



An initiative to advance *professional and ethical conduct, climate & culture*

## A1. Model Policy Guide for Honors and Awards

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### Purpose of Policy Guide

This policy guide is intended to provide science, technology, engineering, mathematics, and medical (STEMM) societies and their members a resource to help them develop their own effective honors and awards policies in furtherance of excellence in STEMM fields. Recognizing that sexual and other intersecting bases for harassment are barriers to participation of all talent in STEMM and undermine excellence, this policy guide promotes applying high standards of both work and professional and ethical conduct when determining an individual's contributions to the fields. All or parts can be excerpted and customized by a society or other entity according to its own circumstances, policy decisions, and needs. This resource is not intended to convey "one-size-fits-all" or "cookie cutter" solutions. It provides an overview of key discussion issues, with options, to inform policy decision-making. A glossary of key terms is provided near the end of this guide.

This resource may be updated over time, based on the experience and views of Consortium members.

### Limitations

This policy guide is designed with an awareness of law but does not constitute legal advice to any particular entity. Legal advice should always be based on the specific facts, circumstances and laws particular to an entity, situation and jurisdiction.

It is endorsed by the Societies Consortium as a resource, not as a prescribed policy for all members. Consortium endorsement does not mean that Consortium members intend to (or should) adopt all provisions or agree with the policy reflected in all provisions.

## I. General Guidance

### Common Principles for Effective Policy Design

*The following common principles provide a strong foundation for designing honors and awards (Honors) policies that effectively contribute to prevention of sexual harassment in STEMM fields.*

- **Conduct as Barrier.** Clarity that failure of professional and ethical conduct is a barrier to including all talent in the field and undermines excellence.
- **Prevention.** Clarity of specific objectives tied to preventing and effectively responding to gender and sexual harassment in the field.
- **Conduct & Science for Excellence.** While research, teaching/studies, and practice of leaders in the field must be of high-quality, clarity that to be a leader in the field, to achieve excellence in the field, and for the privilege of being recognized as a participant in good standing in the field's community, an individual must embody ethical professional conduct.
  - Clarity that gender and sexual harassment (among other bases of harassment/discrimination) are unprofessional and unethical and undermine the field's integrity.<sup>1</sup>
- **Fairness.** An embedded fairness of process (notice of issues and an opportunity to respond prior to any decisions being made concerning loss or suspension of an existing Honor, not assuming guilt).
- **Best Interests of the Field.** Clarity that weighing the best interests of the field (e.g., inclusion of all talent for excellence) over individuals' interests in receiving recognition is critical to excellence in the field when the two must be balanced—particularly due to longstanding barriers to excellence in the field.
- **Honors & Conduct Questions.** Clarity that deferring award of an Honor, or suspending an existing Honor, in the face of a credible question about professional and ethical conduct is not a determination of the question, or a judgment or statement about any individual; it is a policy to serve the field's best interests.
- **Consequences & Restorative Remedies.** Where conduct is lacking in professionalism and ethics, providing a restorative remedy when possible without perpetuating barriers (including re-traumatizing targets of sexual harassment) that undermine excellence in the field.
- **Breadth of Honors Policy.** Clarity that these principles also apply when Honors are conferred by a STEMM society on those in other fields.
- **Community & Bridge Building.** Clarity that building a community in the field that is committed to high expectations of scientific output and professional and ethical conduct, and actively intolerant of anything less, is fundamental to excellence in the field. So is building bridges among a society, its members, and their home institutions in mutual support of those expectations.

<sup>1</sup> See National Academies Consensus Study Report, *Sexual Harassment of Women, Climate, Culture, and Consequences in Academic Sciences, Engineering and Medicine* (June 2018) (*Academies Report*) pp. 88-9 (noting how sexual harassment violates many key values of research integrity).

## Common Elements of Effective Policy

*The following are common elements of effective Honors policy design, implementation and assessment.*

- **Community:** The policy is based on the character of community that the field seeks to create (including one that embraces a climate and culture of civility, diversity and inclusion and actively builds that community in the field).
- **Communications:** The policy and its rationale are communicated effectively to all stakeholders, on a regular basis and in a manner that is sensitive to the range of audiences in a society's or other entity's internal and external communities, e.g., governing board and leadership, members/faculty/researchers/employees, graduate and undergraduate students, post-doctoral scholars, volunteers, collaborating educational institutions and organizations, government and philanthropic funders, etc., and the public.
- **Standards:** The policy Inspires high standards of professional and ethical conduct, and applies a continuum of conduct-associated consequences when standards are not met.
- **Evidence:** Evidence-based decisions are made, with clarity on the standards applied (e.g., regarding credible questions of professional and ethical conduct and determined unprofessional and unethical conduct).
- **Principles:** Principles are reflected as criteria with examples, rather than exhaustive lists, in policy design, as all situations cannot be anticipated.
- **Transparent Action:** There is transparency respecting the Honors policy and related conduct policies. Reports are made annually to internal and external stakeholders on types and numbers of unprofessional and unethical conduct issues faced and how they were addressed. Confidentiality of the honors process is maintained where a situation is not already public (i.e., without inappropriately revealing the individuals involved or their institutions and without prejudging the determination of questions raised about ethical conduct).
- **Process Management & Evaluation:** Good process management is employed in the design, implementation and evaluation of the policy, with clear roles and responsibilities. The policy is reviewed periodically, including its objectives and its outcomes, to determine if the objectives are the right ones and are being well-served, and adjustments are made if needed.
- **Law-attentive, But Going Beyond Law:** The policy satisfies applicable legal design parameters. But the policy is not limited to the requirements of law when there are standards that better serve the objectives of professional and ethical conduct, climate, culture, and excellence, and adopting such higher standards does not violate law. There is intentionality about willingness to be accountable for the higher standards.
- **Governance & Documentation:** All of the above is documented in a policy adopted by the society's or other entity's governing board.

