C. Monitoring Administrative Functioning.....	4
D. Establishing Standards.....	5
E. Monitoring Fiscal Affairs.....	5
F. Accrediting Programs.....	6
<i>Review Committees</i> .....	6
<i>Site Visits</i> .....	7
<i>Commission Decision-Making</i> .....	7
<b>III. SERVING ON COMMISSION COMMITTEES .....</b>	<b>8</b>
A. Executive Committee .....	8
B. Nominations Committee .....	9
C. Audit & Finance Committee .....	9
D. Standards and Criteria Committee .....	9
E. Accreditation Process Evaluation Committee.....	9
F. Other Committees and Task Forces.....	9
<b>IV. MEETINGS, ATTENDANCE AND FULFILLING RESPONSIBILITIES.....</b>	<b>10</b>
<b>V. COMMISSIONER CONDUCT EXPECTATIONS .....</b>	<b>10</b>
A. Commissioner Code of Conduct.....	10
B. Program Reviews.....	10
C. Discussions with Third Parties about Commission Business are Prohibited .....	11
D. Gifts/Gratuities/Bribes.....	11
E. Legal Responsibilities.....	12
<b>VI. U.S. DEPARTMENT OF EDUCATION REPORTING REQUIREMENTS ...</b>	<b>12</b>
<b>ATTACHMENTS</b>	
Appendix A - ACAOM Bylaws .....	ii
Appendix B – ACAOM Committee Charters .....	xii
Appendix C - Commissioner Code of Conduct .....	xxii
Appendix D - Legal Responsibilities .....	xxix
Appendix E – Policy on Reporting to U.S. Secretary of Education .....	lii

## FOREWORD

*Any revisions or amendments to this Manual, including new Commission policies and procedures appended to the Manual relative to compliance with the US Secretary of Education's Criteria for Recognition, will be forwarded to the Commission within 30 days.*

# I. COMMISSIONER QUALIFICATIONS & RESPONSIBILITIES

## A. General Criteria for a Commissioner

New Commissioners are elected by the Commission from among ACAOM communities of interest. The following are the general criteria for Commissioners:

1. Qualified by academic training, professional experience and knowledge of the accrediting process
2. Sensitive to the uniqueness of individual programs
3. Impartial, objective and without conflict of interest
4. Strong academic and professional backgrounds and experience appropriate to the review of acupuncture and Oriental medicine programs
5. Responsible, ethical and objective with a known history of fulfilling commitments on time.
6. Willing, capable of and committed to attending two three-day Commission meetings (one in the Summer and one in the Winter) per year, Commission Retreats as may be determined by the Commission, and to conduct approximately one site visit per year
7. Willing and able to devote the time to perform detailed evaluations of program reports between Commission meetings.
8. For **AN ADMINISTRATOR SEAT** - An administrator member is someone currently or recently directly engaged in a significant manner in postsecondary program or institutional administration
9. For **AN ACADEMIC SEAT** – An academic member is someone currently or recently directly engaged in a significant manner in postsecondary teaching and/or research.
10. For **AN EDUCATOR SEAT** - An educator member is someone currently or recently directly engaged in a significant manner in postsecondary education in an academic capacity (e.g., professor, instructor, academic dean)
11. For **A PUBLIC SEAT** - A public member is a person who is not: a) an employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either has achieved ACAOM accreditation or candidacy status or has applied for accreditation or candidacy; b) a member of any trade association or membership organization related to, or affiliated with, or associated with ACAOM or, c) a spouse, parent, child or sibling of individuals described in a) or b) of this definition or, d) a practitioner. S/he should have knowledge or expertise in higher education. Public members can serve up to three consecutive, three-year terms.
12. For **A PRACTITIONER SEAT** - A Practitioner member is an individual whose principal source of income is that of a practitioner of acupuncture or Oriental medicine. S/he should be actively involved in the development of the profession. Practitioner members may serve up to two consecutive, three-year terms.

13. For **AN AT-LARGE SEAT** - An At-Large member may be appointed from any of the other Commission member categories. At-Large members may serve up to two consecutive, three- year terms.

The composition of the Commission is constructed such that it includes a diverse range of individuals including those who serve in: a) academic leadership roles; b) college administrative roles; c) as faculty of acupuncture & Oriental medicine programs; d) as practitioners of acupuncture and Oriental medicine; and, d) as qualified public members as defined in ACAOM Bylaws.

See **Appendix A** for ACAOM Bylaws which describe the qualifications of Commissioners, ACAOM's mission, meeting requirements and other critical areas which articulate ACAOM's functions. It is a responsibility of each Commissioner to be fully familiar with ACAOM's Bylaws.

## **B. Desired Specific Knowledge, Skills and Characteristics**

1. Good communication and organizational skills
2. Budget and finance experience
3. Knowledge and experience in higher education and program assessment
4. Governance experience
5. Writing and editing skills
6. Clinical and/or teaching experience

## **C. Diversity in Background to Consider**

1. Ethnicity
2. Gender
3. Geographic distribution
4. Professional and/or academic experience
5. Educational background
6. Variety of schools of thought within the profession

## **D. General Responsibilities**

1. Monitor accreditation functions
2. Establish policies and procedures
3. Monitor administrative functioning
4. Establish standards
5. Monitor fiscal affairs
6. Accredite programs
7. Participate in ACAOM Committees
8. Attend ACAOM meetings and fulfill all Commissioner roles and responsibilities.

## II. RESPONSIBILITIES EXPLAINED

### A. Monitor Accreditation Functions

The Commission serves as ACAOM's Board of Directors. All Commissioners thus have a fiduciary responsibility to monitor the affairs of ACAOM and to use the care that an ordinarily prudent person would exercise in a like position and under similar circumstances. As a Commissioner, it is your responsibility to ensure that ACAOM's mission as an accrediting agency is being achieved and that ACAOM is performing its accreditation functions in an efficient and effective manner. This includes monitoring the effectiveness of ACAOM standards, policies and procedures and their application, and actively assessing during relevant Commission deliberations how ACAOM standards, policies, procedures, and practices might be improved.

ACAOM's staff is responsible for developing proposed standards, policies, procedures, etc, and ensuring that each Commissioner receives the necessary information to effectively monitor ACAOM functions. For this purpose, agendas are prepared by staff for each Commission meeting, in consultation with the ACAOM Executive Committee composed of the ACAOM Chair, Vice Chair, Secretary/Treasurer and Executive Director. In addition, Commissioners may, on occasion, receive special communications, which provide information relevant to their roles and responsibilities. The Commission may also conduct conference calls to deliberate on relevant matters. Although Commissioners will be provided such information and documentation as may be necessary to conduct ACAOM business, it is the responsibility of each Commissioner to carefully review such documentation prior to Commission deliberations and to contribute actively to the achievement of ACAOM's mission. **Commissioners who have specific administrative issues or needs other than those directly germane to issues that have been directly delegated to them should contact the ACAOM Chair, who will discuss the matter with the Executive Director.**

### B. Establish Policies and Procedures

The Commission has published various manuals and handbooks that contain ACAOM standards, criteria, and policies and procedures that govern the accreditation process. All programs in the accreditation process are provided copies of ACAOM standards, policies and procedures and are expected to fully comply with them. Similarly, the Commission itself is legally required to adhere to its published policies and procedures in conducting institution/program candidacy and accreditation reviews.

Periodically, Commissioners may be required to approve new policies and procedures or consider amending existing policies and procedures. Under ACAOM protocols, proposals for adopting new or amended policies and procedures are prepared by ACAOM staff for consideration by a relevant committee or committees prior to Commission consideration and adoption at its scheduled meetings. New policies and standards typically require two readings by the full Commission prior to final adoption. The Commission may also consider or adopt proposed policies or procedures by mail/FAX/e-mail ballot or by conference call.

The Commission is responsible for monitoring the effectiveness of ACAOM's policies and procedures. If individual Commissioners have suggestions for improving ACAOM's policies or procedures, such suggestions should be shared with the Executive Director or Chair or

addressed during Commission policy deliberations.

### **C. Monitoring Administrative Functioning**

The Commission is responsible for establishing ACAOM policies while ACAOM staff is responsible for implementing the policies and procedures adopted by the Commission. In particular, staff conduct all the administrative affairs of the Commission, including, but not limited to, implementing the accreditation process, conducting day-to-day financial management, and engaging in communications with programs, state and federal regulatory authorities and the general public.

Since the fulfillment of ACAOM's mission depends, in substantial part, on the effectiveness of ACAOM administrative operations, the Commission, through its Executive Committee, monitors administrative effectiveness through annually-conducted evaluations of the ACAOM Executive Director. Direct and primary oversight of office administrative functioning is the responsibility of the Executive Director, who conducts regular conference calls with the Commission's Executive Committee to keep the Committee apprised of ACAOM administrative and other issues. The Executive Committee meeting minutes are included in the Commission consent agenda for each Commission meeting. The Commission is also responsible for approving policies and procedures governing staff, including those contained in the ACAOM Employee Manual, as well as for determining staff benefits.

### **D. Establishing Standards**

A critical Commission function is to adopt Eligibility Requirements and Standards with which all institutions and programs in the accreditation process must comply. ACAOM Eligibility Requirements and Standards are published and posted to the Commission web site under the Handbook link. ACAOM's Standards and Criteria Committee, composed of Commissioners appointed by the Chair is responsible for recommending amendments to ACAOM standards for the Commission's consideration and adoption. As with the establishment of Commission policies and procedures, standards proposals are typically developed by ACAOM staff for consideration by the Standards and Criteria Committee prior to Commission consideration and adoption at its scheduled meetings. Significant amendments to ACAOM standards or the drafting of new standards are sometimes prepared by a Standards Task Force composed of the communities of interest prior to Standards Committee and subsequent Commission review and consideration. Standards proposals typically require two readings by the full Commission and opportunity for public comment prior to adoption. In addition, the Commission, acting as a committee of the whole, may amend or develop new standards. This process may occur during regularly scheduled Commission meetings or special Commission Retreats.

As an accrediting agency recognized by the U.S. Department of Education, ACAOM is required to implement a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions or programs it accredits. The Commission has adopted a specific policy governing its review of the standards. Pursuant to the policy, ACAOM systematically reviews its existing standards every 5-years. The Standards and Criteria Committee and the Commission are responsible for reviewing ACAOM's standards consistent with this policy.

## **E. Monitoring Fiscal Affairs**

The Commission is responsible for monitoring ACAOM's financial affairs to ensure that ACAOM remains financially stable and has, and will have, the necessary fiscal resources to meet the Commission's short and long term objectives.

The Executive Director, with the assistance of the ACAOM Bookkeeper, and in consultation with the Commission Treasurer, prepares financial reports and budgets for the Commission's review and approval following review by the ACAOM Audit & Finance Committee. During the Commission winter meeting, all Commissioners receive in the agenda meeting materials a Year-End Financial Report for the preceding year and a proposed budget for the next fiscal year. During the Commission's summer meeting, Commissioners receive a Year-To-Date Financial Report for the current year. Commissioners also receive for review and approval, CPA-prepared audited financial statements for ACAOM. Commissioners are expected to fully review ACAOM financial reports and budgets to ensure that ACAOM's has, and will have, the necessary fiscal resources to support adequately its mission, goals and objectives. The Commission is responsible for approving financial statements and budgets at its bi-annual meetings.

## **F. Accrediting Programs**

The Commission's role in reviewing institutions and programs for accreditation and candidacy status is at the heart of ACAOM's mission. Commissioners should be fully familiar with ACAOM Policies and Procedures of the Accreditation Process, which fully describe the procedures for granting candidacy and accreditation status. ACAOM Policies and Procedures are posted to the ACAOM web site under the Handbook link. Commissioners play a critical role in this process, as further described below.

### ***Review Committees***

As a Commissioner, you are required to review the reports for your assigned institutions and programs relative to compliance with Commission policies and standards. For this purpose, Commissioners may utilize a copy of the Site Visitor and Reviewer Checklist that lists all the Commission standards and how the reviewer assesses compliance. The Checklist can be downloaded from the ACAOM website under the Site Visitor Resources link, documents sublink. Programs seeking candidacy, accreditation or re-accreditation must submit an Eligibility Report (for candidacy) or a Self Study Report (for initial accreditation or renewal of accreditation). Each accredited and candidate program must also submit an annual report. Programs that are granted candidacy are required to submit biannual progress reports documenting progress in strengthening compliance with ACAOM standards and criteria. Programs with identified deficiencies relative to compliance with one or more ACAOM standards may be required to submit a monitoring report or interim report documenting progress in strengthening compliance with the standards. A program may also be required to submit a supplemental information report in instances where the Commission has determined that there is insufficient information to substantiate institutional/program compliance with ACAOM standards and the Commission instructs the program to provide further information, not to develop plans or initiate remedial actions.

The Commission may also require candidate or accredited programs to host interim site visits to enable the Commission to assess whether the program has remediated particular

weaknesses relative to compliance with Commission standards.

Under Commission policies, programs must submit required reports to the [Executive Office](#). The staff member and Commissioner reviewers are referred to as the Review Committee for that program. For accreditation and candidacy reviews, the staff reviewer assesses the program's Self Study or Eligibility Report for completeness and compliance with ACAOM standards. If the report is deemed complete and adequately documents compliance with the Commission's standards, staff will approve a site visit to the program. If the report is incomplete or does not adequately document compliance with the standards, staff may reject the report. A program may appeal a staff decision to reject the report by forwarding the report to members of the Review Committee. In instances of an appeal, the Commissioners assigned to the Review Committee for the program may affirm staff's decision to reject the report, may accept the report and permit a site visit to occur, or may seek additional clarification from the program prior to rendering a final decision on the report.

A program's Eligibility or Self-Study Report, along with the site visit report and the program's formal institutional response to that report [as well as written third party testimony, if any, and the institution's response to that third party testimony](#) constitutes the [Accreditation Record](#) for purposes of rendering a candidacy, initial accreditation, re-accreditation decision. Review Committees receive the entire [accreditation](#) record prior to Commission consideration and action. The same documentation is provided [for each Commissioner](#) in the Commission meeting agenda materials for action at a Commission meeting. Review Committee Members assume a primary role in facilitating the Commission program review process for their assigned programs during Commission meetings.

In reviewing biannual progress, first annual, monitoring or interim reports, the Commission's role is to assess whether or not programs have corrected previous Commission findings of Non-compliance and strengthened the Areas Requiring Further Development. Review Committees may also be required to review school Substantive Change Reports to assess whether a school's proposed substantive change(s) will or will not adversely impact the quality of the ACAOM accredited or candidate program(s) and compliance with Commission standards.

Staff provide to Commissioners information on their assigned programs such as the type of report (e.g., Eligibility, Self Study, Interim, Bi-annual Progress Report), the staff reviewer for that school, and the Commission meeting cycle in which Commission action may be taken (e.g., summer or winter).

### ***Site Visits***

Although Commissioners and staff are not expected to conduct site visits, on rare occasions a Commissioner or staff member may be requested to participate on a site visit team. Site visits may include Candidacy visits, Accreditation or Re-accreditation visits, interim site visits, fact finding visits, or site visits for certain categories of substantive changes.

