American Society of Anesthesiologists (ASA)
Expert Witness Testimony Review Program Complaint Form

The ASA Committee on Expert Witness Testimony Review ("the Committee") may consider a complaint against an ASA member brought by any other ASA member concerning expert testimony given on the record (sworn statement, affidavit, deposition, hearing or trial) on or after October 16, 2003, in a civil or criminal judicial proceeding that is final and not subject to further appeal. A complaint may be brought against an expert witness called by any party to the proceeding, regardless of the outcome of the proceeding.

Please complete this form carefully and thoroughly and sign it. **The form and accompanying materials must conform to the required format or ASA will not review the Complaint.**

All materials that you wish the Committee to consider must accompany this form, whether paper or electronic, and must be identified as exhibits to the complaint or otherwise, as indicated below. Electronic submission is preferred, but not required. If you are submitting a paper version, please bind the materials with clips or rubber bands.

The answers on this form and accompanying exhibits must follow the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). All patient-identifiable health information must be removed before any materials can be accepted by ASA. HIPAA requirements for de-identifying patient information are at the end of this form.

Please submit this form and accompanying exhibits to the Committee Chairman, care of:

ASA Office of General Counsel
American Society of Anesthesiologists
1501 M Street N.W., Suite 300
Washington, D.C. 20005

Do not contact members of the Committee, the Judicial Council, ASA officers, or staff. Inquiries and submissions must be to the ASA Office of General Counsel only. Please contact Mary Kuffner at m.kuffner@asawash.org, or (202) 289-2222.

The Office of General Counsel will acknowledge your complaint once it is deemed complete according to the criteria set forth in this form and in the ASA Administrative Procedures. Complaints will be referred in the order received to the Committee Chairman who will assign investigators from the Committee to review the complaint. We will update you as the review progresses. Please note that the entire process may take some time, potentially up to 16 months.

Program documents including the Guidelines for Expert Witness Qualifications and Testimony ("ASA Guidelines"), Administrative Procedures, Bylaws, and a timeline are available on the Office of General Counsel page on the ASA website at http://www.asahq.org.

Thank you for your cooperation.

Section I: Contact Information

Complainant

Your name: _____

Address: _____

_____

Telephone Number: _____

Fax Number: _____

Email Address: _____

Are you an ASA member? _____
(ASA will not accept a complaint from a non-member.)

Respondent (member of ASA against whom this complaint is lodged)

Respondent's name: _____

Address: _____

_____

Telephone Number: _____

Fax Number: _____

Email Address: _____

Section II: Background Information

Name of the court or agency and docket or identifying number of the proceeding that is the subject matter of this complaint_____

The date of Respondent's testimony _____

This matter must be finally adjudicated by a court, administrative body, or other adjudicative authority and no longer subject to appeal. ASA will not accept a complaint based upon testimony in an action that is currently pending. Please attach an official document indicating that the matter is final.

_____ **Attached**

Is there a confidentiality, non-disclosure agreement, or protective order related to this matter?
If yes, please attach a copy of the agreement or protective order. *You should consult your attorney about any agreement or protective order prior to submitting a complaint to ASA.*

_____ **Yes, agreement/protective order is attached**

_____ **No agreement/protective order is applicable**

Please provide a general narrative statement that describes relevant background or facts of the action that is the subject matter of this complaint and generally explain the grounds upon which you believe the testimony to be in violation of the ASA Guidelines. Type such narrative directly in the space immediately below (if filling out form electronically) or on a separate document titled "Narrative Statement."

Section III: Specific Complaint Information

Thoroughly review the testimony/sworn statement and indicate each and every statement in the transcript or affidavit that you believe violates the ASA Guidelines. For each separate statement you wish the Committee to evaluate, you must provide:

A) The page and line numbers from the transcript where the statement is located.

B) The specific subsection(s) from the ASA Guideline(s) that you believe the statement violates. For example, B.1 and B.2. (See relevant subsections at the end of this form.)

C) A description of how the statement allegedly violates the ASA Guideline(s) you listed. Identify any evidence that supports your allegation by reference to medical records, other testimony, scientific literature, etc.

Type such information for Section III A - C directly in the space below (if filling out form electronically) or on a separate document titled "Testimony in Violation of ASA Guidelines."

D) Complete copies of all documents that you rely on as evidence must be included with this form. Relevant medical records should also be included. They must be separately tabbed and labeled and must be accompanied by a table of contents titled, "Exhibits to Complaint" that identifies each tabbed document provided in response to this Section III.