## Threshold Inquiries That May Affect Policy Choices

*When making a decision regarding the choice of a policy option, the following are good questions to consider in discussions with governing boards and other decision-makers.*

### **Mission Foundations:**

- **Scope of Policy.** Considering the society's mission, role as a standard bearer (conducting its own operations to high standards of professionalism and ethics) and standard setter (establishing expectations of high standards of conduct for the field), and considering its values and the character of the community it seeks to perpetuate in the field, what is the scope of ethical conduct that matters to excellence in the field?
- **Professional Affairs Conduct.** Is there broad understanding that the scope is at least ethical professional conduct, as well as quality of scientific output, because both affect excellence in the field? Is it understood that sexual and gender harassment are significant barriers to excellence in the field because they undermine ethics, equity, and full participation of all talent?
- **Personal Affairs Conduct.** Are there situations where ethics in conduct of personal affairs cast serious doubt on an individual's fundamental ethics, and where the society would need to withhold, revoke or suspend an Honor to serve the objectives of the policy? Would a credible accusation or determination that someone committed an illegal act of violence or ethics in his or her personal life (e.g., rape, domestic partner abuse, vehicular homicide, child pornography, embezzlement, insider trading, theft) cast sufficient doubt on fundamental ethics or safety and affect decisions on professional Honors in a field?
  - This may need to be a case-by-case determination. If an individual's conduct in personal affairs threatens physical safety of others or involves serious crimes of integrity, the society could find that recognizing the individual and ignoring the conduct may send an adverse message and thus negatively affect the field. This should be considered in deciding Honors.
- **Cultural Differences.** Is there an understanding that violent or unethical acts are distinguishable from cultural differences in personal affairs (e.g., domestic assault vs. marriage roles and relationships) when those cultural differences aren't perpetuated in professional roles and relationships? This is important in relation to our international campuses and research settings.
- **Academic Freedom & Free Speech.** When, how and in what roles are professional research and personal beliefs protected by academic freedom or free speech policies (and, for public institutions, the First Amendment), as distinguished from conduct and interactions that constitute gender harassment (i.e., are unprofessional and unethical)?
  - This requires considering nuanced and complex interests beyond this policy.
  - At a high level, a helpful focus is expecting leaders in the field to promote civility and respect in work and learning settings to enable full participation and effective communication. This includes avoiding gratuitous conduct and speech in those settings (not necessary for the work or learning) that cause harm—i.e., interfere with work or learning of reasonable people. It does not include censoring the subject of research or curricula.
  - Avoid addressing expectations regarding personal beliefs; focus on conduct in work/education-related activities.

### **Considerations Regarding Impact: Eliminating Perceptions of Tolerance; and Balancing Field and Individual Interests**

- **Perceptions From Unethical Conduct That Has Been Determined.** Is it understood that research shows the *perception* of tolerance of sexual harassment is the greatest predictor of perpetuation of such unethical conduct?<sup>2</sup> Is it understood that awarding an Honor to someone determined to have engaged in sexual harassment indicates indifference and tolerance of such conduct in the field? Will the society decline to award a new Honor—or revoke an existing Honor—to such a person? (See restorative remedies below.)
- **Perceptions From Credible Questions About Conduct.** Is it understood that awarding an Honor to someone when there is a credible question whether the person has engaged in sexual harassment, but that question has not yet been determined one way or the other, can create a perception of tolerance for such unethical conduct in the field? Will the society defer awarding a new honor when there is a credible question, until it is determined that the harassment did not occur? Will it suspend an existing Honor until the question is determined one way or the other? How will interests of individuals involved be balanced with the field’s interests to remove longstanding barriers to inclusion caused by sexual harassment and perceived tolerance of such conduct? Consider:
  - There may not be definitive evidence for a determination—it may be a question of whether the potential target or the accused is more credible.
  - The individuals involved may seek a legal or formal process remedy; and societies and other entities that accept any federal funding for any educational program (broadly defined) must comply with Title IX and provide that process. But research shows many incidents of sexual harassment are not reported, let alone resolved in a legal process.<sup>3</sup>
  - Legal process, proof standards, and outcomes may be unfair in many cases. Research indicates that reporting often has few benefits and many costs to those who report harassment e.g., disbelief, ostracism, retaliation, loss of agency and confidentiality,<sup>4</sup> indicating that false accusations of sexual harassment would be rare. Yet some false accusations do occur.<sup>5</sup> “Fairness” to all individuals involved in a particular situation may be debatable and impossible to achieve.
  - When a credible question can’t be answered satisfactorily, targets are particularly burdened, as a vast majority are expected not to be making false accusations and are undermined. But doubt is also cast on the reputations of those accused, some falsely.
  - Longstanding barriers to inclusion created by gender and sexual harassment significantly undermine full participation and excellence in STEMM fields, as well as harming the fields’ reputations to the detriment of many individuals and society. Excellence requires building a community committed to removing, and actively intolerant of, those barriers.
  - If a society decides to address credible questions in its Honors policy, it may be possible, when a credible question exists, to: (a) keep honors processes as confidential as possible, enabling the award of an honor to be deferred to the next cycle (or until the question is determined) without exposing an accused publicly (although this is less possible when an existing award is suspended); (b) clearly publicize that, when there is a credible question, the policy is to not make a judgment respecting any individual’s conduct while the question exists, but to weigh the interests of the field more than the interests of individuals until the question can be resolved.

<sup>2</sup> *Academies Report* pp. 47-48; 50 (noting that “organizational climate”, i.e., a work environment that communicates tolerance of sexual harassments is “by far, the greatest predictor of the occurrence of sexual harassment, and ameliorating it can prevent people from sexually harassing others”).

<sup>3</sup> *Academies Report*, pp. 80-81, 105.

<sup>4</sup> *Academies Report* pp. 81-82, 106-07.

<sup>5</sup> According to Kate Clancy, Associate Professor, University of Illinois speaking at the National Academies, Nov. 9, 2018 *Convening of Leaders in Academia to Prevent Sexual Harassment*, 2-8% of reports of sexual harassment are false.