ACAOM's *Site Visitor Manual*, which is published on the ACAOM web site under the Site Visitor Resources link, sets forth the roles and responsibilities of site visitors, standards of conduct, as well as information and instructions for conducting the visit.

## ***Commission Decision-making***

Certain categories of Commission decisions may be delegated to a Commission Review Committee or may be handled by the full Commission, either by FAX ballot or during ACAOM's bi-annual meetings. The following presents the types of Commission program decisions and the entity responsible.

### 1. Candidacy, Initial Accreditation or Reaccreditation Decisions

Full Commission at ACAOM's bi-annual meetings.

### 2. Interim Reports/Monitoring Reports/Supplemental Information Reports/Biannual Progress Reports

Normally only the Review Committee reviews and takes action on such reports. In instances where reports raise significant issues relative to compliance with Commission standards, the Review Committee may require the program to host an interim site visit for full Commission consideration.

### 3. Annual Reports

Review Committees Review –First Annual ReportsII (i.e., the annual report submitted after an initial grant of candidacy, accreditation, or reaccreditation). Staff review subsequently sub- mitted Annual Reports. If Annual Reports reviewed by staff raise significant issues relative to compliance with ACAOM standards, Review Committee members may be requested to re- view those reports and, where appropriate, may place the matter before the full Commission for its review and action.

### 4. Substantive Change Reports/Site Visits

Normally the assigned Review Committee makes decisions on behalf of the Commission to approve applications for substantive changes. Certain types of substantive changes, particularly those that require a site visit, may require full Commission approval.

### 5. Formal Complaints

Complaints against accredited or candidate schools that meet ACAOM's complaint procedures may either be handled by staff, a Review Committee, or by the full Commission depending on the nature of the complaint.

Review Committee Members are expected to help facilitate Commission discussions for their as- signed programs during Commission program review meeting deliberations.

**Commissioners with a conflict of interest with a program reviewed by the Commission do not receive the record for program in question and cannot participate in the Commission deliberations or vote on that program.**

Commissioners without a conflict of interest for the program being reviewed are expected to: a) read the entire record contained in the Commission meeting agenda materials for each program prior to Commission meeting deliberation on the program; b) provide complete and timely comments on school reviews to staff reviewers, where applicable; c) fully participate in Commission hearings on program reviews; and, d) fully participate in program deliberations, whether at the Review Committee level or during the Executive Session of Commission decision meetings.

### **III. SERVING ON COMMISSION COMMITTEES**

As a Commissioner, you may be assigned to serve on one or more Commission Committees or Task Forces. Such Committees deliberate either in person or by Conference calls, mailings, e-mail and FAX ballot. Each Committee is Chaired by a Commissioner appointed by the ACAOM Chair. Committee Chairs are required to coordinate the committee review of matters within the committee's charter or charge, including the coordination with staff of committee agendas and conference calls.

All Commission Committees and Task Forces, with the exception of the ACAOM Executive Committee and Program Review Committees are appointed by the Commission Chair. Program Review Committees are appointed by Commission staff. The Commission currently has the following active committees, charters for which are attached in **Appendix B**.

#### **A. Executive Committee**

This Committee, required under ACAOM Bylaws, is composed of the officers of the Commission (Chair, Vice Chair and Secretary/Treasurer). The Executive Director also serves on the Committee as an ex officio member. The Executive Committee has the authority to act on urgent items between Commission meetings, the urgency of the items to be determined by the Commission Chair. The Committee also conducts regular conference calls to discuss other issues and matters relevant to the administration of ACAOM affairs. The Committee is required to report its actions to the Commission for consideration and ratification. The Executive Committee typically conducts conference calls on a quarterly basis.

#### **B. Nominations Committee**

This is another Bylaws Committee composed of up to three Commissioners appointed by the Chair. The Committee's role is to solicit and screen nominees for election as Commissioners. The Committee prepares a report of its recommendations in the form of a slate of nominees for each anticipated vacancy on the Commission. The report is then placed on the Commission meeting agenda for consideration and action. The Nominations Committee typically conducts conference calls on a quarterly basis.

#### **C. Audit & Finance Committee**

The Audit & Finance Committee is a standing ACAOM Committee that reviews staff and CPA prepared financial reports and statements, budget proposals, and considers ACAOM's investment strategies prior to consideration and action by the Commission. The Committee typically conducts conference calls on a quarterly basis.

#### **D. Standards and Criteria Committee**

The Committee, which is composed of Commissioners, considers and recommends for Commission action proposed changes to Commission Standards and Criteria. The

Standards and Criteria Committee typically conducts conference calls on a quarterly basis.

#### **E. Accreditation Process Evaluation Committee**

This Committee, which is composed of Commissioners, assesses the effectiveness of ACAOM accreditation processes, policies, procedures and protocols to consider and recommend for Commission action on proposed changes to those processes, procedures and protocols. The Committee typically conducts conference calls on a bi-annual basis.

#### **F. Other Committees and Task Forces**

In addition to standing committees and committees mandated in the ACAOM Bylaws, the Commission may establish various Ad Hoc Committees and Task Forces to study and provide recommendations to the Commission on issues set forth in the charter or charges established for such committees or Task Forces. Current ad hoc committees and Task Forces include the ACAOM Ad Hoc Distance Learning Committee, Ad Hoc Information Technology Committee, Doctoral Task Force and Masters Standards Task Force.

All Commissioners who are assigned to serve on a Commission Committee or Task Force are expected to read all relevant documentation and participate fully in the committee/task force deliberation process.

### **IV. MEETINGS, ATTENDANCE AND FULFILLING RESPONSIBILITIES**

Commissioners are expected to attend all Commission meetings and fulfill all assigned Commission responsibilities in a timely and competent manner. Failure to attend meetings and/or to adequately fulfill Commissioner's responsibilities undermines ACAOM's effectiveness and places an undue burden on Commission resources. Competent and timely review of school reports and meeting attendance, as well as thorough preparation for Commission meetings are particularly critical to ACAOM operations.

Commissioners who do not believe that they can adequately fulfill their roles and responsibilities should contact the Executive Director or Commission Chair to discuss whether it might be better for the Commissioner to resign from his or her position. Commissioners who have demonstrated difficulty in performing critical Commissioner roles and responsibilities will be contacted by the Commission Chair.

### **V. COMMISSIONER CONDUCT EXPECTATIONS**

#### **A. Commissioner Code of Conduct**

Commissioners must strictly comply with the —Commissioner Code of ConductII set forth in **Appendix C**. All Commissioners must demonstrate their commitment to comply with the code by signing an acknowledgement statement at each Commission meeting that they understand the principles and standards in the code and agree to comply with them. Appended to the Code is a Conflict and Duality of Interest Disclosure Form, in which all Commissioners must report any potential conflicts of interest at each meeting.

#### **B. Program Reviews**

Commissioners are expected to act professionally in all program review activities. In particular, Commissioners are expected to be familiar with and fully comply with ACAOM's —Policy Statement on Conflict of Interest set forth in the ACAOM Policies and Procedures Manual. Under this policy, Commissioners with a conflict of interest pertaining to a particular program will not receive program review material and must abstain from discussion and vote on the program decision in Executive Session. Commissioners may not be involved in both personal advisory services relative to acupuncture and Oriental medicine programs and institutional development and in evaluation services relative to acupuncture and Oriental medicine accreditation.

In addition to avoiding conflicts of interest, Commissioners are expected to meet ACAOM's expectations for professional conduct in serving as site visitors and during Commission hearings on program reviews.

### **Site Visits**

Commissioners serving on a site visit team must comply fully with the Commission conflict of interest and conduct policies governing site visitors published in the *ACAOM Site Visitor Manual* and in the *ACAOM Site Visitor Code of Conduct*.

### **Program Review Hearings**

Commissioners are expected to be sensitive and tactful during school review hearings. Unduly hostile questioning of program representatives must be avoided. Commissioners should also attempt to avoid questions which place program representatives in an embarrassing position regardless of how the questions are answered. For example, questions along the following lines should be avoided (e.g., —Have you ceased the practice of providing misleading advertising to prospective students?). In this regard, Commissioners should acknowledge that certain issues may be particularly sensitive for programs to address, such as difficult personnel or financial matters, and particularly on matters where a Commissioner suspects that the program has not acted with honesty and integrity (e.g., providing untruthful or misleading information to the Commission or students). If an individual Commissioner, from his or her review of the accreditation record, anticipates asking questions which could be deemed sensitive or embarrassing for the program, the Commissioner should contact staff or the Commission Chair before the hearing on ways in which the necessary information can be sought from the program in a dignified and appropriate manner.

## **C. Discussions with Third Parties about Commission Business are Prohibited**

The Commission has various communities of interest, including college representatives, practitioners, representatives of AOM organizations (e.g., AAAOM, CCAOM), among others, and it is inevitable that third parties will contact individual Commissioners with questions, requests, or comments respecting ACAOM business, or attempt to lobby Commissioners to take certain actions or policy positions.

In responding to such contacts, it must be emphasized that all Commission deliberations, except those that are conducted in conjunction with ACAOM public hearing protocols, are confidential. In addition, USDE Recognition Criteria requires that the Commission remain

–separate and independent from ... any related, associated, or affiliated trade association or membership organization (34 CFR 602.14). Accordingly, to preserve the confidentiality of Commission deliberations and to avoid even the appearance of undue influence or conflicts of interest, Commissioners must not engage in any private discussions with third parties regarding ACAOM operations, policies, procedures, standards, program review decisions, or other matters relevant to an individual's role as a Commissioner. Should a Commissioner be contacted by a third-party regarding Commission business, the proper protocol is to refer the inquiring party to the Executive Director or Commission Chair.

#### **D. Gifts/Gratuities/Bribes**

Commissioners should be aware that programs in ACAOM's accreditation process have, at times, offered gifts, favors, services and gratuities to Commissioners, staff and site visit peer evaluators. It is Commission policy that Commissioners, staff and site visitors must not accept any money,

property, gifts, favors or services that might be reasonably perceived by others to influence him/her in the discharge of his/her responsibilities. Refer to the Commissioner Code of Conduct respecting the Commission's relevant policies.

#### **E. Legal Responsibilities**

All Commissioners should be aware of a few basic legal responsibilities of Commissioners and of the Commission as a whole. For a brief overview of these responsibilities, refer to **Appendix D**, which provides information on legal responsibilities in the areas of Loyalty and Conflicts of Interest, Respecting Confidentiality, Apparent Authority, Antitrust Generally, Defamation, and Accreditation and Approval.

### **VI. ACAOM US DEPARTMENT OF EDUCATION REPORTING REQUIREMENTS**

The U.S. Department of Education requires that the Commission submit certain information and documentation regarding accreditation decisions, Title IV compliance respecting institutions in the accreditation process, changes in policies or standards that could impact the Commission's scope of recognition and other relevant materials and information. **Appendix E** contains ACAOM's *Policy on Reporting to the U.S. Secretary of Education*.



## APPENDIX A

**BYLAWS**  
of the  
**ACCREDITATION COMMISSION FOR**  
**ACUPUNCTURE AND ORIENTAL MEDICINE**

Article I - Name

This corporation shall be known as the Accreditation Commission for Acupuncture and Oriental Medicine, and is referred to in these bylaws as the "Commission." The directors of this corporation shall be known as Commissioners.

Article II - Principal Office

The principal office of the Commission or the Principal Business Office of the Commission may be fixed and located at such place or places as the Commission may specify. The Commission may change any such office from time to time from one location to another.

Article III - Objectives and Purposes

The objectives and purposes of this Commission shall be to establish and maintain high educational standards and ethical business practices in acupuncture, traditional Oriental medicine and immediately related professions, and to carry out this purpose through the development and implementation of a national accrediting program for schools and colleges of acupuncture and Oriental medicine.

Article IV - Non-Partisan Activity

This Commission has been formed under the District of Columbia Non-Profit Public Benefit Corporation Law for the public purposes described above, and it shall be non-profit and non-partisan. No substantial part of the activities of the Commission shall consist of the publication or dissemination of materials with the purpose of attempting to influence legislation, and the Commission shall not participate or intervene in any political campaign on behalf of any candidate for public office or for or against any clause or measure being submitted to the people for a vote.

The Commission shall not, except in an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of its purpose.

Article V - Organization

1. The Commission shall have no members.
2. The Commission shall act as an independent body with authority to evaluate schools and colleges of acupuncture and traditional Oriental medicine, and determine whether or not they meet the Eligibility Requirements, Standards and Criteria adopted by the Commission. The Commission shall be governed by these Bylaws, and shall not be accountable to any other agency or organization except insofar as the Commission shall:
  - a. report to federal and state government agencies, relevant accrediting agencies and to the Commission's communities of interest as to final actions taken by the

Commission, as well as to publish a copy of the program review agenda for meetings of the Commission and for public hearings in advance inviting the communities of interest to submit comments on programs and institutions scheduled for Commission review and on proposed amendments to Standards and Criteria.

- b. adhere to government regulations and professional standards relating to accrediting bodies.

## Article VI - Board of Directors

### 1. Name:

The directors of this corporation shall be known as Commissioners and collectively as the Commission. The Commission shall serve as the Board of Directors of this corporation.

### 2. Powers and Duties:

Subject to the District of Columbia Corporation Code, the activities and affairs of the Commission shall be managed and all corporate powers shall be exercised by or under the direction of the Commission. The Commission may delegate the management of the activities of the Commission to any person or persons, management company, or committee, however composed, provided that the activities and affairs of the Commission shall be managed and all corporate powers shall be exercised under the ultimate direction of the Commission. Without prejudice to such general powers, but subject to the same limitations, the Commission shall have the following powers:

First - To conduct, manage and control the activities and affairs and to make such rules and regulations therefore, not inconsistent with law, the Articles of Incorporation or Bylaws, as they may deem best;

Second - To elect the Commissioners of this Commission and to fill vacancies on the Commission, as set forth in section 5 of this Article;

Third - To elect, appoint and remove the officers, agents and employees of the Commission, prescribe their duties and powers and fix their compensation;

Fourth - To adopt, make and use a corporate seal and alter the form thereof;

Fifth - To establish and maintain offices and facilities of the corporation as they deem appropriate;

Sixth - To cause the Commission to be qualified to do business in any jurisdiction and conduct business within or outside the District of Columbia;

Seventh - To borrow money and incur indebtedness for the purpose of the Commission and cause to be executed and delivered thereof, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations and other evidences of debt and securities therefor;

Eighth - To alter, repeal or amend, from time to time at any time, these bylaws and any and all amendments of the same, and, from time to time and at any time, to make and adopt such new and additional bylaws as may be necessary and proper;

Ninth - To direct and regulate the accreditation process.

3. Number:

There shall be eleven (11) Commissioners, and they shall be elected by the Commissioners, acting within the nomination and election process established by the Commission. Commissioners shall be elected from the following categories as defined below:

- 2 shall be administrator members,
- 2 shall be academic members,
- 2 shall be educator members, who shall be elected from programs that are either accredited by it or in candidacy with the Commission
- 2 shall be practitioners of acupuncture or Oriental medicine,
- 2 shall be public members,
- 1 shall be an “at-large” member.