Please consider the following questions when submitting evidence:

Did the Respondent prepare a written report? _____ yes _____no
If yes, please submit a complete copy of the report as one of the exhibits to the complaint.

Did the Respondent testify at a deposition? _____yes _____no
If yes, please submit as one of the exhibits to the complaint a complete transcript of the deposition testimony, including copies of all relevant exhibits to the deposition. If applicable, please also submit deposition testimony from opposing expert(s) and treating anesthesiologist(s).

Did the Respondent testify at trial? _____yes _____no
If yes, please submit as one of the exhibits to the complaint a complete transcript of the trial testimony, including copies of all relevant exhibits to the trial testimony. If applicable, please also submit trial testimony from opposing expert(s) and treating anesthesiologist(s).

Please also include other testimony that you consider relevant to a complete review of the testimony alleged to be in violation of ASA Guidelines. This should include any supporting or opposing testimony (with relevant exhibits) provided by other expert witnesses or the treating physician and all motions and rulings regarding such testimony. It may also include supporting or opposing testimony (with relevant exhibits) provided by other providers involved in the treatment of the patient.

Section IV: Acknowledgement and Confidentiality Agreement

I acknowledge that I am a Member of ASA. I acknowledge that I have a professional and ethical obligation to include in my complaint only information that is truthful, accurate, and complete. I agree that I shall promptly notify the ASA, through its Office of General Counsel, of any subsequent information that is relevant to my complaint.

Pursuant to ASA Administrative Procedures, the complaint record and all proceedings shall remain confidential, except that the final decision of the Board of Directors imposing a sanction on a member, including the findings upon which it is based, shall be made public on the ASA's website.

I acknowledge and agree that, as consideration for ASA's review and investigation of this matter, I will treat as confidential this complaint, all non public information contained herein, and any information I subsequently receive from ASA, or any individuals or entities associated with ASA or such investigation by ASA, which relates in any way to this complaint and related investigation, whether or not reduced to tangible form or marked in writing "proprietary" or "confidential". I will not share any such information with any third party (individual or entity) without the prior written consent of ASA and only for the purpose of compliance with state or federal laws and regulations.

Signature: _____ Date: _____

A Complaint that fails to meet these requirements or that is not signed shall be deemed incomplete and no further action will be taken. Notice will be provided along with a reasonable opportunity to cure its defects.

REQUIREMENTS FOR DE-IDENTIFYING PATIENT INFORMATION

Material must NOT contain the following identifiers of the patient or of relatives, employers, or household members of the patient:

1. Names
2. All geographic subdivisions smaller than a state, including street address, city, country, precinct, zip code and geocodes
3. All elements of dates (except year) for dates directly related to an individual, including:
    a. Birth date (age is acceptable, up to 89)
    b. Admission date
    c. Discharge date
    d. Date of death
4. Telephone numbers
5. Fax numbers
6. Electronic mail addresses
7. Social security numbers
8. Patient identification or medical record number
9. Patient account number
10. Health plan beneficiary numbers
11. Certificate and license numbers
12. Vehicle identifiers (including license plate number) and serial numbers
13. Medical device identifiers and serial numbers
14. Web Universal Resource Locators (URLs)
15. Internet Protocol (IP) address numbers
16. Biometric identifiers (including finger and voice prints)
17. Full face photographs and comparable images
18. Any other unique identifying number, characteristic, or code

ASA GUIDELINES FOR EXPERT WITNESS QUALIFICATIONS AND TESTIMONY (EXCERPT OF SUBSECTIONS RELEVANT FOR EVALUATION OF TESTIMIONY)

B. EXPERT WITNESS ETHICAL GUIDELINES

1. The physician's review of the medical facts should be truthful, thorough and impartial and should not exclude any relevant information to create a view favoring either the plaintiff or the defendant. The ultimate test for accuracy and impartiality is a willingness to prepare testimony that could be presented unchanged for use by either the plaintiff or defendant.
2. The physician's testimony should reflect an evaluation of performance in light of generally accepted standards, reflected in relevant literature, neither condemning performance that clearly falls within generally accepted practice standards nor endorsing or condoning performance that clearly falls outside accepted medical practice.
3. The physician should make a clear distinction between medical malpractice and adverse outcomes not necessarily related to negligent practice.
4. The physician should make every effort to assess the relationship of the alleged substandard practice to the patient's outcome. Deviation from a practice standard is not always causally related to a poor outcome.