- **Named Honors.** Has the society considered the heightened impact on the field of a “named honor” and “lifetime achievement” honor?
  - Unethical conduct by someone for whom a repeatedly conferred honor is named is particularly harmful. The society may wish to reserve (in its Honors policy *and* its gift/endowment policy and agreements) the ability to remove a name from an honor when the society determines that it is in the best interests of the field and the society’s standards of professional and ethical conduct. Existing gift/endowment agreements must be honored unless all parties agree to amend them.

#### **Considerations Regarding Consequences for Unprofessional and Unethical Conduct:**

- **A Continuum.** Has the society considered the continuum of unprofessional and unethical conduct and corresponding continuum of consequences? Consider:
  - The age of a conduct issue, the stage of career when it occurred, and whether an Honor recipient or potential recipient acknowledges responsibility for the misconduct and demonstrates by action (non-repetition) having learned a lesson.
  - That particularly prominent Honor recipients or potential recipients, exceptional Honors, and the likelihood for continued focus on the Honor (e.g., with a named facility or repeatedly conferred named Honor), elevate the perception of tolerance of sexual harassment in the field.
  - The nature, egregiousness and prevalence of the sexual harassment.
- **Restoring Good Standing.** How could an individual whose conduct is lacking in professionalism and ethics improve? When sexual harassment has been determined or credibly questioned, will the society pursue—or encourage home institutions of those involved to pursue—restorative remedies? Such remedies ultimately enable all involved parties to move beyond the determined or questioned sexual harassment, mitigate harm, and ultimately may make award or restoration of an Honor possible at some point. These remedies, when used appropriately, may best address issues of impact on and interests of the field, as well as fairness. (Refer to the Glossary near the end of this document.)


#### **Special and Additional Considerations:**

- **Capacity to Investigate.** Does the society have the capacity—or is it willing and able to develop the capacity—to conduct investigations of its own?
  - If so, additional investigation process design and implementation are needed as complements to the honors and awards policy.
  - Some capacity is needed to address the society’s responsibilities as an employer and supervisor of staff, fellows, volunteers, students, and others (beyond “mere” members), as well as in its role as a federal funding recipient with its own educational programs.
- **Specific Legal Advice.** Has the society engaged with legal experts to support its policy’s satisfaction of legal parameters in design and implementation?
- **Building Bridges with Member Home Institutions.** Is it possible to formalize relationships with the home institutions of the society’s members, fellows, volunteers and students (e.g., educational and research organizations, teaching hospitals, etc.) in cooperation agreements that will enable sharing certain information important to determining ethical conduct?
  - This might be possible if the society were to condition membership in the society, or qualification for other Honors, on the faculty/researcher-members, volunteers, fellows, and others consenting to their home institutions’ sharing the existence, evidence and outcomes of formal and informal complaints, investigations,

etc. with the society. There are different legal constraints for students and employees that would need to be addressed.

- Building bridges among societies and home institutions will be a focus of the Societies Consortium and may facilitate such arrangements.
- **When An Honor Holder Is Deceased.** How will the society address determinations of, or credible questions regarding, sexual harassment by deceased individuals? To answer this, a society might wish to consider:
  - **Shift In Balance of Individual Fairness and Field Impacts.** A deceased person is unable to defend against allegations of sexual harassment or to participate in restorative remedies, elevating concerns of fairness for the accused. Fairness is a particular concern where a credible question of professional and ethical conduct exists but was not determined during the person's lifetime. Also, a deceased person cannot continue unprofessional and unethical conduct, eliminating threats that the conduct will be ongoing. Unless heightened concerns for continuing impact on the field exist, it may not be necessary for a society to take action to serve the interests of the field, and the weight of fairness to the individual may be greater.
  - **Heightened Concerns Re: Field Impacts.** Heightened concerns for impact on the field may exist when the act of sexual harassment was determined during a now-deceased person's lifetime (or is unequivocal based on proven facts) and is highly egregious (respecting a single event or frequency). This is particularly the case when the deceased holder of the Honor is very prominent in the field, or the Honor is exceptional, or there is a named Honor that continues to be conferred.
  - **Case-By-Case Decisions.** A society may want to make case-by-case decisions. When it decides action is warranted, the action may range from revocation of the Honor to a statement about intolerance of the type of conduct raised.
  - **Revocation.** Revocation is an extraordinary (rare) remedy due to the shift in balance of individual fairness and field interests.
- **Statements.** If a statement is warranted, it may be most appropriate to speak to intolerance of the *type* of conduct raised, without stating whether the conduct occurred—and to *not add commentary* to any already existing determination made on the subject. When a statement is made, it may be helpful to include examples of types of unprofessional and unethical conduct faced and consequential actions taken under the society's current policy generally. That may mitigate impact on the field by demonstrating the authenticity of intolerance for sexual harassment currently.

## II. Model Policy on Honors and Awards

This model policy is intended to be a customizable resource, as explained in the Introduction. Language that is included in **[brackets]** calls for the society to insert its specifics, and to include particular points if applicable to the society and its needs. Text that is marked with a  provides guidance or calls for the Society to decide between more significant policy decisions.

The **[Insert: Society Name]** (Society) confers honors and awards, including but not limited to elected membership, **[Insert the particular honors and awards (or types that are covered and whether or not paid-for membership (as compared with election) is included)]**<sup>6</sup> (Honors) on individuals for significant contributions to the field or interests of the field, and are determined in the Society’s judgment and discretion. The Society retains the right to grant, defer or decline to grant an Honor to any person. The Society also retains the right to revoke or suspend an Honor already granted if, in its judgment and discretion, the Society determines that it is in the best interests of the field to do so. Suspension means the Honor (and the ability of the recipient to exercise any associated privileges and rights) are held in abeyance until notice by the Society that the Honor is reinstated or revoked.

See the glossary at the end of this policy for definitions of key terms.



Review gift, endowment and other relevant society policies and agreements on naming facilities, programs and other things for consistency with the Honors policy.

Include in such policies and agreements: “The Society has the right to revoke a naming Honor, as provided in its Honors policy, available at **[Insert: URL]** which will govern over other Society policies and agreement terms on naming.”