There shall also be an Executive Director who shall act as an ex officio member of the Commission and without a vote.

Membership Category Definitions:

An administrator member is someone currently or recently directly engaged in a significant manner in postsecondary program or institutional administration

An educator member is someone currently or recently directly engaged in a significant manner in postsecondary education in an academic capacity (e.g., professor, instructor, academic dean)

An academic member is someone currently or recently directly engaged in a significant manner in postsecondary teaching and/or research.

A public member is a person who is not: a) an employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either has achieved ACAOM accreditation or candidacy status, or has applied for accreditation or candidacy; b) a member of any trade association or membership organization related to, or affiliated or associated with ACAOM; or, c) a spouse, parent, child, sibling of an individual or individuals described in a) or b) of this definition; or d) a practitioner as defined below.

A practitioner member is a person whose principal source of income is as a practitioner of acupuncture or Oriental medicine. Practitioner members should be actively involved in the development of the profession.

Any individual may be appointed as an “at large” member of the Commission.

The composition of the Commission must be constructed such that it includes a diverse range of individuals among whom serve in: a) academic leadership roles; b) college administrative roles; and, c) as faculty of acupuncture & Oriental medicine programs.

If the status of a Commissioner should change relative to the Commission's definitions of [administrator](#), [educator](#), [academic](#), practitioner, public, or at large members, or in the case of an [educator](#) member, the institution from which he or she is elected is no longer accredited or in candidacy with this Commission, that Commissioner's appointment lapses automatically, and his or her position is vacant.

#### 4. Election and Term:

Commissioners shall be elected for a term of three (3) years, on a staggered basis. When a vacancy occurs because of resignation, death, inability or ineligibility to continue service, a new Commissioner may be elected to complete the term. Members of the Commission shall serve no more than two (2) consecutive full terms. When a Commissioner is elected to fill a vacancy, or due to the expansion of the number of Commissioners, the partial term shall not count toward this limit. After a Commissioner has served for the maximum number of consecutive full terms, that Commissioner shall be ineligible for reelection for a period of one (1) year.

The chair of the Commission shall annually appoint a Nominations Committee, which will consist of up to three commissioners, one of whom will chair the committee to solicit and screen nominees and to present a slate of nominees to the Commission for action. The nominating committee shall consider the following characteristics in presenting a slate to the Commission: experience as a site visitor, gender, ethnicity, geographic location, academic training, a balance of acupuncture and Oriental medicine backgrounds, professional experience and knowledge of the accrediting process, sensitivity to the uniqueness of programs, impartiality, objective reasoning, evidence of upholding responsibility, integrity, and willingness and capability of devoting the necessary time.

#### 5. Vacancies:

A vacancy or vacancies in the Commission shall be deemed to exist in the event of the death or resignation of any Commissioner, the lapse of the Commissioner's eligibility for the position for which he or she was elected, or the removal of any Commissioner in accordance with the District of Columbia Corporation Code. A Commissioner may be removed from office upon an affirmative vote of two-thirds of Commissioners present at any meeting in which a quorum exists if a Commissioner: a) misses two consecutive Commission meetings unless absences from such meetings are excused in advance by the Commission Chair, b) fails to adhere to the *Commissioner Code of Conduct*, or c) if the Commission determines that such removal is otherwise in the Commission's best interests.

Any Commissioner may resign, effective on giving written notice thereof, or at a later time specified in the notice thereof, to the Chair or the Secretary of the Commission. The Commissioners shall elect a Commissioner to complete the unexpired term.

Notwithstanding anything to the contrary in Article VI, no Commissioner may resign while the Commission would then be left without a duly elected Commissioner or Commissioners in charge of its affairs, except on notice to the Corporation Counsel of the District of Columbia. Any reduction of the authorized number of Commissioners shall not have the effect of removing any Commissioner prior to the expiration of that Commissioner's term of office.

6. Meetings:

- a. All meetings of the Commissioners shall be called by the Chair. Upon written request of two Commissioners, the Chair shall be required to call a meeting within thirty (30) days of the receipt of the request.
- b. Regular and biannual meetings of the Commission may be held without notice if the time and place of such meetings are fixed by these bylaws or by the Commission. The biannual meetings of the Commission shall be held in February and August of each year, or as soon thereafter as may be practicable, during which reports on the affairs of the Commission shall be considered and any other proper business may be transacted. Officers shall be elected (according to Article VII, section 2) at the February meeting.
- c. Action without meetings, which is permitted or required to be taken by the Commission, may be taken as long as adequate notice is given to each Commissioner and a quorum approves this action in writing.
- d. Quorum. Six (6) Commissioners shall constitute a quorum for the transaction of business at any meeting. The Executive Director shall not be counted for purposes of determining a quorum. Except as may be otherwise provided in these Bylaws actions shall be taken on affirmative vote of a majority of those Commissioners voting at any regular or special meeting. Proposals for action may be placed before the Commission by any Commissioner.
- e. Participation by electronic means shall be allowed in any meeting by means of conference telephone or other similar equipment allowing all participants to hear each other, and such participation shall constitute presence in person at such meeting.
- f. Minutes. The draft minutes of the meetings of the Commission shall be sent to each member thereof. The draft minutes of the meetings of the Commission, or of any committee thereof, shall not become the official records of the Commission until approved by the Commission or committee present at the meeting for which the minutes are prepared.

7. Compensation:

Commissioners shall serve without compensation other than the expenses for attending Commission meetings and an honorarium, as the Commission shall decide. Commissioners shall be reimbursed for travel expenses.

Article VII - Officers

1. Designation of Officers:

The officers of the Commission shall include a Chair, Vice-Chair, Secretary, Treasurer, Executive Director and such other officers or one or more vice-Chairmen, assistant Secretaries and assistant Treasurers, as may be determined by the Commission as necessary to enable the corporation to carry out its purposes and sign instruments. Except as otherwise provided in these Bylaws, any number of offices may be held by the same person, except that neither the Secretary nor the Treasurer may serve concurrently as the Commission Chair.

2. Election, Term and Compensation of Officers:

The officers of the Commission, excepting the Executive Director, shall hold office for two-years terms, with no limit to the number of terms an officer can be reelected to a position. Elections of officers shall take place at biannual Commission meetings. An officer may be removed for cause as defined in Article IV, Section 5 of these Bylaws at any meeting in which a quorum exists. An affirmative vote of two-thirds of Commissioners present is required for removal. Any officer may resign at any time on written notice to the Commission. Officers may be compensated as officers, as the Commission shall decide.

3. Chair:

The Chair shall, when present, preside at all meetings of the Commission, shall perform such other duties as are prescribed in the Bylaws, as are incident to the office, shall have authority to execute in the name of the Commission any written instruments to be executed by the Commission (except where by law a signature of another officer is required) and shall perform such duties as the Commission may prescribe from time to time.

4. Vice-Chair:

The Commission shall elect one or more Vice-Chairs who, in order of their seniority, shall assume and perform the duties of the Chair in the absence or disability of the Chair or whenever the office of Commission Chair is vacant. The Vice-Chair shall have such titles, perform such other duties and have such other powers as the Chair or the Commission may prescribe from time to time.

5. Secretary:

The Secretary shall attend all meetings of the Commission and shall keep or cause to be kept at the principal executive office or such other place as the Commission may order, the original or a certified copy of the Articles of Incorporation and these Bylaws, and a book of written minutes of all such meetings, containing all acts and proceedings thereof, the time and place of holding thereof, whether regular or special, and if special, how authorized, the notice thereof given and the names of those present, The Secretary shall give notice, in conformity with these Bylaws, of all meetings of the Commission and of any committee requiring notice. The Secretary shall perform such other duties and have such other powers as the Commission may prescribe from time to time. The Chair

may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform such other duties and have such other powers as the Commission may prescribe from time to time.

6. Treasurer:

The Treasurer shall keep or cause to be kept adequate and correct written books and records of the financial affairs of the Commission in such form and as often as required by the Commission. The Treasurer, subject to the direction of the Commission, shall have the custody of all funds and securities of the Commission. The Treasurer shall perform all other duties customarily incident to that office and shall perform such other duties and have such other powers as the Commission may prescribe from time to time. The Treasurer shall function as the Chief Financial Officer of the Commission. The Chair may direct any Assistant Treasurer to assume and perform such other duties and have such other powers as the Commission may prescribe from time to time.

7. Executive Director:

The Commission shall select and hire an Executive Director who shall be the Chief Executive Officer of the Commission. The Executive Director shall be responsible for the staff, their hiring, training, performance, and termination. The Executive Director shall perform such duties as may be assigned by the Commission or as may be prescribed in these Bylaws. During the Executive Director's employment, s/he shall not hold any other office within the Commission.

8. Bonding:

The Treasurer, Secretary, and other officers and employees as required by the Commission shall be bonded or insured at the expense of the Commission in the amounts determined by the Commission.

Article VIII - Executive Committee

An Executive Committee shall have authority to act on urgent items between Commission meetings, the urgency of the items to be determined by the Commission chair. The Committee shall report its actions to the Commission. The Executive Committee shall be composed of the officers of the Commission.

Article IX - Reports

Each officer of the Commission shall cause to be prepared and distributed such annual and other periodic or occasional reports as and in the manner prescribed by applicable law and as required by the Commission. In particular, without limiting the generality of the foregoing, the Treasurer shall cause to be prepared and delivered to the Commission within a reasonable time following the end of the Commission's fiscal year, or when directed by the Commission, an annual report containing in appropriate detail the following:

1. The assets and liabilities, including trust funds, of the Commission as of the end of the fiscal year.

2. The principal changes in assets and liabilities, including trust funds, during the fiscal year.
3. The revenue or receipts of the Commission, both unrestricted and restricted, to particular purposes for the fiscal year.
4. The expenses or disbursements of the Commission for both general and restricted purposes during the fiscal year.
5. Any report of independent accounts regarding the foregoing or if there is no report, the certificate of the Treasurer that such statements were prepared without audit from the books and records of the Commission.

#### Article X - Corporate Seal

The corporate seal shall consist of a circular die bearing the name of the Commission and the state and date of its incorporation and shall be kept and used by the Secretary or any assistant secretary as the Secretary may direct. If and when authorized by the Commissioners, a duplicate of the corporate seal may be kept and used by such officer or person as the Commission may designate. Failure to affix the corporate seal does not affect the validity of any instrument of the Commission.

#### Article XI - Indemnification

Each person now or hereafter a Commissioner or officer of the Commission (and his heirs, executors and administrators) shall be indemnified by the Commission against all claims, liabilities, judgments, settlements, costs and expenses, including all attorneys' fees, reasonably incurred by him or her or imposed upon him or her in connection with or resulting from any action, suit, proceeding or claim to which he is or may be made a party by reason of his being or having been a Commissioner or officer of the Commission (whether or not a Commissioner or officer at the time such costs or expenses are incurred by or imposed upon him or her), except in relation to matters as to which he or she shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of his or her duties as such Commissioner or officer. This provision shall not be deemed to be exclusive of any other rights to which such person may be entitled under any bylaw, agreement, vote of the Commission, or otherwise.

#### Article XII - Amendment of Bylaws

These Bylaws may be modified, amended or rescinded by an affirmative vote of two thirds of Commissioners present at any meeting in which a quorum exists.

## APPENDIX B

## **NOMINATIONS COMMITTEE CHARTER**

### **A. Purpose**

Consistent with Article VI, Section 4 of the ACAOM Bylaws, the purpose of the Nominations Committee is to —...solicit and screen nominees [for possible service as Commissioners] and to present a slate of [qualified] nominees to the Commission for action...ll

### **B. Structure and Membership**

Number. The Nominations Committee consists of up to three Commissioners appointed annually by the Commission Chair (Article VI, Section 4 of ACAOM Bylaws). The Committee composition should optimally include a balance of institutional, practitioner and public mem- bers of the Commission.

Chair. The Chair of the Nominations Committee shall be appointed by the Commission Chair.

### **C. Authority, Responsibilities and Procedures**

#### **General**

The Nominations Committee shall oversee the ACAOM nominations process for electing Commissioners. The Committee considers and screens nominees, taking into consideration the credentials of each candidate relative to the criteria for the specific Commission vacancy (i.e., Public, Institutional, Practitioner and At Large seats) and the educational and professional backgrounds and expertise of candidates that would enable the Commission to better fulfill its mission. Based on its review of candidates that that meet the criteria for service on the Commission, the Committee develops and presents a recommended slate of qualified nominees to the Commission for consideration and action.

#### **Criteria for Developing Slates for Commission Consideration**

Each candidate considered by the Nominations Committee **must** meet the following Criteria set forth in Article VI, Section 3 of the ACAOM Bylaws for the relevant Commission vacancy:

##### **Membership Category Definitions:**

An administrator member is someone currently or recently directly engaged in a significant manner in postsecondary program or institutional administration

An educator member is someone currently or recently directly engaged in a significant manner in postsecondary education in an academic capacity (e.g., professor, instructor, academic dean)

An academic member is someone currently or recently directly engaged in a significant manner in postsecondary teaching and/or research.

A public member is a person who is not: a) an employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either has achieved ACAOM accreditation or candidacy status, or has applied for accreditation or candidacy; b) a member of any trade association or membership organization related to, or affiliated or associated with ACAOM; or, c) a spouse, parent, child, sibling of an individual or individuals described in a) or b) of this definition; or d) a practitioner as defined below.

A practitioner member is a person whose principal source of income is as a practitioner of acupuncture or Oriental medicine. Practitioner members should be actively involved in the development of the profession.

Any individual may be appointed as an “at large” member of the Commission.

Pursuant to Article IV, Section 4 of ACAOM's Bylaws, in addition to meeting the forgoing criteria for the seat in question, in considering candidates to serve on the Commission, the Nominations Committee must also take the following factors into consideration when developing a slate of nominees for Commission review and action:

- Prior experience as a site visitor;
- Diversity on the Commission (e.g., gender, ethnicity);
- Geographical location among Commissioners;
- Academic training and professional experience;
- Balance of AOM backgrounds among Commissioners;
- For Institutional Members, a proper balance between faculty/educators, academic administrators, and Presidents/CEO's;
- Knowledge of the accreditation process;
- Sensitivity to the uniqueness and diversity of AOM programs;
- Impartiality, objective reasoning, and integrity; and capacity to devote the necessary time to serve as an effective

Commissioner. Nomination Procedures and Timelines:

1. ***Approximately seven months prior to new appointments to the Commission:*** ACAOM's Executive Director and Chair identifies the vacancies expected to occur on the Commission for any reasons, including the expiration of non-renewable terms, resignation(s), unwillingness to serve an additional term, or removal. Staff contacts each Commissioner whose term is due to expire at the next scheduled Commission meeting but who is eligible for an additional term to inquire whether he or she is willing to stand for election to another term. Commissioners affected must notify the Commission office in writing of their intent within one month.
2. ***Approximately six months prior to new appointments to the Commission:*** Commission staff, under the leadership of the Executive Director, solicits nominations from the communities of interest through a –Commission Vacancy Announcement and Call for Nominations published in appropriate venues (e.g., ACAOM newsletter, web site, and email lists), to include the names, contact information CV's, credentials and other required information of qualified potential candidates for service on the Commission. An instruction letter listing the required

documentation from candidates shall accompany the announcements.