If an agreement pre-dates the Honors policy (or otherwise doesn’t expressly incorporate the Honors policy’s suspension and revocation provisions) the agreement’s terms will likely need to be honored, unless they can be amended by all parties.

### Underlying Policy Rationale — Interests of Excellence in the Field.

While not the only interest that is critical for excellence in the field and is considered by the Society in deciding who should hold an Honor, professional ethics is an important such interest. When the Society awards an Honor, the Honor reflects the Society’s judgment that an individual’s contributions to, and effect on, the field are exemplary. The Society takes into account the effect on the field of the totality of the individual’s work and professional and ethical conduct and reputation. It expects those who hold Honors to demonstrate that participation in and recognition by the field are privileges; and that the field’s leaders, and others it celebrates, embody highly professional and ethical conduct in their work.



Consider Mission Foundations-Scope of Policy in Part I of this guide and decide whether ethics in personal affairs may sometimes be relevant to Honors. If so, add to the end of the paragraph: “*as well as conduct in their personal affairs that does not cast serious doubt on their core ethics. (References to conduct in this policy include professional conduct, as well as such personal conduct.)*”.

Unethical conduct includes, among other acts, sexual harassment and discrimination based on other factors unrelated to ability and promise (e.g., race and ethnicity), whether alone or intersecting with sexual harassment. These acts perpetuate longstanding structural and systemic barriers to full participation of all talent in the field, which have immediate adverse

<sup>6</sup> If the Society makes named awards, include: “..., the honor of being the name of a facility or award that will be conferred on others,...”



impact on individuals and undermine excellence in the field. Such unprofessional and unethical conduct may occur in research, learning/teaching, or practice.

### Ethics Considerations in Awarding Honors



The Society will pick Option 1 or Option 2 below, deciding: (Option 1) whether high standards of ethical professional *and* related personal conduct are considered in conferring Honors; or (Option 2) just ethical professional conduct is considered. The Society will also decide (a) whether credible questions about conduct are considered in awarding Honors; and (b) if so, whether the effect of a credible question will be to defer conferral of new Honors, or also, potentially, to suspend existing Honors:

- If the Society's policy will address credible questions, keep all underlined text in the rest of the Model Policy, but remove the underlining.
- If the Society will defer conferral of a new Honor when there is a credible question, but will not suspend an existing Honor due to a credible question, delete the one underlined clause in the chosen Option (1 or 2) stating that credible but undetermined questions may justify suspension.
- If the Society will not address credible questions, even in conferring new Honors, delete all underlined text in the rest of the Model Policy. (Consider Mission Foundations--Perceptions From Credible Questions About Conduct in Part I of this guide.)

#### ***Option 1. Capturing Ethical Professional and Personal Conduct***

The Society finds, in its discretion, that determined unethical conduct of a current or prospective holder of an Honor—as well as credible, but undetermined, questions about the ethical conduct of such an individual—can contribute to longstanding structural and systemic barriers in the field. Consequently, ***for the purpose of placing heavier weight on what is best for excellence in the field than what is best for any individual*** when the two must be balanced, the Society will not confer any [*Insert: "Honor" or "the High Honors of (specify)"*] on any individual whose conduct has been determined to be unethical. That determination will be based on ...

#### ***[Pick one to complete the sentence]:***

... the Society's own review or investigation and, if useful in the Society's discretion, the Society's consideration of any others' determinations (with supporting information) made available to the Society.

**[or]**

... an outside authority's (e.g., home institution, court, government agency) review or investigation and determination (with supporting information) made available to the Society, on which it may rely.

The Society also will not confer any [*Insert: "Honor" or "such High Honors"*] on any individual whose ethical conduct is the subject of a credible question known to the Society, so long as the question has not been finally and favorably determined to the Society's satisfaction, in its discretion. Determined unethical conduct may also justify suspension or revocation of [*Insert: "an Honor" or "a High Honor"*]; and a credible but undetermined question of ethical conduct may justify suspension. ***When applying this policy in situations of credible but undetermined questions, the Society is withholding judgment and is not making a statement or determination regarding any individual. Rather, the Society is implementing a prophylactic measure to support the field's priority efforts to break down longstanding barriers to excellence.***

**THE SOCIETY'S CONFERRAL OF AN HONOR IS AN EXERCISE OF ITS DISCRETION, NOT AN OBLIGATION. THE SOCIETY, IN ITS DISCRETION, MAY SUSPEND OR REVOKE AN HONOR IF ITS ASSESSMENT OF THE RECIPIENT'S ACTUAL OR POTENTIAL IMPACT ON THE FIELD CHANGES FOR ANY MISSION-DRIVEN REASON.**

**Option 2. Capturing Ethical Professional Conduct**

The Society finds, in its discretion, that determined unethical professional conduct by a current or prospective holder of an Honor—as well as credible, but undetermined, questions about the ethical professional conduct of such an individual—can contribute to longstanding structural and systemic barriers in the field. Consequently, ***for the purpose of placing heavier weight on what is best for excellence in the field than what is best for any individual***, the Society will not confer [*Insert: “any Honor” or “the High Honors of (specify)”*] on any individual whose professional conduct has been determined to be unethical. That determination will be based on...

**[Pick one to complete the sentence]:**

... the Society’s own review or investigation and, if useful in the Society’s discretion, the Society’s consideration of any others’ determinations (and supporting information) made available to the Society.

**[or]**

...an outside authority’s (e.g., home institution, court, government agency) review or investigation and determination (with supporting information) made available to the Society, on which it may rely.