3. ***Approximately four months prior to new appointments to the Commission:*** ACAOM staff receives and compiles nominations with the required credentials until the nomination deadline. Staff contacts each nominee to confirm their willingness to serve on the Commission. Staff reviews the qualifications of the potential candidates to determine their eligibility to serve on the Commission (including whether the individual appropriately meets the Bylaws definition for the vacant seat) and to ensure that an appropriate balance of the Commission's constituency would be maintained. The names and nominations documentation for all eligible candidates, including contact information, CV's or biographical sketches, statement of interest in serving on ACAOM, and licenses (if appropriate) are forwarded to the Commission Nominations

Committee. Staff does not remove from consideration by the Nominations Committee any potential candidates based on the perceived suitability of one candidate over another.

4. ***Approximately three months prior to new appointments to the Commission:*** Based on the Nominations Committee review of the credentials of each nominee, the Committee selects the most qualified candidates for further consideration. A member or members of the Nominations Committee and/or the Executive Director will conduct a telephone and/or personal interview with the individual and will describe the work of the Commission and the commitment required to ascertain the candidate's interest and availability to serve on the Commission. The interviewer informs each candidate that she or he is one of many from which the Commission will make its selection.
5. ***Approximately two months prior to new appointments to the Commission:*** The Nominations Committee provides a slate of up to three candidates per vacant seat. The ACAOM Chair and Executive Director are apprised of the outcomes, and the slate of nominees is forwarded to the ACAOM Executive Director.
7. ***Commission Agenda Item Preparation on ACAOM Election:*** ACAOM Staff prepares, in consultation with the Nominations Committee, an agenda item for the Commission meeting reflecting the nominations slate(s) adopted by the Nominations Committee, which shall include CVs and/or summary of the candidates' other credentials.
8. ***Commission Meeting/Election:*** The Commission elects a qualified candidate for each vacant seat on the Commission. If, for any reason, the Commission rejects all the candidates on any nominations slate, the Nominations Committee and the Commission will repeat steps 1-8 until qualified Commissioners are elected to fill the vacancies. An elected candidate's status as a Commissioner becomes effective at the time of the adjournment of the meeting in which the election takes place.
9. ***Election Notifications:*** ACAOM staff corresponds with each candidate concerning the outcome of the election. New Commissioners are introduced to the Commission's communities of interest through its newsletter, web site, and other venues.

## **AUDIT AND FINANCE COMMITTEE CHARTER**

### **A. Purpose**

The purpose of the Audit and Finance Committee is to assist in the Commission's oversight of:

- the integrity of the ACAOM's financial statements;
- the Commission's financial strategy and objectives consistent with its strategic plans;
- the independent auditor's qualifications, independence and performance;
- the performance of the Commission's internal financial management functions;
- the Commission's budgeting process;
- the Commission's financial policies;
- the Commission's investment and risk management practices.

### **B. Structure and Membership**

Number. The Audit and Finance Committee shall consist of the Commission Treasurer and two additional members of the Commission appointed by the Commission Chair. The Chair of the Commission and its Executive Director shall serve on the Committee as ex officio members.

Chair. The Chair of the Audit and Finance Committee shall be the Treasurer of the Commission.

### **C. Authority and Responsibilities**

#### **General**

The Audit and Finance Committee shall discharge its responsibilities and shall assess the information provided by ACAOM's management and the independent auditor, in accordance with its professional judgment. Management is responsible for the preparation, presentation, and integrity of the Commission's internal financial statements, budget proposals, and for the appropriateness of the accounting principles and practices that are used by ACAOM. The independent auditors are responsible for auditing the Commission's financial statements. The authority and responsibilities set forth in this Charter do not reflect or create any duty or obligation of Commissioner members on the Audit and Finance Committee to plan or conduct any audit, to determine or certify that the Commission's financial statements are complete, accurate, fairly presented, or in accordance with generally accepted accounting principles or applicable law, or to guarantee the independent auditor's report.

#### **Oversight of Independent Auditors**

1. Selection. The Audit and Finance Committee shall be directly responsible for appointing, evaluating, retaining and, when necessary, terminating the engagement of the independent auditor. The Audit and Finance Committee may, at its discretion, seek Commission ratification of the independent auditor it appoints.
2. Compensation. The Audit and Finance Committee shall be directly responsible for approving the compensation of the independent auditor. The Audit and Finance Committee is empowered, without further action by the Commission, to cause ACAOM to pay the compensation of the independent auditor established by the Audit and Finance Committee consistent with the auditor engagement letter.

3. Preapproval of Services. The Audit and Finance Committee shall pre-approve all audit services to be provided to the Commission, whether provided by the principal auditor or other firms, and all other services (review, attest and non-audit) to be provided to the Commission by the independent auditor.
4. Oversight. The independent auditor shall report directly to the Audit and Finance Committee, and the Audit and Finance Committee shall be directly responsible for oversight of the work of the independent auditor. In connection with its oversight role, the Audit and Finance Committee may, from time to time, as appropriate:

receive and consider the reports made by the independent auditor regarding:

- o key accounting policies and practices;
- o alternative treatments within generally accepted accounting principles for policies and practices related to material items that have been discussed with ACAOM's management, including ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the independent auditor; and
- o other material written communications between the independent auditor and Commission management.
- o any audit problems or difficulties the independent auditor encountered in the course of the audit work and management's response, including any restrictions on the scope of the independent auditor's activities or on access to, or availability of, requested information and any significant disagreements with management;
- o major issues as to the adequacy of the Commission's internal financial controls and any special audit steps adopted in light of material control deficiencies;
- o any accounting adjustments that were noted or proposed by the auditor but were passed (as immaterial or otherwise); and
- o any communications between the Commission and the audit firm's offices respecting auditing or accounting issues presented by the engagement.

**Financial Statements, Internal Financial Reports and Budget Proposals**

1. Review and Discussion. The Audit and Finance Committee shall review and discuss with the Commission's management and independent auditor, ACAOM audited or reviewed financial statements or internal financial reports prepared by ACAOM management. The Committee will review and provide input on budget proposals prepared by ACAOM management.
2. Recommendation to Board Regarding Financial Statements and Budgets The Audit and Finance Committee shall consider whether it will recommend to the Commission the adoption

of ACAOM's CPA-prepared financial statements and internal financial statements and budget proposals prepared by ACAOM management.

3. Audit Committee Report. The Audit and Finance Committee shall prepare a bi-annual committee report for inclusion on the Commission's summer and winter meeting agendas.

### **Controls and Procedures**

1. Oversight. The Audit and Finance Committee shall coordinate the Commission's oversight of ACAOM's internal control over financial reporting and budgetary processes. The Committee shall receive and review the reports of budget to actual financial reports prepared by ACAOM management on a monthly basis.
2. Risk Management. The Audit and Finance Committee shall discuss the Commission's policies and practices with respect to risk assessment and management, including guidelines and policies to govern the process by which the Commission's exposure to risk is handled, such as ACAOM business liability and D&O insurance policies, HR Policies and Procedures, among others.
3. Procedures for Complaints. The Audit and Finance Committee shall establish procedures for (i) the receipt, retention and treatment of complaints received by the Commission regarding accounting, internal accounting controls or auditing matters; and (ii) the confidential, anonymous submission by employees of the Commission of concerns regarding questionable accounting or auditing matters.
4. Evaluation of Financial Strategy and Objectives. The Audit and Finance Committee shall review and discuss with management the Commission's financial strategy and objectives.
5. Additional Powers. The Audit and Finance Committee shall have such other duties as may be delegated from time to time by the Commission.

### **D. Procedures and Administration**

1. Meetings. The Audit and Finance Committee shall meet by conference call as often as it deems necessary in order to perform its responsibilities. The Audit and Finance Committee may also act by unanimous written consent in lieu of a meeting. The Audit and Finance Committee shall periodically meet with the independent auditor. The Audit and Finance Committee shall keep such records of its meetings as it shall deem appropriate.
2. Reports to Board. The Audit and Finance Committee shall provide reports to the Commission at its bi-annual meetings and at such other times as may be determined by the Committee or the Commission. The Audit and Finance Committee should review with the full Commission any issues that arise with respect to the quality or integrity of the Commission's financial statements, budgetary processes, the performance and independence of the Commission's independent auditors or the performance of internal financial management processes.
3. Charter. The Audit and Finance Committee shall review and reassess the adequacy of this Charter on an annual basis and recommend any proposed changes to the Commission for approval.

## **STANDARDS AND CRITERIA COMMITTEE CHARTER**

### **A. Purpose**

The purpose of the Standards and Criteria Committee is to:

develop and review proposals for new or amended ACAOM Eligibility Requirements, standards and criteria for reviewing institutions and programs in the accreditation process;

coordinate the Commission's *Procedures for the Review and Revision of Eligibility Requirements, Standards and Criteria* set forth in Section 3.10 of the *ACAOM Policies and Procedures Manual*;

coordinate or oversee the review of public comment on proposals for new or amended Eligibility Requirements, standards and criteria;

provide recommendations to the Commission on proposals for new or amended Eligibility Requirements, standards and criteria.

### **B. Structure and Membership**

Number. The Standards and Criteria Committee shall consist of up to seven Commissioners appointed by the Commission Chair. The Committee composition shall include a balance of institutional, practitioner and public members of the Commission.

Chair. The Chair of the Standards and Criteria Committee shall be appointed by the Commission Chair.

### **C. Authority, Responsibilities and Procedures**

#### **General**

**I**

The Standards and Criteria Committee shall develop and/or review proposals for new or amended standards consistent with its professional judgment and provide formal recommendations to the Commission on such proposals. ACAOM Staff and/or Standards Task Forces established by the Commission and composed of representatives of the communities of interest typically develop standards proposals for the Committee's consideration, but the Committee itself may also directly develop such proposals.

#### **Standards Review Process**

The Commission engages in a systematic program of review every five years that demonstrates that its existing standards are adequate to evaluate the quality of education and training provided by the institutions and programs it accredits and are relevant to the professional needs of students. The Standards and Criteria Committee is responsible for conducting, coordinating or overseeing the standards review process and providing recommendations, as appropriate, to the Commission for consideration and action. The Committee is also responsible for coordinating and/or overseeing the development of new Eligibility Requirements, standards and criteria.

If the Commission determines, at any point during its systematic program of review, that changes to the standards are needed, action will be initiated within 12 months to make the changes and revisions will be completed within a reasonable period. All Commission communities of interest including, but not limited to, stakeholders of institutions/programs in the accreditation process, relevant state and accrediting agencies, acupuncture and Oriental medicine organizations, practitioners, and members of the

public are notified of the proposed changes and encouraged to submit comments. The ACAOM Standards and Criteria Committee will ensure that the public comments received on standards proposals are considered before changes are finalized and presented to the Commission for consideration.

#### Procedures for Revising Standards

- o The Commission considers proposals for changes to its Standards and Criteria when they are presented to the Commission:
  - a. Through internal suggestions by Commissioners or staff.
  - b. Through suggestions by ACAOM communities of interest.
  - c. Through third party testimony, either written or verbal, from students, graduates, faculty, college administrators, clinical instructors, practitioners, professional organizations, regulatory agencies, or members of the public, among others.
  - d. Through new regulations or provisions for recognition promulgated by the U.S. Secretary of Education.
- 2. The Commission, through its Standards and Criteria Committee, conducts a comprehensive review of Commission Standards every five years.
- 3. The Commission implements the following procedures for adopting or amending ACAOM Eligibility Requirements and Standards. Note that the Commission may adopt non- substantive changes in ACAOM Eligibility Requirements and Standards for the purpose of clarification, adopt Standards that are mandated by the US Secretary of Education, or adopt changes in ACAOM policies and procedures without implementing these procedures.
  - a. Suggestions for change by the communities of interest, Commissioners, ACAOM Staff or by an ACAOM-established Standards Task Force are reviewed by the Standards and Criteria Committee and, if appropriate, incorporated into a draft pro- posal for change.
  - b. Draft proposals recommended by the Committee are presented to the Commission for its decision on whether to solicit public comment.
  - c. The Commission provides opportunities for public comment on all standards pro- posals, which may include the solicitation of written

comments, on-line standards surveys and public hearings.

- d. The Standards and Criteria Committee ensures that all public comment are re- viewed and considered before formulating recommendations to the Commission on whether to amend or adopt standards proposals.
- e. Eligibility Requirements, Standards and Criteria that are adopted by the Commission are published on the ACAOM web site and included in any addendum or re- vised editions of the *ACAOM Accreditation Manual: Structure, Scope, Eligibility Requirements and Standards*.

## **INFORMATION TECHNOLOGY COMMITTEE CHARTER**

### **A. Purpose**

The purpose of the Information Technology (–ITII) Committee is to consider and provide input on proposals for new IT applications for automating and enhancing the accreditation process, including web- based, software, and other IT systems and provide recommendations to the Commission, as appropriate, on proposals for accreditation IT systems.

### **B. Structure and Membership**

Number. The Standards and Criteria Committee shall consist of three Commissioners appointed by the Commission Chair.

Chair. The Chair of the IT Committee shall be appointed by the Commission Chair.

### **C. Authority/Responsibilities**

The IT Committee provides input on proposed ACAOM technological applications, including databases and web based systems. It also identifies the types of desired data and reports that would facilitate Commission decision-making functions and provide useful, non-confidential accreditation data and statistics to the communities of interest. The Committee also provides input on draft RFPs for new IT applications and develops recommendations to the Commission on the selection of accreditation IT systems vendors.

## APPENDIX C

## **COMMISSIONER CODE OF CONDUCT**

All members of the Commission and all Officers shall exercise the utmost good faith in all transactions affecting their duties to ACAOM and its property. In their work with and on behalf of the Commission, they shall be held to a strict rule of honest and fair dealing between themselves, the Commission and the communities of interest ACAOM serves.

Commissioners shall adhere to the following specific requirements.

1. Commissioners will determine, support and ensure adherence to ACAOM's mission, establish Commission policies, procedures and standards, and ensure that the Commission has adequate human and financial resources to fulfill its mission. Commissioners will actively monitor ACAOM's financial and programmatic performance. Commissioners will avoid any actions in the performance of their duties as Commissioners that a reasonable and ordinarily prudent Commissioner would believe is not in the Commission's best interests.
2. Commissioners will actively participate in the Commission's internal processes for evaluating the effectiveness of its own performance and the overall effectiveness of the Commission's administration.
3. Commissioners are organizational overseers and not managers; they delegate management and administrative responsibility to ACAOM's staff under the direction of the Executive Director. Commissioners shall adhere to the principle that the Commission itself establishes ACAOM policy and provides general oversight over ACAOM's resources and success in achieving its mission, while ACAOM administrative staff implements the policy decisions and directives determined by the Commission. Commissioners will respect and preserve the proper separation between administrative management and institutional governance. Individual Commissioners who have administrative issues or needs other than those directly connected with matters that have been directly delegated to them (e.g., serving on an ACAOM committee staffed by a particular employee) will communicate and discuss those issues or needs with the Commission Chair, who will discuss the matter with the Executive Director, rather than directing ACAOM employees to take certain administrative actions.
4. Commissioners will perform all work assigned to them in a timely manner, including Committee and school review responsibilities. Should any Commissioner be unable to perform such functions in a timely manner, they will promptly advise the Executive Director and Commission Chair.
5. Commissioners will preserve and protect the confidentiality of all information entrusted to them by the Commission and its applicant, candidate and accredited

programs. Commissioners shall not disclose any confidential or sensitive information they receive, either while in service or after service on the Commission. All discussions conducted in the Commission's executive session meetings must be considered confidential.