The Society also will not confer any [*Insert: Honor*] or [*Insert: such High Honors*] on any individual whose ethical professional conduct is the subject of a credible question known to the Society, so long as the question has not been finally and favorably determined to the Society’s satisfaction, in its discretion. Determined unethical professional conduct may also justify suspension or revocation of [*Insert: an Honor*] or [*Insert: a High Honor*]; and a credible but undetermined question of ethical professional conduct may justify suspension. ***When applying this policy in situations of credible but undetermined questions, the Society is withholding judgment and is not making a statement or determination regarding any individual. Rather, the Society is implementing a prophylactic measure to support the field’s priority efforts to break down longstanding barriers to excellence.***

**THE SOCIETY’S CONFERRAL OF AN HONOR IS AN EXERCISE OF ITS DISCRETION, NOT AN OBLIGATION. THE SOCIETY, IN ITS DISCRETION, MAY SUSPEND OR REVOKE AN HONOR IF ITS ASSESSMENT OF THE RECIPIENT’S ACTUAL OR POTENTIAL IMPACT ON THE FIELD CHANGES FOR ANY MISSION-DRIVEN REASON.**



If deferral or suspension of Honors is possible based on credible questions, adding the following to the end of the ***bolded, italicized, and underlined*** statement above in Option 1 or Option 2 is advisable:

**“Any statement or action to the contrary is prohibited and not authorized by the Society.** Credible questions arise when there is some fact or evidence of a conduct issue raised (which may include, e.g., a factual account by a target or bystander) that would justify a review or investigation. The question may relate to whether the conduct at issue occurred (including whether the facts raised are truthful, accurate, and complete) and/or whether the conduct is unethical.”



After choosing Option 1 or Option 2 above—and deciding whether to apply the policy to credible undetermined questions of conduct—decide whether to include at the end of the Option chosen, the provisions below (specifying what constitutes awareness of the Society and the possibility of restorative remedies).

**Awareness of Conduct Issues—Required Disclosures:** The Society is aware of conduct issues about the holder or potential recipient of an Honor if its Chief Executive Officer (CEO) or any individual who participates (whether as a staff, an advisor or a decision-maker) in the official Honors process is aware. These individuals must notify the *[Insert: specify position, e.g., CEO or Ethics Officer]* (Society Official), who will make the head of the Honors process aware.

Anyone who makes a nomination or recommendation and knows that the nominee has been determined to have engaged in unprofessional or unethical conduct, or that a credible but undetermined question exists about the nominee’s conduct, is required to make a disclosure to the Society Official as part of the nomination process.

A person who is being considered for an Honor (upon becoming aware of being considered), or who holds an Honor, has a continuing duty to disclose to the Society Official the existence of any fact, situation, or circumstance that could be considered relevant to the Society’s decision whether to award the Honor under provisions of this Honors Policy. Failure to make a disclosure may result in the Society withholding, suspending or revoking an Honor, in the Society’s discretion.

**Restorative Remedies:** In the event of determined conduct inconsistent with an Honor — or in the event of a credible but undetermined question about such conduct —the Society may provide opportunities for restorative remedies (that diminish the effect of such conduct or credibly questioned conduct, elevate understanding of harm caused by such conduct, enhance relationships, improve conduct, advance safety for those affected, and prevent recurrence of any undesirable conduct, eventually enabling positive participation in the field and possibly Honors). The Society may pursue or encourage other institutions to pursue such remedies where, in the Society’s judgment and discretion, the Society determines restorative remedies are possible with authentic consent by the accused and the target and without perpetuating barriers to participation of all talent in the field or otherwise undermining excellence in the field. The Society would generally endeavor to consult the accused and the target and consider, among other factors:

- (a) the egregiousness, prevalence, effect, and age of such conduct, the stage of career when it occurred;
- (b) whether an individual with determined unprofessional and unethical conduct takes responsibility for the conduct and demonstrates through action (non-repetition) that s/he learned the necessary lesson and is unlikely to repeat similar conduct;
- (c) whether an individual appears to be sincerely committed to demonstrating professional and ethical conduct, understanding how the determined conduct or questions of conduct occurred, avoiding a repetition, and restoring relationships—not just to qualify for receipt of an Honor, but recognizing the importance of professional and ethical conduct to excellence in the field.

#### **Process for Suspension or Revocation of Existing Honors.**

Upon notice by the Society to a person already holding an Honor, a suspension or revocation shall take effect. At least 30 days before a notice of revocation or suspension, the Society will give the holder of the Honor a notice of intent to revoke or suspend the Honor. The notice of intent will include a statement of the interests of the field served by the proposed revocation or suspension, in the Society’s judgment. The holder of the Honor will have an opportunity to submit to the

Society, within 14 days of receiving a notice of intent, a written statement of any reasons why s/he believes it would not be in the best interests of the field for the revocation or suspension to be affected. After that 14-day period, whether or not a statement has been submitted, the Society will act in its discretion. The Society, at any time, may review and act on pertinent information that was not available or known to it at the time of its decision.

#### **Special Circumstances – Honors Held by Deceased Individuals.**

Special circumstances arise when unprofessional and unethical conduct of a deceased person who holds an Honor is raised. The Society will exercise its discretion to address such situations on a case-by-case basis and may determine that no action is needed without heightened concerns. It will consider the following:

- A deceased person is unable to participate in even an informal investigation or process, is unable to defend against allegations, e.g., of sexual harassment, or to participate in restorative remedies.
- A deceased person cannot continue unprofessional and unethical conduct, eliminating threats that the conduct will be ongoing.
- Unless heightened concerns for continuing impact on the field exist, the need to protect the interests of the field in eliminating barriers to inclusion may be limited, and the interest of fairness to the accused may be greater.
- Heightened concerns for impact on the field, even after death, may exist when the act of unprofessional and unethical conduct has been determined during a person's lifetime (or is established by unequivocal facts) and is highly egregious (respecting a single event or frequency). This is particularly so when the deceased holder of the Honor is very prominent in the field, or the Honor is exceptional, or there is a named Honor continuing to be conferred on others.
- When action is warranted, it may range from revocation of the Honor to a statement about intolerance of the type of conduct raised. Revocation is an extraordinary remedy. The Society will exercise its judgment on a case-by-case basis. If a statement is made, the Society would speak to intolerance of the type of conduct raised, without judging or stating whether the conduct occurred, and without adding commentary to any existing determination made on the subject. When a statement is made, the Society may include examples of types of unprofessional and unethical conduct faced and consequential actions taken under the Society's current policy generally, to demonstrate the authenticity of its intolerance for the type of conduct and mitigate impact on the field.
- The Society is not expected to newly investigate a question of professional and ethical conduct related to a deceased holder of an Honor.