6. Commissioners shall avoid actual or apparent conflicts of interest. The following articulates the specific procedures governing conflicts of interest with which Commissioners shall adhere.

- a. Any duality of interest or possible conflict of interest on the part of any Commissioner must be disclosed to the other members of the Commission and made a matter of record when the interest becomes a matter of action by the Commission, by a committee or task force of the Commission or by any operating governance structure of the Commission to which that Commissioner or Officer serves as liaison. Where, in the sole judgment of the Commissioner, the situation involves sensitive or confidential information, disclosure may be limited initially to the Chair of the Commission who will then determine whether further disclosure is required.
- b. Any Officer or Commissioner having a duality of interest or possible conflict of interest on any matter may not vote or use his or her personal influence on the matter, and he/she should not be counted in determining the quorum for the Commission or Committee or task force of the Commission, even where permitted by law. Where, in the judgment of the Chair, the matter before the Commission involves confidential information pertinent to the operations of the Commission, the Commissioner having a duality of interest or possible conflict of interest will be asked to recuse him/herself from the discussions and action on the matter. The minutes of that meeting should reflect that a disclosure was made, recusal (if applicable), the abstention from voting, and the quorum situation.
- c. The foregoing requirements should not be construed as preventing the Commissioner or Officer from briefly stating his or her position in the matter, nor from answering pertinent questions of other Commissioners since his or her knowledge may be of great assistance. Further, these requirements are to be construed as consistent with the existing –Policy Statement on Conflict of Interest published in the *Accreditation Handbook* governing conflicts of interest with educational institutions being reviewed by the Commission. Where a potential conflict arises between these policies, the Policy Statement on Conflict of Interest governing the review of educational institutions shall be controlling.

7. Commissioners are entrusted with certain information, tools and resources that are expected to advance ACAOM's mission, objectives and legitimate interests. Commissioners shall not use such information, tools or resources to identify or exploit opportunities for

personal gain or for the benefit of individuals or entities external to the Commission.

8. Commissioners will refrain from accepting any gifts, including money, tangible property, favors or services that might be reasonably perceived to influence him/her in the discharge of his or her duties to the Commission. Ambiguities on the part of Commissioners as to whether they should accept a gift, service gratuity, etc., shall be resolved by declining the offer.

9. Commissioners shall ensure that all Commission policies and decisions in carrying out its mission are consistent with relevant legal requirements.

10. When Commissioners are acting in their individual capacities, Commissioners shall refrain from any actions or public statements that could be reasonably perceived to be made on the Commission's behalf.

11. The news media are among the channels for communicating information to ACAOM's communities of interest. While the Commission acknowledges the media's right to obtain information about ACAOM through appropriate channels, Commissioners and ex-Commissioners individually will not respond to media inquiries relative to ACAOM, but will refer such inquiries to the Executive Director or Commission Chair as authorized spokespersons.

12. Any Commissioner who knows or believes that another Commissioner may have violated this Code shall report the possible violation to the Commission Chair and Executive Director.

### **Commissioner Acknowledgment**

I \_\_\_\_\_, have read, understand and acknowledge the principles and standards contained in the Commissioner Code of Conduct. I agree to adhere to, and comply with, such principles and standards.

I also understand that breaches of this Code constitute grounds for removal as a Commissioner.

Please Sign Here: \_\_\_\_\_

Print Name Here: \_\_\_\_\_

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

## **Conflict and Duality of Interest Disclosure Form**

### **I. General Principles:**

#### **Conflict of Interest:**

A conflict or duality of interest may exist where Commissioners have material interests outside ACAOM that could influence them, or could be perceived as influencing them to act contrary to the best interests of the Commission and/or for their own personal benefit or that of a family member, business associate or another organization or entity with which the Commissioner has some affiliation. Often, a relevant duality of interest is financial, such as when an individual has an employment relationship, a stock ownership interest, or a consultative or advisory arrangement, or receives a grant or stipend. In some situations, a conflict may exist even though the conflict does not arise out of financial considerations, such as serving in the governance of another organization or having a prior relationship with a particular school, individual or other entity.

#### **Disclosure Statement:**

A key element in monitoring relevant dualities of interests and in avoiding potential conflicts of interest is a system in which those serving the Commission disclose those interests. By disclosing such interests to the Commission, the Commission can determine if a duality of interest is relevant, and can determine the steps needed to minimize the likelihood that a conflict will arise.

#### **Types of Dual Interests that Should be Reported:**

The following relationships must be disclosed to the Commission:

1. Employment. The name and nature of all current employers must be disclosed.
2. Serving in the governance of, or any fiduciary relationship with, another organization or entity related to the field of Oriental medicine, or other health-related discipline or profession.
3. Membership on a scientific advisory panel or other standing scientific/medically related committees of another organization.
4. Stock Ownership. Shares of stock directly owned or controlled, including those owned or controlled by an immediate family member -- particularly for stock in corporations/entities related to the field of Oriental medicine.
5. All consultative or advisory arrangements – particularly with individuals and/or entities related to Oriental medicine.
6. Grants/research support. Grants or research support from a company/organization whose products or services are related to a medical profession, particularly with respect to acupuncture or Oriental medicine.

If relevant conflicts or dualities of interest exist for immediate family members they, too, should be disclosed.

This list is not exhaustive since all categories, conditions or circumstances that might present a potential conflict or duality of interest cannot be listed. A reasonable test to decide on what other matters to disclose is to ask whether any particular affiliation or interest could cause embarrassment or other harm to the Commission, to the individual or institutions involved, or lead to questions about the individual's motives, if such affiliation or interest were publicly made known.

## **II. Disclosures:**

### **Part A.**

I have read the Conflict of Interest guidelines for ACAOM Commissioners and the contents of this form and understand and support their intent. To the best of my knowledge, I do \_\_\_\_, do not \_\_\_\_ have a relevant duality or conflict of interest in serving the Commission. (See Part B of this document)

I agree that if in the course of my service to the Commission I am involved in a situation or activity in which I have an actual duality or conflict of interest, or the potential for the perception of such exists, I will fully adhere to the Conflict of Interest guidelines for ACAOM Commissioners.

I further agree that if any duality or conflict of interest arises which has not been reported previously, I will immediately notify the Commission in writing.

Name (Please Print): \_\_\_\_\_

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

**Part B**

(To be completed if the respondent indicates that he/she has a relevant conflict or duality of interest)

Affiliation/Financial Interest (Check each area that applies):

- 1. Employment \_\_\_
- 2. Membership in Governance of, or Fiduciary Relationship with, another Organization \_\_\_\_\_
- 3. Membership on scientific/medically-related advisory panels/committees \_
- 4. Honoraria/consulting \_\_\_
- 5. Grants/Research Support \_
- 6. Other \_\_\_\_\_

For each item checked, on a separate sheet(s) of paper, please list the third-party organization(s) and sufficient information of the affiliation/interest that will enable the Commission to make informed decisions relative to potential conflicts of interest. The information you provide should include: 1. the nature of the activity which is a relevant potential duality or conflict of interest; 2. the type of financial or other relationship, if any, between you and any third parties involved; 3. a description of the business or purpose of such third parties.

## APPENDIX D

# Loyalty and Conflicts of Interest

## What Are the Duties of Care and Loyalty?

A trade or professional association is typically a nonprofit, tax-exempt membership organization that conducts its affairs through a governance structure of association leaders. The governance structure is usually composed of boards, committees, divisions, sections, task forces, and other groups of elected or appointed volunteers who are responsible for making, recommending, or approving association policy and procedure throughout the organization or at least a segment of the organization. Employed staff of the association assist in these endeavors and then are responsible for implementing the association's policies and procedures. All of the association's volunteers, and all of its employees, have legal responsibilities to the association.

Those in positions of responsibility and authority in the governance structure of the association, both volunteers who serve without compensation and employed staff, have a "fiduciary duty"—including duties of both "care" and "loyalty"—to the organization. In simple terms, this means that they are required to act reasonably and in the best interests of the association, to avoid negligence or fraud, and to avoid conflicts of interest. In the event that the duties of care and/or loyalty are breached, the person breaching the duty is potentially liable to the association for any damages caused to the association as a result of the breach. This fiduciary duty is a duty to the association as a whole. Even those who only serve a particular committee, task force, division, or other segment of the association owe the fiduciary obligation to the organization.

### Who Is at Risk?

As noted, all volunteers who play any role in the governance of the association or any of its segments, and all employed staff, owe duties of care and loyalty to the association and are potentially liable to the association should they fail to act consistently with those duties.

### What Legal Principles Govern the Duties of Care and Loyalty?

1. **The duty to act in the best interests of the Association.** This duty is very broad, requiring volunteers and employees to exercise ordinary and reasonable care in the performance of their duties, exhibiting honesty and good faith. Thus, an association volunteer or employee has the duty to exercise due care when acting on behalf of the association, to attempt to avoid generating legal liability for the association, and to attempt to further the association's interests rather than the individual's own interests or the interests of any other party. The duty also imposes an obligation to protect any confidential information obtained while serving

in the fiduciary role with the association. (See, Chapter 2, "Respecting Confidentiality.")

2. **The duty to avoid conflicts of interest.** The duty of loyalty encompasses a duty to avoid conflicts of interest and to provide undivided allegiance to the association's mission. A conflict may exist when a volunteer or employee of the association participates in the deliberation and resolution of an issue important to the association while the individual, at the same time, has other professional, business, or volunteer responsibilities outside of the association that could predispose or bias the individual one way or another regarding the issue. In these situations, it is typically *not* enough for the individual to be aware of the conflict and to attempt to act in the association's best interest despite the conflict. On the contrary, for many conflicts, full disclosure to the organization and refraining from participation in the organization's deliberation and resolution of the issue (i.e., recusal) are required to remedy the conflict. For serious, visible, continuing, or pervasive conflicts, withdrawal from the volunteer or employed position, or from the outside conflicting responsibility, may be required. It is important to be sensitive to and to avoid *apparent* conflicts of interest as well as actual conflicts.

In the context of an association's self-regulation programs (i.e., professional or business ethics enforcement, professional certification or academic accreditation, product standards and certification, and similar programs), the duty to avoid conflicts of interest also mandates that all individuals acting on behalf of the association not have conflicts with respect to the interests of the persons, products, or entities that are the subjects of the particular activities or proceedings in which the individuals are involved. Thus, for example, a volunteer or staff member of an association committee considering certification of a particular entity's services must not participate in consideration, deliberation, or resolution of the matter if the person has relationships or interests that (a) give the person an economic stake in the outcome, (b) enmesh the person with any party or witness in any way, or (c) afford the person prior knowledge about the matter that causes the person to prejudge its appropriate outcome. No volunteer or employee should serve in the same matter in both an investigatory and an adjudicatory role.

3. **Corporate Opportunities Doctrine.** The duty of loyalty specifically prohibits competition by an association volunteer or employee with the association itself. Those individuals may generally engage in the same "line of business" or areas of endeavor as the association, provided it is done in good faith and without injury to the association. One form of competition that is not permitted, however, is appropriating "corporate opportunities." A corporate opportunity is a business prospect, idea, or investment that is related to the activities or programs of the association and that the individual knows, or should know, would be in the best interests of the association to accept or pursue. An association's volunteer or employed representatives may take advantage of such a corporate opportunity independently of the association only after it has been offered to, and rejected by, the association.

## Hypothetical Scenarios Concerning Fiduciary Duties

The following scenarios are fictional. They are designed to illustrate the nature of legal risks faced by association volunteers and employees in the area of fiduciary duties. Any resemblance to actual persons or to institutions or entities is completely unintentional.

### *Example 1: Negligently Damaging the Interests of the Association*

A technical committee of a national association of manufacturers is divided into subcommittees that operate state-by-state -to encourage governments to adopt acceptable environmental regulations applicable to the manufacturers. The chair of the committee learns that members of the subcommittee for the State of Amsterdam have agreed that they will simultaneously raise prices if the State adopts particular unfavorable environmental regulations. Although the chair knows that this conduct would very likely violate the antitrust laws and could potentially implicate the association and impose substantial liability upon it, the chair neither attempts to discourage the activity nor notifies the association's executive staff or legal counsel. The scheme is uncovered by the government, which conducts an investigation and adjudication including the association as a target; ultimately, the association pays a substantial fine and pays six-figure defense costs. The association learns that the chair of its technical committee had knowledge of the scheme in advance and failed to act. The chair could be held liable by the association for its fines paid to the government and for its defense costs.

All volunteers and employees have a duty to act reasonably in the association's best interests. If one has reason to believe that the association's interests are in jeopardy, one must notify appropriate personnel promptly and take whatever additional steps are suitable to avoid the liability for the association.

### *Example 2: Engaging in Self-Dealing*

A member of the governing board of a state professional society owns a substantial interest in a small, emerging computer software company but is not actively involved in its management. Without disclosing this relationship with the company, the individual suggests to the association's chief employed officer and chief financial officer that they consider this company as the vendor for a large software purchase contemplated by the association. When the matter comes to the Board for a choice among several competing bidders for the contract, the member argues strenuously and successfully that the contract should go to this company, still not disclosing her ownership interest in the company.

The board member's failure to disclose a business interest and to withdraw from the association's consideration of the matter is an obvious violation of the members' fiduciary obligation. It could subject the person to liability to the association, to its members or to its creditors.

Anyone with a personal stake in an association decision should disclose that interest and recuse oneself from deliberation and decision on the matter.

### *Example 3: Acting Despite a Personal Relationship That Creates a Conflict*

A member of a national trade association is assigned to serve on a three-member

business code of ethics hearing panel that is reviewing a complaint of deceptive advertising against a corporate member. After receiving the materials on the complaint, the member realizes that a distant relative is the complaining party in the matter. The member considers recusal--- withdrawing from the matter---but decides that it is unlikely that anyone will learn of the relationship with the complainant and believes that it will not affect objective decision making. After a conference with the other two panelists, the member concludes that there has been an ethics code violation and votes to drop the company from membership. The company later "learns of the relationship and successfully sues both the panelist and the association. The association is advised by legal counsel that it has a strong claim against the member on the panel for breach of the duties of loyalty and care, but, convinced of the panelist's good faith, declines to sue.

Again, all doubts concerning conflicts should be resolved in favor of full disclosure. Often recusal will be advisable as well.