### III. Additional Policy and Legal Considerations

**Adapting the Policy for Institutions of Higher Education, Teaching Hospitals, and Other Entities:** This Model Honors and Awards Policy is easily adapted for use by research and educational organizations that are not societies. These are necessary modifications:

- Replace “Society” with another defined term suitable for the organization throughout.
- Within both “Option 1” and “Option 2” of the Model Policy there is a further choice respecting who conducts an investigation. The first choice is likely the most suitable for institutions of higher education and other “home institutions” of the holder or prospective holder of an Honor. Either choice may be suitable for other organizations that are not the employer.

**Due Process and Contract Considerations for Societies and Other Entities:** Public institutions and entities may be subject to more stringent due process standards than the contract standards that apply, and fundamental fairness standards that may apply, to private entities such as societies and private institutions of higher education. (State law may also have an impact.) These due process and contract standards may apply to the following:

- *Exercise of Discretion.* Under principles of the Due Process Clause of the U.S Constitution, applicable to public institutions, rather than stating in a model policy or tool that any decisions/determinations are made in a public institution’s “sole and absolute discretion” (or like language), it may be preferable to specify that decisions are made in the public institution’s judgment based on its mission and specified criteria.
- *Retroactive Policy Changes Affecting Existing Individual Rights or Privileges.* Where aspects of any new or amended policy or tool are to be retroactively applied to individuals whose significant existing rights or privileges may be adversely affected, due process and contract questions may arise. It may be good practice, and in some cases required, under due process principles for a public entity to seek a membership vote in favor of the substance of the change before implementing it retroactively. The necessity of doing so may depend on whether a right vs. a privilege is affected and (particularly but not exclusively for a privilege) whether that existing interest is longstanding. However, the line between “vested rights” that receive greater protection and privileges is not always clear. Documented evidence of the importance of the interest served by the retroactive application of the policy is important and may help to justify its effect on vested rights.<sup>7</sup> Under fundamental fairness and contract principles, taking such a vote may strengthen the position of societies and other private entities in relation to those who challenge the policy change.
  - An entity’s existing by-laws and policies are important to consider on this point. Some may require a membership or board vote to make a change that has retroactive effect; others already may establish and expressly notify members or others affected of the authority of the entity to make changes that affect individual privileges without their approval.
  - In any event, entities, private and public, may find that having a dialog with members and seeking a membership vote or otherwise meaningfully engaging stakeholders will help to engender broad ownership of the policy and advance a community norm that values professional and ethical conduct.

**Defamation:** It is important to post the Honors Policy publicly. When credible questions are addressed by the policy, it is important to act and communicate consistently with the Model Policy’s bolded statements that the Society or other entity

<sup>7</sup> For example, a society may adopt a policy allowing it to revoke membership or honors where a determination of sexual harassment has been made. The prospective application of the policy to individuals joining or receiving an honor after the policy goes into effect generally should not trigger this issue. Retroactive application to individuals who are already members or honors-holders at the time a policy goes into effect, however, may raise a question.

is “withholding judgment and is not making a statement or determination regarding any individual” in relation to credible questions, and that “[a]ny statement or action to the contrary is prohibited and not authorized by the Society.”

- *Defining what credible questions mean.* It is also important to define what a “credible question” means, if a society or other entity defers or suspends Honors due to credible but undetermined questions of ethical conduct. (See Glossary which provides a definition, and considerations for determining the existence, of credible questions.) Actions or communications that are inconsistent with the bolded statements, or failure to make the bolded statements public or to state what a credible question means, may increase exposure to defamation claims.
- *Publicizing meaning of credible questions and maintaining confidentiality.* Publicizing the policy to advance its purpose and intent—while keeping the names of Honors nominees confidential—are also good practices. Requiring nominators and those under consideration, early in the Honors process when knowledge of who is being considered is limited, to disclose to a specified official any determined unethical, unprofessional conduct, as well as credible question of conduct, may aid in maintaining confidentiality.

While it is impossible to control whether a defamation claim will be made, the aim is to discourage such claims and to strengthen the Society’s authentic position that such claims are not valid. There is more risk (of claims being made against the Society, whether or not successfully) if an existing Honor is revoked based on credible questions, than if conferral of a new Honor is deferred on that basis.

**Consistency:** All societies and other entities that adopt the Model Policy should be sure that it is not at odds with any of their other applicable policies (or contracts), or should resolve any inconsistency. It is important to make clear on the face of relevant policies (and in contracts) the one that ultimately governs if there is a conflict.

## IV. Glossary of Key Terms

### Note:

- *Definitions are for purposes of this Model Policy. They generally reflect relevant federal non-discrimination principles as well as the research on effects of sexual harassment.*
- *Definitions are ordered and clustered in a manner that reflects their inter-relationships, as used in the policy.*
- *Some of the definitions require the exercise of judgment when applied to particular facts and are not therefore capable of absolute precision.*

**Sexual harassment** is a type of discrimination on the basis of sex, and includes one or more of the following:

- **Sexual coercion or *quid pro quo* sexual harassment:** when threats or rewards respecting educational or employment benefits, support, or status are conditioned on sexual favors.<sup>8</sup>
- **Hostile environment sexual harassment:** exposure in work- or education- related settings or activities to gratuitous (i.e., non-work related/unnecessary for the work) (a) sexual images, gestures, or remarks, (b) sexual insults, (c) non-sexual gender harassment (see below), or (d) unwelcome sexual attention—of such pervasiveness or severity as to interfere with a “reasonable person’s” ability to learn or work. (See reasonable person standard.)<sup>9</sup>
  - **Gender harassment:** is a form of sexual harassment that includes sexism, or other non-sexual behaviors (including remarks and conduct) that demean, denigrate, devalue, and disrespect individuals on the basis of sex.<sup>10</sup>

<sup>8</sup> This behavior violates federal nondiscrimination law covering educational programs and employment. Title IX applies to **all** educational programs and supporting administrative and other functions of **any** non-federal entity that receives federal funding for **any**—broadly defined—educational program. It protects students, faculty, staff, participants in, and applicants to educational programs. Title VII protects employees and applicants for employment. This behavior also violates some states’ laws and, for public institutions, the U.S. Constitution’s Fourteenth Amendment’s Equal Protection Clause.

<sup>9</sup> These acts also violate federal and some states’ laws and, for public institutions, the U.S. Constitution’s Fourteenth Amendment’s Equal Protection Clause.

<sup>10</sup> *Academies Report*, pp. 42, 25-27, 72 (noting research indicating that gender harassment is more pervasive than, and can cause harm equivalent to, sexual coercion and unwelcome sexual attention). The full breadth of gender harassment covered by this policy can be, but is not always, currently recognized by law as hostile environment sexual harassment. The law applies a reasonable person standard (influenced by societal norms) to determine whether that kind of sexual harassment has occurred. The law on discrimination against people who, based on their gender identity or expression, fail to act according to gender stereotypes, is developing in the courts, particularly as relates to transgender students (see footnote 10). However, the Court has long been clear that harassment based on male and female gender, even if not sexual, and gender-based stereotyping, can serve as the basis for a discrimination claim. See *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629, 650 (1999) (describing actionable harassment under Title IX to include male students threatening their female peers to prevent the female students use of a school resource); *Oncale v. Sundowner Offshore Services, Inc.* 523 U.S. 75, 81 (1998) (holding that same sex harassment can be actionable, noting that harassing conduct need not be motivated by sexual desire, and can be motivated by a “general hostility to the presence of women in the workplace”); *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 19 (1993) (allegations sufficient under Title VII included gender-based insults such as “you’re a woman, what do you know,” and “we need a man as a rental managed”); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 235 (1989) (allegations actionable under Title VII were that consideration for holding off female plaintiff’s partnership included that plaintiff should “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry,” and that she was “macho,” and “overcompensated for being a woman,” and that objections to her use of profanity were only “because it’s a lady using foul language.”). The United States Department of Education has also long stated that gender harassment, which may include acts of verbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping, but not involving conduct of a sexual nature, can be a form of sexual discrimination under Title IX. See *USED OCR’s Revised Sexual Harassment Guidance* (January 2001).

- **Sexual assault and battery**, including but not limited to rape (which are crimes).

**On the basis of sex:** means on the basis of sex, gender identity, gender expression, failure to act according to gender stereotypes, and sexual orientation.<sup>11</sup>

**Reasonable person standard:** a threshold used in law to determine whether hostile environment sexual harassment has occurred. The facts are viewed through the eyes of a generic “reasonable person” in a similar circumstance, position, and relationship. Behavior (including comments, images, gestures, etc.) is evaluated to determine if it is gratuitous (i.e., not necessary for the work) and of such pervasiveness (frequency) or severity (even once) that it would interfere with a reasonable person’s ability to work or learn. What a reasonable person in similar circumstances would find harmful may change with societal norms and power/knowledge/positional differences among individuals involved.

**Credible question (of professional and ethical conduct):** when there is a question about whether or not a person’s conduct meets the Society’s high standards of professional and ethical conduct (e.g., whether the person sexually harassed others). The question may concern whether a person engaged in particular conduct—or whether particular conduct is unprofessional and unethical—or both. References to: questioned conduct; undetermined question; credible but undetermined question; determination of a question not yet made; and like phrases in the policy mean there is a credible question about any one or more of these concerns. A credible question is just that—it does not represent a judgment or conclusion about any person.

Whether a credible question exists, and whether standards of conduct are met, require the Society to make judgments. Some considerations are addressed below, but these judgments must be guided by the Society’s mission, standards and the specific factual situation:

- Typically, for a credible question to exist, there would be enough facts known to the Society, the accused’s home institution, or a government agency or other involved entity to warrant at least one of them conducting an informal or formal review of the questioned conduct and whether the facts are true, accurate and complete. However, a determination of the facts and question, one way or the other, has not yet been made—at all or to the Society’s satisfaction in its discretion.
- A credible question may arise from information provided by someone who is directly targeted or who is indirectly affected by the conduct at issue (e.g., a bystander, witness, or someone else who knows of the conduct). It may exist if the conduct at issue is sexual harassment, whether or not that label is used, or a formal complaint is filed. It may arise in a news report (followed by verifying key points for accuracy).
- If truth of an allegation is impossible—e.g., the accused was elsewhere and could not have been present—there is no credible question.

<sup>11</sup> The issue of gender identity and expression under Title IX is still developing in the courts. See *Whitaker et. al. v. Kenosha Unified School District No. 1*, 858 F.3d 1034, 47-52 (7<sup>th</sup> Cir. 2017) (upholding a preliminary injunction preventing a school district from enforcing its policy restricting a transgender boy from using school facilities aligned with his gender identity, which punishes transgender students for “fail[ing] to conform to the sex-based stereotypes associated with their assigned sex at birth”); *Grimm v. Gloucester Co. School Board*, 302 F.Supp.3d 730 (E.D. VA 2018); *C.f., Joel Doe, et al. v. Boyertown Area School District*, 897 F.3d 518 (3<sup>rd</sup> Cir. 2018) (petition for certiorari docketed in Supreme Court at <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/18-658.html>) (denying a preliminary injunction that sought to stop the School District from applying its policy to allow students to use bathrooms aligned with their gender identities, noting established severe psychological and other harm when students are denied that ability and that Title IX allows but does not require the provision of separate bathroom facilities; and finding opponents to the policy did not show sufficient harm to find the policy creates a hostile environment on the basis of sexual harassment of them); *Compare, R.M.A. by Appleberry v. Blue Springs R-IV Sch. Dist.*, No. WD 80005, 2017 WL 3026757 (Mo. Ct. App. July 18, 2017), reh’g and/or transfer denied (Sept. 5, 2017), transferred to Mo. S.Ct., No. SC 96683, 2019 WL 925511 (Mo. Feb. 26, 2019) (upholding the dismissal of a case alleging sex discrimination against a transgender male student who was denied access to the boys’ locker room and bathroom “based on my sex and gender identity,” because the student did not allege sex stereotyping and Missouri law does not protect against discrimination on the basis of “gender-related traits” and, in dicta, no Missouri court has extended the Missouri human rights statutes to sex stereotyping).