### **How Does One Minimize Risk to Oneself and to the Association?**

1. Place the association's interests first in dealings on the association's behalf. Be alert to possible opportunities and risks, and promptly inform appropriate personnel concerning those opportunities or risks.
2. Be alert to possible conflicts of interest and to circumstances that could create even the appearance of conflict of interest, and at a minimum disclose those conflicts before taking part in any deliberations or decisions on subjects where conflicts or possible conflicts exist.
3. Be aware that recusal may be appropriate where an actual or apparent conflict of interest exists.
4. Preserve the confidentiality of information acquired in one's capacity as a volunteer or employee of an association wherever it appears that the information is proprietary to the association.
  5. Do not appropriate corporate opportunities available to the association.
6. Adoption of a policy governing the conduct of governance volunteers and staff relative to addressing conflicts of interest may help avoid problems in this area. A sample conflicts of interest policy is provided in Appendix A.

## **Respecting Confidentiality**

### **What Is the Obligation to Respect the Confidentiality of Information?**

Association volunteers and employees are occasionally required to have access to confidential information or data. The need for confidentiality may arise because confidentiality is in the best interests of the association or because disclosure of information or data could injure individuals or organizations. In some cases, confidentiality is required by law. In others, disclosure could risk liability for defamation. (See, Chapter 6, –Defamation.)

Examples of confidential information or data maintained and used by associations include:

- information generated by confidential self-regulatory processes such as standards setting, certification and accreditation, or business or professional code enforcement;
- opinions and other privileged information received from inside or outside legal counsel or other consultants;
- certain kinds of tax information and financial statistics;
- employment and compensation information or data that will be unduly invasive of personal privacy; and
- trade secrets or confidential commercial information generated through the business endeavors of the association or shared with the association by outside business concerns on the condition of maintenance of confidentiality.

As part of the fiduciary obligation that they owe to the association (See, Chapter 1, "Loyalty and Conflicts of Interest"), volunteers and employees are required to maintain in confidence all information and data that the organization considers and treats as confidential. They are not permitted to disregard or overrule the association's determinations of the need for confidentiality. The obligation to maintain confidentiality continues indefinitely.

### **Who Is at Risk?**

Any association volunteer or employee who discloses confidential information risks imposing liability on the association because the association, in certain contexts, has a legal duty to maintain confidentiality. Even where the association has no such duty, the release of confidential information may harm the association, and the individual who disclosed that information may therefore be liable to the association for breach of the individual's fiduciary obligations.

### **What Legal Principles Govern the Duty to Respect Confidentiality?**

The duty to maintain confidentiality extends to materials and information designated as confidential, and also to information that the volunteer or employee should know the association would not wish to have revealed to others. The duty prohibits these individuals from purposefully disclosing confidential information and requires them to act with due care to avoid the inadvertent disclosure of confidential information.

## **Information Designated as Confidential**

Information may be designated as confidential in various ways. Documents may be marked confidential, such as documents that contain attorney-client communications or an attorney's legal opinions or factual research (called "attorney work product"). Information may be transmitted in "executive session" or in confidential minutes of executive sessions of meetings. Alternatively, categories of information, such as self-regulation program proceedings and records, may be designated as confidential in the bylaws or other rules of the association.

Where legitimate reasons exist for confidentiality, association volunteers and employees should formally designate information as confidential. This privilege should not be overused, however. An association requires a high level of openness to function properly and with due regard for the interests of its members. Before executive session is invoked, a strong reason for confidentiality should be identified and agreed upon. Generally, the reasons will be among those set forth in the first paragraph of this chapter. Executive session may *not* appropriately be invoked to exclude a member of the governing board or executive staff, or a designee of the member, from *any* association meeting.

There may, however, be extraordinary circumstances in which legal or procedural requirements mandate that such an individual be absent. For example, debate on code enforcement against a volunteer member by a committee or board on which the member sits or debate on contract negotiations with a staff member by a committee or board that the staff member administers would constitute such circumstances. (See, Chapter 1, "Loyalty and Conflicts of Interest.") Where a matter is required to be kept confidential, it may not be disclosed within or outside of the association, except within the association to the extent necessary to accomplish the association's legitimate objectives.

## **Information Not Designated as Confidential**

The duty of confidentiality extends to information *not* designated as confidential as well, wherever the individual should know that the association would not wish to have the information released to a third party.

## **Hypothetical Confidentiality Scenarios**

The following scenarios are fictional. They are designed solely to illustrate the nature of legal risks faced by volunteers and employees of associations.

### *Example 1: Disclosure of Attorney-Client Information*

During executive session at a professional association's Board of Directors meeting, outside legal counsel informs the Board, based on confidential information provided to counsel, that the association faces serious legal risks in connection with its recent enforcement of certain features of the association's code of ethics. Later, one volunteer member of the Board relates this legal opinion to colleagues at the professional practice where the member works. Litigation ensues over the code enforcement. During the litigation, the plaintiff's attorney happens to learn about the

disclosure of legal counsel's opinion beyond the Board of Directors and seeks to force the association to reveal the substance of the opinion. The court finds that the disclosure by the Board member has waived the attorney-client privilege, orders the association to disclose it, and permits it to be used against the association in the litigation.

As a result, the association decides that it must enter into a very unfavorable settlement, costing the association a substantial sum.

Attorney-client information should be protected to the utmost and revealed only to those persons specifically authorized to learn of it by counsel.

*Example 2: Disclosure of Information Pertaining to Employment and Compensation of Association Employees*

An association volunteer leader serves on a committee responsible for monitoring the association's staff compensation structure. After completing the term for this position in the association, the individual becomes a volunteer leader in a second association. Using knowledge of the compensation paid to the chief executive of the first association, the volunteer spearheads a successful effort to recruit that chief executive to the second association, at a slightly higher salary. The first association sues the former volunteer leader, proves that it lost its chief executive due to the volunteer's abuse of confidential information obtained while the volunteer had fiduciary duties to the association, and recovers from the volunteer a substantial award to compensate it for its cost of replacing the chief executive.

*Example 3: Inadvertent Disclosure of Confidential Information*

An association employee working on the association's product certification program takes files home to work on them. The employee leaves a briefcase containing the files on the subway, where it is recovered by a reporter for a newspaper. The reporter reviews the files and learns from them that a well-known new product will not be certified by the association because it may be unsafe. The paper runs the story, and the company that makes the product sues the association for negligently releasing confidential information to the public. The association settles out of court for a substantial amount. The employee resigns under pressure after the association considers, but rejects, the possibility of seeking reimbursement from the employee.

Great care must be taken to safeguard the confidentiality of sensitive materials.

### **How Does One Minimize Risk to the Association and to Oneself?**

1. Carefully preserve the confidentiality of any information that comes into one's possession and that is designated by the association as confidential. Confidential information should not be shared with any unauthorized person.
2. Before disclosing to anyone association information obtained through volunteer or employment responsibilities for the association where the information is *not* formally designated as confidential, consider whether the information is such that it would be in the association's interests to preserve confidentiality. If confidentiality may be in the association's best interests, or if the question is close, refrain from disclosure.
3. Do not disclose to third parties, or to persons within the association who do not need to know, information provided by the association to its attorneys in confidence or the

substance of legal opinions provided to the association by its attorneys.

4. When entrusted with confidential records or information, take great care to avoid inadvertent disclosure.

# Apparent Authority

## Limitations on the Authority of Volunteers and Employees

In 1982, the U.S. Supreme Court determined that an association is liable for antitrust violations arising from the activities of its volunteers or employees, even when the association does not know about, approve of, or benefit from those activities, as long as the volunteers or employees appear to outsiders to be acting with the association's approval (i.e., with its "apparent authority").

The famous decision is *American Society of Mechanical Engineers, Inc. v. Hydrolevel Corp.* In it, the Supreme Court made clear that associations are to be held strictly liable for the activities of volunteers and of employees that have even the apparent authority of the associations. The imposition of liability is intended as a warning to associations that they must adopt and follow procedures to ensure that antitrust violations, even unauthorized ones, do not occur.

Many associations have promulgated procedures, or incorporated procedures into other governing documents, to provide guidance for volunteers and employees on the limits of their authority to act on behalf of the associations. Sample apparent authority guidelines are included in this book as Appendix B.

## Who Is at Risk?

The Supreme Court's apparent authority doctrine has applicability to all volunteers and employees of an association, as well as bodies or entities integral to the association's governance structure (councils, boards, divisions, committees, subcommittees, ad hoc groups, task forces, work groups, etc.). These include all leaders and staff of an association. State and local chapters or affiliates of larger federations of associations can also be affected by the apparent authority doctrine.

## What Legal Principles Govern the Law of Apparent Authority?

Even if an association volunteer or employee does not *in fact* have authority to act in a particular manner on behalf of the association, the law will nevertheless hold the association liable if third parties reasonably *believe* that the volunteer or employee had authority. The law thus requires an association to take reasonable steps to ensure that the scope of its agents' authority is clear to third parties.

## Hypothetical Scenarios Concerning Apparent Authority

The following scenarios are fictional. They are designed solely to illustrate the nature of legal risks faced by association volunteers and employees.

### *Example 1: Boards and Committees*

A medical association establishes a committee to review pronouncements on health care issues made by other organizations, both governmental and private, and to publish abstracts of those pronouncements for the information of the society's membership. The mission statement for the committee makes clear that the committee is to review and possibly abstract pro

nouncements of other organizations; not to issue such pronouncements itself. To facilitate the committee's dealings with other organizations, the association permits the committee to print stationery bearing the committee's name and the name of its members and chair. The chair of the committee has championed the use of a particular diagnostic drug, called Formula A, which is in competition for recognition by the profession with a newer drug, called Formula B. The chair receives an inquiry from Orange Star Insurance Co. about Formula B. The chair directs a lower level association staff member to respond on committee letterhead that Formula B "has been deemed potentially unsafe and ineffective, as well as unnecessarily costly. II Orange Star begins refusing to reimburse for the use of Formula B, and several other insurers follow suit.

The manufacturers of Formula B sue the association and win a substantial antitrust judgment against it.

An association must avoid permitting circumstances to exist in which an improperly motivated member could commit violations of law in the association's name. Following common sense and the sample apparent authority guidelines in Appendix B will help avoid such problems for an association.

*Example 2: Conflict of Interest*

A trade association's Task Force for Approval of Testing Companies has as its mission re- viewing applications from local testing companies and approving those whose composition and procedures render them fit, in the view of the Task Force, to provide valid testing of the safety of the industry's products for the benefit of commercial users of the products. Approval by the Task Force confers a substantial advantage in attracting clientele for the local testing companies. Member A of the association's Task Force is from the tiny state of Old Amsterdam and in fact operates a testing company generally recognized as a model for the nation. Member B is from the neighboring state of New Rotterdam and also operates a well-recognized testing company in that state. The Task Force divides its work among subcommittees and issues letterhead stationery to each of its members upon which to issue approval decisions. It specifically directs its members to recuse themselves in any case presenting a conflict of interest. Members A and B serve on a two-person subcommittee.

Member A learns that a new testing company has been formed, seeking to do business in both Old Amsterdam and New Rotterdam. Member A ensures that the application is referred to her subcommittee. Members A and B then conspire to reject the application, despite knowing that they had a direct financial conflict of interest, and despite the fact that the application would likely have been approved on the basis of a neutral review. The new testing company thereafter fails to attract a sufficient clientele and goes out of business. Later, the investors in the defunct testing company, learning that Members A and B composed their own subcommittee and that they had a conflict of interest, sue the trade association for a violation of their right to due process and for an antitrust conspiracy. They recover a substantial sum from the association. The association could hold Members A and B legally accountable to the association for breach of their duties of care and loyalty.

An adequate system of checks and balances must be instituted before an association takes any action that could cause adverse impact on members or third persons. Centralized control of stationery and of authority to act are very important.

## How Is Risk Reduced for an Association and Its Leadership?

- 1. Standards, guidelines, and credentials.** Extreme care is necessary in the development of standards, guidelines, or credentials that affect economic interests or competition. When such documents might have effects upon prices or fees charged by members, scope of practice or modes of practice for professionals, compensation or reimbursement, sales of products or professional engagements, assignment of tasks or titles, or other economic or competitive factors, the anti-trust laws are implicated. (See, Chapters. 10, "Guidelines, Advisories, Models, or Recommendations," 11, "Professional Specialization, Certification, Recognition, and Listing," and 12, "Product Standards, Testing, and Certification.") Standards, guidelines, and credentials must state who is authorized to interpret them, such as special committees or the governing board. Formal interpretations must be issued in writing. Extreme care must be used in formulating any statements regarding standards, guidelines, or credentials that are expected to be relied upon by association members or by others, whether or not there are specific enforcement mechanisms related to the standards, guidelines, or credentials.

If the standards, guidelines, or credentials do include enforcement mechanisms, there must be provisions to ensure that due process is afforded to those affected including the opportunity for appeal. (See, Chapters 8, "Business and Professional Ethics," and 9, "Accreditation and Approval.")
- 2. Correspondence and statements.** Official correspondence and statements, whether issued explicitly or implicitly by or on behalf of an association, must be approved in advance.

Other correspondence or statements must not be on the association's letterhead, and, if they could possibly be interpreted as issued by or on behalf of the association, a disclaimer indicating that they are not made by or on behalf of the association may be warranted.
- 3. Meetings.** All meetings of an association must be scheduled in advance if practicable, have agendas circulated to attendees in advance, be open if practicable, and have written minutes prepared and circulated to attendees.
- 4. Adoption of apparent authority guidelines.** Adoption of such guidelines (see sample guidelines provided in Appendix B) may assist association staff and volunteers in minimizing risk pertaining to apparent authority.

# **Antitrust Generally**

## **What Is Antitrust Law?**

The federal antitrust laws (principally the Sherman and Clayton Acts) and the trade regulation statutes (principally the Federal Trade Commission Act) are intended to promote open and fair competition in all commercial endeavors. State antitrust laws generally follow the federal pattern and have the same objectives. Since the 1970s, it has been clear that the federal anti-trust laws apply with full force to the learned professions, including architecture, law, engineering, medicine, dentistry, and psychology.

Trade and professional associations are organizations of members, many of whom compete with one another. Therefore, virtually any action that such a trade or professional association takes, and particularly actions that involve the attempted private regulation of a business or profession, may raise antitrust issues. Many of these actions are perfectly lawful. There is a broad range of lawful activities for associations to take relating to standard setting, certification of products or professionals, dispute resolution, and other forms of business or professional self-regulation. Great care must be taken, however, to ensure that an association's activities do not fall within the special unlawful categories established by the courts as "anticompetitive." The courts consider an action to be anticompetitive when, on balance, it raises prices or fees or lowers the quantity or quality of available goods or services. Prices and fees, in fact, are a particularly sensitive area. Any action of an association that directly raises, lowers, or stabilizes prices or fees has the highest risk of antitrust scrutiny and the greatest potential penalties. Even action that may only indirectly affect prices and fees) such as association-promulgated arrangements on terms and condition of sale, warranties, limitations on the extent or type of advertising, and hours of operation, can also be expected to attract antitrust scrutiny of the association.