- Not all rumors raise credible questions. Conclusory, isolated rumors may not, if no salient facts are (even anonymously) provided and no affected people or witnesses come forward. Pervasive (even conclusory) rumors may create a credible question, though, particularly if persistent or if the subject of such rumors is prominent, and in a position of power, and there are reasons to believe those who may have the facts are fearful.<sup>12</sup>

A credible question may be resolved/determined by the Society's own review, an outside authority's determination (e.g., home institution, court, government agency) made available to the Society on which the Society relies, or both. The Society must be satisfied, in its discretion, that the question has been answered well enough to decide whether or not the person should hold the relevant Honor.

**Determined conduct or determined question of conduct:** after a credible question has been raised, there is a determination that a person's conduct is or is not professional and ethical, meeting the Society's standards of conduct (or not). This determination may be based on the Society's own review, an outside authority's determination made available to the Society and on which the Society relies, or both.

**Discretion (the Society's):** means the Society's decision, determination, judgment or application of criteria, is made in the Society's sole and absolute discretion in pursuit of its mission. Such discretion is still not arbitrary or exercised for an illegal purpose (e.g. to discriminate on the basis of sex or race).

**Restorative remedy:** means a remedy for gender harassment and some other forms of unprofessional and unethical conduct, where the individuals involved authentically consent to participate in a non-legal, informal process with aims of (a) elevating understanding of specific conduct-related harm (whether recognized by the "reasonable person standard" or particular to the individuals involved), (b) achieving confidence that the harmful conduct will not be repeated and the target will be safe; (c) restoring relationships and affirming a community that is inclusive and actively intolerant of harassment, and (d) potentially also offering the accused the opportunity to be a community member in good standing going forward. (The remedy may engage two people, together or separately, or a larger community, depending on the scope of those impacted and the circumstances.)

- It is not necessary for gender harassment or other misconduct to be proven to engage in a restorative remedy.
- At a high level, the accused must be willing to acknowledge that the target experienced harm from the accused's conduct, but does not have to acknowledge all allegations (or, depending on the situation, legal culpability), as long as the accused is committed to understanding what conduct caused the harm and how to avoid repetition—and the target's objective is to be safe from future harm, rather than to punish the accused.
- Restorative remedies are not adequate when regulations require other action (e.g., Title IX regulations require formal process when desired by a target, and proposed changes may require formal process when a formal complaint is filed unless both parties agree otherwise; and research fabrication, falsification or plagiarism and violation of human subjects research regulations trigger regulatory requirements for formal processes).

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<sup>12</sup> Providing safety to those with knowledge, and confidential informal means of exploring whether rumors raise a question that needs review, is an important focus for societies. So is regular communication about how and to whom a person may safely and confidentially provide information about sexual and intersecting bases of harassment, and when total confidentiality can't be guaranteed (e.g., when safety of the community is threatened or Title IX requires an investigation). Whether Title IX regulations require an investigation may change if changes recently proposed by the U.S. Department of Education are implemented. Under current regulations, however, the need to investigate depends on whether the Society or home institution has actual knowledge, meaning certain representatives of the institution know (e.g., senior officials, supervisors, positions designated to receive complaints)—or whether the institution reasonably should have known, considering all facts and circumstances (e.g., rampant rumors, media reports, persistent red flags) had it made a diligent inquiry. If a society's or institution's employee sexually harasses a student while performing responsibilities for students, the society or institution is held responsible for remedying the effects of the harassment, whether or not it had notice. Having an ombuds function (with good training), whether full-time or as an assigned duty of someone whose other duties would not trigger a reporting requirement (so not a senior officer, supervisor, lawyer) can be helpful for maintaining confidentiality.

**Retaliation:** means punishing or otherwise engaging in differential adverse treatment of someone in response to that person raising a concern about, or otherwise asserting the right to be free from, discrimination including harassment.<sup>13</sup> Prohibited conduct includes activity that would discourage someone from resisting or complaining about future discrimination/harassment. Retaliation can include actions such as transfer to a less desirable position or assignment; verbal or physical abuse; increased scrutiny; spreading false rumors; or making the person's work more difficult.<sup>14</sup>

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<sup>13</sup> See [https://www.eeoc.gov/laws/types/retaliation\\_considerations.cfm](https://www.eeoc.gov/laws/types/retaliation_considerations.cfm) (EEOC's detailed discussion of the prevalence, determining factors and consequences of harassment).

<sup>14</sup> See *Academies Report* p. 81 (discussing research demonstrating the prevalence of and costs to targets from retaliation).

## V. About the Societies Consortium

The Societies Consortium on Sexual Harassment in STEMM is a unique collective act of leadership and accountability to advance excellence in science, technology, engineering, mathematics and medical fields (STEMM). This initiative is providing customizable model policies (with embedded menus of options for flexibility), policy-law guidance, and practical tools to advance professional and ethical conduct, climate and culture in societies' own operations and STEMM fields broadly, in support of inclusion of all talent and excellence in the fields. Through a collective effort and investment, the consortium model can develop high quality resources that benefit from multiple perspectives and national expertise, in a time and cost-efficient manner. Toward these aims, the Consortium's strategic focus is building communities actively intolerant of sexual and intersecting bases of harassment and building bridges for collective efforts across STEMM—among societies, academic and research institutions, teaching hospitals and others, as well as researchers, faculty and students. Launched in December 2018, eighty-four (84) STEMM disciplinary societies are Inaugural Members (as of March 19, 2019), with more in process.

To learn more about the Societies Consortium or to join, visit our website at [societiesconsortium.com](http://societiesconsortium.com) or email us at [societiesconsortium@educationcounsel.com](mailto:societiesconsortium@educationcounsel.com).



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