## **Who Is at Risk?**

Violations of the antitrust laws may be prosecuted by the federal government, either civilly or criminally, and by injured private persons or entities. Courts may award injunctive relief against violators and may require violators to pay victims three times the financial injury actually suffered' (called "treble damages"), plus their attorneys' fees.

An association and its individual "Volunteers and employees who cause the association to violate the antitrust laws are potentially at legal risk. Antitrust is one area in which there are many precedents for both civil and criminal action brought not only against association entities but also against association members and staff when there is evidence that they participated personally in antitrust violation. Specific areas of concern for associations include self-regulation programs (Part II of this volume), professional practice programs (Part III), and business price and cost programs (Part IV). Separate chapters of this book address the application of antitrust principles to these specific areas of concern and provide instructive hypothetical scenarios as well as specific guidance on ways to avoid exposure to antitrust liability.

## **What Legal Principles Govern Antitrust Enforcement?**

Violations of the antitrust laws fall into two basic categories: (a) actions that are

unlawful without regard to their actual impact on competition (called *per se* violations) and (b) actions that are not necessarily unlawful, but may be so, depending on their actual impact on competitive conditions (called *Rule of Reason* violations).

Actions that are likely *per se* unlawful include the following:

- agreements fixing prices or fees or setting floors or ceilings on prices or fees;
- agreements to boycott competitors, suppliers, third-party payers, or customers/patients clients;
- agreements among competitors dividing or allocating markets; and
- agreements coerced by a provider with a dominant market position tying the purchase or provision of one product or service to the purchase or provision of another product or service.

Any other agreement-including resolutions of, or other measures taken by) an association of competitors---may violate the antitrust laws under a Rule of Reason analysis if its effect is generally to raise prices or fees or to reduce the quality or quantity of available goods or services.

*It is very important to understand that the antitrust laws can be violated by mutual understandings or other informal arrangements falling far short of a formal contract or written resolution.* Individuals may violate the antitrust laws, or implicate their associations in anti-trust violations, by using the associations to facilitate their undertaking anticompetitive arrangements among themselves, even without invoking any of the formal mechanisms of the association. Indeed, an association may be held responsible for anticompetitive conduct by its volunteers or employees who only appear to be acting in the name of the association but, in fact, violate its policies. (See chapter 3, "Apparent Authority.")

### **How Does One Minimize Antitrust Risk for the Association and for Oneself?**

Users of this book should refer to the specific sections that address particular areas of association policies and programs that may pose antitrust risks. Generally, however, the following guidelines should be observed:

1. Avoid agreements, resolutions, or other actions-formal or informal, written or unwritten- that relate to commercial prices or professional fees.
2. Avoid agreements, resolutions, or other actions---formal or informal, written or unwritten---that restrict nondeceptive advertising.
3. Avoid agreements, resolutions, or other actions-formal or informal, written or unwritten---that constitute a boycott (i.e., a collective refusal to deal), except to the extent that the boycott is motivated purely by political (i.e., noneconomic) concerns. Legal counsel should be sought with respect to any proposed action that could be characterized as a boycott, whatever its motivation.
4. Avoid agreements, resolutions, or other actions---formal or informal, written or unwritten---that could be construed as representing a division or allocation of markets among competing economic actors.
5. Avoid agreements, resolutions, or other actions---formal or informal, written or unwritten---that tie the provision or purchase of one good or service to the provision or purchase of another good or service.
6. Avoid any other action that appears likely to have the effect of raising prices or fees or reducing the quantity or quality of goods or services that are available.
7. Adoption of an association antitrust compliance policy may assist association staff and volunteers in Understanding the need to comply with the antitrust laws. A sample antitrust compliance policy is provided in Appendix C.

# Defamation

## What Is Defamation?

*Defamation* is the oral utterance ("slander") or written publication ("libel") of false facts or false implied facts damaging to an individual's, entity's, or product's reputation. Typically, defamation may be committed even by those who believe that they are communicating the truth. The defamed individual may sue anyone who publishes, prints, or repeats the defamation and, depending on the circumstances, may recover from the speaker sums of money to compensate for the harm to reputation and to "punish" the speaker as well. In some circumstances, "privileges" apply that may protect the speaker from legal liability.

## Who Is at Risk?

Publishing and other communications activities are among the major endeavors of most associations regardless of size or kind; associations therefore face the acute and persistent legal risk of defamation. Those responsible at associations for publishing magazines, scientific or professional journals, technical manuals, periodicals, newspapers, books, newsletters, brochures, reports, pamphlets, audiovisual materials, or computer databases and information sources might make defamatory statements themselves or permit others to do so. In fact, any one who makes an oral or written communication concerning an identifiable individual, entity, product, or service can potentially commit defamation. Defamation could therefore be readily committed by those acting on behalf of an association as volunteers or employees and engaged in disciplinary or investigatory processes such as ethics enforcement, standards and certification for products or professionals, accreditation of graduate or continuing education, promulgating lists of credentialed providers of products or services, making personnel decisions, and so on.

## What Are the Basic Principles of the Law of Defamation?

Defamation consists of the communication to a third party of a false, derogatory statement concerning a person, entity, product) or service, unless the communicator was privileged in making the communication.

Therefore, to give rise to liability:

1. A statement must be *about a particular, living individual or existing entity, or a product or service line of a particular entity*. The reference need not be by name; a statement may be defamatory if the listener or reader of the communication understands it to refer to a particular individual, entity, product, or service.
2. A statement must be *actually communicated to a third person* (in other words, to someone other than the speaker). Anyone who republishes (i.e., prints, reprints, repeats, paraphrases, or quotes, even with attribution) is equally responsible with the original speaker.
3. A statement must be *derogatory or damaging to the person's, entity's, product's, or service's reputation*. Accusing someone of dishonesty or other moral deficiency, or of professional or business deficiency, raises particularly significant risks of liability for defamation. Any derogatory statement of fact or implied fact may be defamatory, however.

4. A statement must be *false or misleading*. Truth is an absolute defense to virtually any defamation claim. Generally, the challenger, complainant, or plaintiff (the person about whom the statement was made) bears the burden of proving that the statement was false, at least where the statement is about a "matter of public concern."
5. A statement must not be protected by *privilege*:
  - a. In many or most states, if a speaker takes reasonable precautions to ensure accuracy in every derogatory detail, including making reasonable inquiry, the maker will not be held liable for defamation, even if the speech turns out to be false and defamatory.
  - b. Where the statement concerns a public official or "public figure," the speaker will not be held liable unless the speaker actually knew that the accusations were false or made the statement in "reckless disregard" of its truth or falsity.
  - c. Publication or communication of a derogatory statement within an association, including to members, for "the purpose of promoting a common interest, may be protected by a "qualified privilege." For example, communications among members of an association's governing board regarding actual board business, or deliberations in the context of legitimate enforcement of a business or professional code, are likely to be protected by this "common interest" privilege. Employment recommendations or evaluations, made within or outside the association, enjoy a similar qualified privilege in most states. Where the privilege applies, these statements may give rise to liability only if motivated by spite or ill-will, or if communicated to persons beyond the management group or "need to know" circle.

True but *misleading* derogatory statements about persons, entities, products, or services may as fully generate liability as statements that are outright false.

Note that defamation may also occur in the employer-employee context, particularly where employment references are concerned. For this, and any other questions relating to human resources issues, see chapters 19 and 20 of this book.

## **Hypothetical Defamation Scenarios**

The following scenarios do not refer to actual persons or organizations; their purpose is solely to illustrate the nature of risk faced from defamation actions by associations and their volunteers and employees.

### *Example 1: Publications*

An association's scientific journal publishes an article by a professor (Member 1) at Major State University (MSU). Shortly after publication, the association receives a letter from another MSU faculty member (Member 2). Member 2 claims Member 1's article was substantially plagiarized from Member 2's own recently published work in an obscure journal. Member 2 demands that the association so state in the next issue of the same journal and threatens that if the association does not do so, Member 2 will sue the association for copyright infringement. Very upset by the allegations and risk of liability for infringement, facing an imminent publication deadline, and angered at the apparently unscrupulous conduct of Member 1, the association's journal -editorial staff compares publication dates, ascertains , that Member 2's substantially similar article was in fact published first, and in its next

issue states that Member 1's article had been plagiarized.

Member 1 files a defamation action against the association, and the complaint names all association personnel responsible for the retraction as additional defendants. Member 1 testifies that although published second, the piece was actually written first and was pirated by Member 2. The jury finds that the association's characterization of the article as plagiarized was false and that the association was negligent in failing to ascertain the facts. It enters judgment jointly against the association and its individual employee defendants for a substantial award.

#### *Example 2: Publications*

This scenario is the same as Example 1, except that the association's employees do not react immediately to Member 2's charge of plagiarism. Instead, they consult the association's legal counsel and, under counsel's direction, directly contact Member 1, who is unable to explain the striking similarity of the articles. The association's editorial staff does everything they can think of to confirm or deny the plagiarism charge, short of informing any third parties not aware of the charges about them. They then publish a carefully worded statement, screened by counsel, that sets forth the facts as understood by them.

When Member 1 sues, and testifies as to authorship of the article first, the jury believes the testimony. Thus, it declares that the accusation of plagiarism was false. It enters judgment in favor of the association and the individual defendants anyway, however, because the association had not been negligent. It had instead taken all reasonable steps to ensure the accuracy of its report.

#### *Example 3: Newsletters*

A respected member of a statewide trade association of automobile service companies writes a letter to the editor of the association's newsletter. The letter says that a particular national chain of drive-in auto service firms that has recently begun doing business in the state is consistently employing untrained service professionals. The letter states the writer's opinion that the practice could result in severe safety hazards to motorists. The newsletter reprints the letter.

The chain sues the association, its newsletter staff, and the editorial review committee of volunteers for publishing the letter. The association argues that the letter contained only opinions, not facts, but the court rules otherwise. It finds that the letter to the editor implied the defamatory fact that the automobile service provided by the national chain was substandard and dangerous to motorists. It finds this implied statement of fact to be false, and that the association took no steps to verify its truth or falsity prior to printing the letter. It finds that the chain lost a significant number of customers as a result of the newsletter and awards a substantial sum as damages against the association and the individuals.

The simplest way for the association to have avoided this liability would have been to refrain from publishing the letter. If publishing the letter were important to the association, however, the newsletter staff should have contacted legal counsel *before* publishing the letter, in an attempt to find the means to minimize the association's legal risk (as well as the legal risk to the employees themselves and to the volunteers who performed editorial review for the newsletter). Legal counsel might have suggested that the association require the member to supply credible evidence that

the auto service of the chain was substandard (and to ask the chain to respond to that evidence before publishing the letter). Only if the claims appeared to be accurate after a conscientious investigation should they have been published. Alternatively, legal counsel might have suggested that the member be asked to resubmit the letter in a different form---for example, without identifying the offending chain expressly or by implication, and/or without implying that the service provided was substandard.

*Example 4: Accreditation.*

An educational program located in the State of New Amsterdam offers continuing education courses for specialty-practice health care professionals. The educational program applies for accreditation by a national association of health care professionals engaged in accreditation in this area. The association receives an anonymous letter stating that the applicant educational program routinely fails to provide refunds on a timely basis and grossly overcharges for course materials. The association makes appropriate inquiry of the program, which vigorously disputes the charges but also fails to provide definitive evidence refuting them. Lacking proof, and otherwise satisfied with the program, the association grants accreditation to the program. Subsequently, an employee of the association's accreditation department gives a speech at an association convention in New Amsterdam. The employee is asked a question concerning how the association's department deals with unsubstantiated allegations concerning programs being considered for accreditation. Without identifying the program by name, the employee relates the story of "a New Amsterdam program" that allegedly withheld refunds and over- charged for materials but that was accredited anyway in the absence of proof.

The educational program sues the association and the employee, claiming that the audience correctly identified the program, resulting in serious damage to its business. The court finds the association and the individual employee liable for a substantial amount in damages.

Liability of this nature can be avoided simply by avoiding "examples" based upon actual cases---or by changing the facts, details, and identifying information sufficiently so that *no one* could identify the hypothetical example with any particular program or person. It is wise to state expressly that one is stating a hypothetical example, not based upon any actual case. And when in doubt, answer generally without providing an example at all.

## **How Does One Minimize Risk to the Association and to Individuals from Defamation?**

As suggested by the foregoing examples, any prospective publication or other communication that explicitly or implicitly concerns a particular individual, entity, product, or service raises a potential defamation issue. Whenever the publication or communication has a derogatory meaning, the following steps should be taken *before* issuing the publication or making the communication:

1. Determine whether the statement can simply not be made.
2. Determine whether it is possible to convey the essential information without the derogatory meaning.
3. If derogatory meaning must be conveyed, determine whether it is necessary to identify the individual, entity, product, or service concerned, either implicitly or explicitly. Is it possible to create a hypothetical formulation that will convey the

same information without reflecting explicitly or implicitly on any real person or entity? Great care should be taken to ensure that hypotheticals do not imply facts about actual people, entities, and so on.

4. If derogatory information about a particular, identified or identifiable, subject must be conveyed, ensure that the audience for the communication is as small as possible while remaining consistent with the goals of the communication. If the communication can be limited to the subject in question, this will minimize or eliminate the risk of legal exposure. Restricting the communication to association volunteers and employees sharing a common interest in its subject matter also may somewhat reduce risk.
5. Take all reasonable steps to ensure that every detail of the derogatory information related about an identified or identifiable person, entity, product, or service true and not misleading. Contact the subject directly where reasonably possible. Insist on multiple independent sources, and create a paper record concerning those sources.
6. Information provided by persons with a reason to have personal animosity or ill will toward a subject---or with other reasons (e.g., economic) to wish the subject ill fortune---should be viewed with particular suspicion. Furthermore, individuals within an association who have or might appear to have such feelings toward the subject should not be put in a position to speak about the subject on the association's behalf or to supervise the speech of others concerning the subject.
7. *Most important*, before publishing or releasing a derogatory statement concerning an identified or identifiable person, entity, product, or service, ask legal counsel to review the document, the support for the statements made, and the need to make the statement at all or in its present form.

## Accreditation and Approval

### What Are the Legal Risks from a Program of Accreditation or Approval?

Trade and professional associations alike are increasingly engaging in programs of accreditation or approval of members' educational institutions, manufacturing or service facilities, or other training or business operations. The accrediting or approval functions of an association are intended to benefit the general public, prospective users/ students/ customers/ patients/ clients, and the profession or industry itself. As with other "self-regulation" programs of associations, it is crucial that each accrediting or approval program be conducted using reasonable criteria and following strict procedures to ensure that legal risks are minimized.

In the educational setting, courts have consistently recognized that accreditation of institutions and instructional programs serves useful educational and professional goals. Indeed, courts have noted that the restrictions on access by imposition of educational and training requirements are definitional aspects of the term *profession*. Courts have also granted that promulgation of accreditation criteria, and information concerning which institutions satisfy those criteria, is protected to a significant degree by the First Amendment to the U.S. Constitution. The First Amendment also provides at least limited protection for lobbying efforts designed to obtain official recognition for accreditation criteria or for the accreditation or approval decisions of associations. Although association-sponsored accreditation in the educational context has a longer history than association-sponsored accreditation or approval in other contexts, such as health care facilities or business service operations, nevertheless, the legal precedents and principles already established for academic accreditation can be expected to be applied elsewhere when opportunities arise.

Accreditation and approval activities of associations generally entail three kinds of legal risk:

1. **Antitrust issues.** (See, Chapter 5, "Antitrust Generally.") Unsuccessful applicants for accreditation or approval, or students or other users of unaccredited or unapproved programs, may seek to use the antitrust laws to obtain accreditation or approval, or damages for the program's failure to be accredited or approved. An association could be held liable under those laws if the challenger can demonstrate that accreditation or approval is very important to economic success and that the program's exclusion was the result of unreasonable or invalid criteria or of unfair or inappropriate procedures. As with all antitrust actions, the key factor in an antitrust challenge to an association's accreditation or approval process is whether the association's actions are "anticompetitive" within the meaning of the antitrust laws. In short, did those actions have the effect of raising, lowering, or stabilizing prices (e.g., tuition or other costs of education or prices or fees at noneducational facilities) or of reducing the quantity or quality of products or services available?
2. **Fairness issues.** State common law can be invoked to require that private accreditation or approval be fair. Accreditation or approval criteria and exclusions are evaluated on a case-by-case basis. They are deemed invalid when they are unreasonable, arbitrary or unsupported by the evidence. They may also be set aside if inadequate procedures are employed or if the established procedures of the accrediting or approval body are not followed in a particular case.

3. **Defamation issues.** See chapter 6, "Defamation."

## Who Is at Risk?

As with ethics enforcement and other "self-regulation" by associations, accreditation or approval must be conducted consistent with authority granted in the association's bylaws or other governing documents. Ad hoc, informal, or "rump" approval programs or endeavors carry great potential risk and must be completely avoided.

Even for formally authorized programs, however, liability may be incurred by volunteers or employees carrying out the accreditation or approval processes within an association if those individuals act improperly---such as by acting with improper motives or failing to follow established procedures. It is critical that persons involved in those processes comply with all applicable procedures and strictly observe conflict of interest rules. (See chap. 1, "Loyalty and Conflicts of Interest.")

## What Legal Principles Govern Accreditation and Approval?

1. **Antitrust law.** "Anticompetitive actions," as defined in the federal antitrust laws, are unlawful. (See, Chapter 5, "Antitrust Generally.") Accreditation and approval criteria must not have the purpose or primary effect of raising, lowering, or stabilizing prices or fees, restricting the supply of products or services, or lowering the quality of products or services. Accreditation and approval criteria should be objectively grounded--- that is, based on data or on a respected body of professional, educational, or business opinion developed by recognized experts and linking each particular criterion to more successful achievement of valid quality goals. It is critical to the legality of accreditation and approval criteria that commercial and economic considerations play no role whatsoever in setting or applying them.
2. **Fairness requirements.** Most important is careful establishment and strict observance of rules and procedures for the accrediting or approval program. The law requires that criteria be neither excessively vague nor unduly rigid. Procedures generally must afford the applicant written notice of adverse decisions, stating the reasons for the failure to accredit or approve, placement on probation, or other adverse decision; they must afford the applicant an adequate opportunity to respond to the reasons stated as supporting the adverse decision; and they must afford applicants denied accreditation or approval, or otherwise receiving an adverse determination, such as probation, an appeal to an impartial tribunal. It is also critical that conflicts of interest be strictly avoided by members of association accrediting bodies and appeal panels. (See, Chapter. 1, "Loyalty and Conflicts of Interest," regarding conflicts of interest issues.)

## Hypothetical Scenarios Concerning Accreditation and Approval

The following scenarios are fictional. They are designed solely to illustrate the nature of legal risks faced by associations, as well as their volunteers and employees, from certain forms of legal action in connection with accreditation and approval programs.

### *Example 1: Minimum Tuition Criterion*

A substantial group within the House of Delegates of a national professional association engaged in academic accreditation for postgraduate programs in the profession believes that several universities have set tuition at levels so low that it

threatens the quality of education offered by those institutions. Arguing that monitoring the levels of tuition is simpler than quantifying the many ways in which low tuition can injure the quality of education, the delegates succeed in passing a "Sense of the House" resolution urging the association's Accreditation Board to review tuition levels in determining whether to grant accreditation. In debate on the floor of the House of Delegates, several delegates argue that "cut-rate tuition" is forcing even established programs to hold down tuition increases. The Accreditation Board collects tuition data in connection with its program reviews and denies accreditation to a program with low fees. That program challenges its exclusion under this criterion. The court finds against the association) holding that the Accreditation Board effectively applied a tuition minimum, which constitutes a *per se* violation of the antitrust laws. The association is held liable for a substantial judgment.

An association engaged in academic accreditation or other approval programs should strictly avoid criteria that set prices or violate any of the *per se* categories in the antitrust laws and should avoid political or other processes that attempt to exert *any* influence on fees or prices through an accrediting or approval function. (See chaps. 5, "Antitrust Generally," and 11, "Professional Specialization, Certification, Recognition, and Listing.")

*Example 2: Criteria Unsupported by Data and Conflict of Interest*

Several "innovative" educational programs in a profession deemphasize the use of standard textbooks in the field in favor of courses of self-directed readings worked out by student and professor. Concern arises within the national association responsible for accreditation of educational programs for the profession that these innovative programs are failing to "socialize" their students adequately into the professional community. Three prominent association members---who are themselves authors of principal texts in the field---work behind the scenes and persuade the association's governing body to amend the accreditation criteria to require that a certain number of "generally recognized" textbooks be assigned to every degree candidate by accredited programs. A class action is brought on behalf of all of the nontextbook programs, claiming that the new criterion is unsupported by data or by respected pedagogic opinion to the effect that the textbooks in question produce superior professionals. The lawsuit further charges that the central motivation for the criterion was economic. The court reviews the matter under the Rule of Reason and sides with the challenging programs. The court recognizes that considerable deference is owed to an expert body such as a national association when it sets educational criteria but cites the association's inability to offer any support for the socialization criterion in the literature. The court also expresses concern that major players within the association seeking the criterion change were motivated by economic self-interest. A substantial dollar judgment is entered against the association and the central figures in obtaining the changed criterion.

Before enacting any criterion change in an accreditation program, an association should conduct a careful review to ensure that the change is supportable if challenged in court. A wide array of opinions from the potentially affected community should be solicited, and criteria should be adopted only if data demonstrate that they lead, as a rule, to improved quality of education, or if there is a respected body of professional and academic opinion, that it will lead to an improvement in the quality of education. Persons with a direct financial stake in the adoption of particular criteria should be excluded from the process, or at any rate their bias should be disclosed, and the association should make certain that valid

reasons, not a bias, lie behind the adoption of criteria.

*Example 3: Inappropriate Pressure Outside the Approval Process*

A health care association maintains an Internship Committee, which approves internship programs at specialty treatment facilities of hospitals on an institution-by-institution basis. According to the bylaws of the association, the Committee makes its approval decisions without bias and autonomously from other association bodies. Members of the association's governing board receive information reflecting sexual harassment of interns in Good Health Hospital's approved internship program. The board investigates, and it passes a resolution urging that the approval of the program be withdrawn by the Internship Committee. Numerous members of the association's governing board contact members of the Internship Committee by telephone and by letter. In those calls, the board representatives relate the facts as they know them and urge that the Committee take action. As it happens, the staff of the Internship Committee had received a formal complaint about the sexual harassment at the Good Health Hospital internship program at the very same time that the governing board had learned about it, and the Committee had already initiated an independent investigation. Upon learning about the contacts from board members, the staff of the Committee consults with legal counsel. Legal counsel advises the Internship Committee that the widespread *ex parte* contacts with Committee members raise the level of risk to the association to an unacceptable level. The Internship Committee is forced to drop inquiry into the complaint, and the program at Good Health Hospital retains its approval.

It is very important that contacts with the accreditation or approval program proceed only as mandated in the association's governing documents or other established rules and procedures. Where autonomy is granted to an accrediting or approval body, all other individuals and bodies of the association should refrain from attempting to influence the process.

*Example 4: Following Procedures and Avoiding Evidence Obtained "Outside the Record"*

Pro-Ed is a commercial firm that offers continuing education (CE) for human resources management professionals; it files an application for approval by a national association that approves these programs. The application is thorough and complete, and, from all appearances, Pro-Ed seems to be well run and adequately administered. The quality of its CE programs appears high. In the initial review of Pro-Ed's application by a subcommittee of the association's approval committee, the subcommittee judges Pro-Ed worthy of 2-year preliminary approval, signifying that Pro-Ed meets all established association criteria, and makes a formal, written recommendation of approval. During the course of discussion in the full approval committee, however, one committee member relates having attended one of Pro-Ed's CE courses several years earlier and finding the material presented to be "bizarre" and "inappropriate." Another committee member recounts that a relative had much the same experience in another CE course offered by Pro-Ed. Based on this information, the committee declines to accept the subcommittee's recommendation or to issue an approval to Pro-Ed, fearing that its quality was not as high as had appeared in the application. Unknown to the approval committee, Pro-Ed had stopped offering the two CE courses in question when it had received complaints similar to those voiced by committee members. Its remaining courses were not subject to those defects. Pro-Ed successfully sues the association, receiving a substantial award.

It is critical that applications for approval or accreditation be judged *solely* on the official record. If a member of a reviewing body is privy to information outside the record, the member should disclose that fact, and, if the information is such that the member cannot fairly judge the matter based upon the record, the member should be recused from the process.

*Example 5: Conflicts of Interest*

A utility company, Power, Inc., applies for approval of its nuclear power plant control room design and operation by a national association in which the utility holds membership. The association maintains an approval program for such facilities. The application is incomplete and it is evident to the association committee reviewing the application that the applicant, Power, Inc., does not understand the association's criteria and procedures for control room approval. The committee declines to recommend approval of the facility, citing Power, Inc.'s fundamental misunderstanding of the criteria and pointing out, in the committee's review report, the mistakes made on the application. Representatives of Power, Inc. consult the executive staff of the association for help in reapplying and ask for the names and telephone numbers of the members of the reviewing committee so that they may be contacted for clarification of points made in the report. Through this endeavor, Power, Inc. learns that one of the committee reviewers is a consultant who has, for many years, advised competing utilities regarding the design and operation of nuclear power plant control room design and operation. Power, Inc. writes to the association, charging that the reviewer has a conflict of interest.

Although confident that the reviewer's actions were not in fact improperly motivated, the association decides to have the committee reconsider the initial application, employing reviewers with no conceivable economic conflict of interest.

It is not obvious whether the utility, Power, Inc., would have a claim here. Plainly, however, the reviewer should have disclosed to the association and to the applicant the potential conflict and probably should have been recused from the process. It is also highly questionable whether the executive staff of the association should have "consulted" with a known applicant and provided identifying information on the committee reviewers.

### **How Does One Minimize Risk to the Association and to Individuals?**

1. Only the specific bodies within an association designated in the governing documents as responsible for a particular accreditation or approval process should adjudicate or take a position with respect to accreditation or approval of specific applicants. No other board, committee, or other body in the association should exert pressure on the accreditation or approval process regarding review of specific applicants.
2. The rules of the accreditation or approval process must be scrupulously followed by all participants.
3. *Ex parte* communications (those occurring at times and places other than in the actual accreditation or approval proceedings) with the relevant reviewing committee or board, site visitors, or hearing panelists about any particular application for which they have responsibility should be strictly avoided. Communications about pending applications should be handled through the association's executive staff responsible for assisting the accreditation or

approval program.

4. Full disclosure of any factor' that might be considered bias or conflict of interest is essential, with recusal in appropriate cases.
5. Accreditation or approval criteria should be adopted for valid reasons only, and commercial or economic motivations should be particularly shunned. Care should be taken to ensure that objective bases support each accreditation or approval criterion.
6. Accreditation or approval decisions should be based completely and exclusively on the "record" of the review, not on extraneous, anecdotal, subjective, or other outside sources of information.

## APPENDIX D

## **ACAOM Policy on Reporting to the U.S. Secretary of Education**

To ensure that the Commission meets its reporting obligations to the U.S. Secretary of Education, the Commission requires that the staff submit the following information and documentation to the U.S. Secretary of Education, as required.

1. *Final Accreditation/Candidacy Actions/Updated List of Accredited Programs:* Commission staff will submit to the U.S. Secretary of Education all decision letters on final actions to grant accreditation/candidacy to programs along the Commission's updated official list of candidate and accredited programs within 30 days of each Commission meeting during which accreditation and candidacy actions are taken.
2. *Final Adverse Accreditation/Candidacy Actions:* Commission Staff will submit to the U.S. Secretary of Education and relevant state and accrediting agencies all decision letters on final actions to deny accreditation or accreditation, place a program on probation, or other adverse action at the same time such letters are forwarded to programs.
3. *Commission Newsletter:* A copy of the Commission's newsletter (published biannually) will be submitted to the U.S. Secretary of Education upon publication. The Commission newsletter provides a report on all relevant Commission activities during the preceding six month period.
4. *Summary of Major Accrediting Activities During Preceding Year:* Commission Staff will submit to the U.S. Secretary of Education, upon request, the Commission's major accrediting activities for the preceding year.
5. *Title IV / HEA Program Responsibilities:* The Commission Staff will submit to the U.S. Secretary of Education, upon request, information regarding any accredited or candidate program's compliance with Title IV, HEA program responsibilities, including a program's eligibility to participate in Title IV or HEA programs, for the purpose of assisting the Secretary in resolving problems with the institution's participation in these programs.
6. *Programs in Non-Compliance with Title IV, HEA Program Responsibilities and Programs Engaging in Fraud or Abuse:* The Commission staff will promptly provide the U.S. Secretary of Education with the name of any program accredited by ACAOM which the Commission has reason to believe is failing to meet its Title IV, HEA program responsibilities or is engaged in fraud or abuse. Staff will provide the reasons for the Commission's concerns with relevant supporting documentation, if any.
7. *Changes in Commission Policies, Procedures or Standards:* Commission staff will promptly submit to the U.S. Department of Education in writing any proposed change in the Commission's policies, procedures or standards that might alter the Commission's scope of recognition or compliance with the criteria for Recognition.

Upon a vote of the Commission that initiates activities that could result in a future request of expansion of its scope of recognition (e.g., formation of a related workgroup, decision to proceed to develop new standards), it will promptly notify the Department of such vote.

### **ACAOM Policy on Records Retention**

ACAOM maintains complete and accurate records of --

- (1) Its last full accreditation or preaccreditation review of each institution or program including on-site evaluation team reports, the institution's or program's responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and a copy of the institution's or program's most recent self-study; and
- (2) All decisions made throughout an institution's or program's affiliation with the agency regarding the accreditation and preaccreditation of any institution or program and substantive changes, including all correspondence that is significantly related to those decisions.

Amended 04/2011