



## Ethics Case Procedure

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### INTRODUCTION

NABCEP develops and promotes high ethical standards for NABCEP certified practitioners, and requires that NABCEP certificants meet these standards. The following disciplinary procedures are the only rules for processing possible violations of these ethical standards, and are applicable to certificants, as well as those who are seeking certification from NABCEP. Certificants and candidates seeking certification or recertification agree that: these procedures are a fair process for resolving all ethics matters; they will be bound by decisions made pursuant to these procedures; these procedures are governed by the principles of the law of the State of Nevada; and these procedures do not constitute a contract between NABCEP and the candidate or certificant.

#### **A. GENERAL PROVISIONS**

**1. Nature of the Process.** NABCEP has the only authority to end any ethics matter, regardless of circumstances. By applying for certification or recertification, candidates and certificants agree that they will not challenge the authority of NABCEP to apply the Code of Ethics and Ethical Standards of Conduct, and the Ethics Case Procedures, or other applicable policies to resolve ethics matters.

These ethics procedures are not formal legal proceedings, so many legal rules and practices are not observed, and the procedures are designed to operate without the assistance of attorneys. Any party may be represented by an attorney with respect to an ethics matter. If a party has retained an attorney, that attorney may be directed to communicate with NABCEP solely through the NABCEP Legal Counsel. The parties

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are encouraged to communicate directly with NABCEP. NABCEP may use the services of NABCEP Legal Counsel without limitation.

**2. Participants.** Ethics cases may be decided by the Ethics Committee, the Board of Directors, and/or any other authorized organizational representative. A certificant or candidate who is the subject of an ethics complaint or investigation will be the respondent. The person(s) initiating an ethics complaint will be the complainant(s).

**3. Time Requirements.** NABCEP will make every effort to follow the time requirements noted in this policy. However, NABCEP's failure to meet a time requirement will not prohibit the final resolution of any ethics matter. Complainants and respondents are required to comply with all time requirements specified in these procedures. Time extensions or postponements may be granted by NABCEP if a timely written request explains a reasonable cause.

**4. Litigation/Other Proceedings.** NABCEP may accept and resolve ethics complaints when civil or criminal litigation or other proceedings related to the complaint have been, or are presently, before a court, regulatory agency, or professional body. NABCEP may also continue or delay the resolution of any ethics complaints in such cases.

**5. Improper Disclosure/Failure to Disclose.** NABCEP may issue any appropriate directive(s) where a candidate or certificant provides a misleading disclosure, or fails to disclose requested information, related to certification or recertification or to an ethics complaint, disciplinary proceeding, or similar matter. Where a discipline, order, or other directive is issued by NABCEP under this Section, the candidate or certificant involved may seek review and appeal pursuant to these procedures.

**6. Time Limitations Concerning Complaints.** NABCEP may consider any ethics complaint, regardless of: whether the respondent held a NABCEP credential at the time of the alleged violation; when the alleged violation occurred; or, whether the respondent continues to hold or seek a NABCEP credential during the course of any ethics case.

**7. Confidentiality.** In order to protect the privacy of the parties involved in an ethics case, all material prepared by, or submitted to, NABCEP will be confidential, unless otherwise authorized by these procedures. Among other information, NABCEP will not consider the following materials to be confidential: materials which are disclosed as the result of a legal requirement; upon the written request of a candidate or certificant, any certification information which he/she would like made available to other credentialing or professional organizations, or similar bodies; and, all final decisions and rulings of the Ethics Committee or the Board of Directors.

Until an ethics case has been closed or finalized pursuant to Section H, all parties and participants must maintain the confidentiality of all information and materials related to the ethics case, including its existence, consistent with these rules. If any party discloses information related to the ethics case contrary to these rules, the Ethics Committee and/or

the Board of Directors may terminate the ethics complaint if such disclosure is by the complainant; or may impose any sanction included within these rules if such disclosure is by the respondent.

**8. Party Conduct/Failure to Cooperate.** All parties must behave in a courteous and professional manner when communicating with NABCEP representatives. If any party refuses to fully cooperate with NABCEP concerning matters arising under these procedures without good and sufficient cause, NABCEP may: terminate the ethics complaint of an uncooperative complainant; or, impose any sanction or appropriate corrective action if a respondent is uncooperative. Where a discipline, order, or other directive is issued by NABCEP under this Section, the candidate or certificant involved may seek review and appeal pursuant to these procedures.

**9. Resignation from NABCEP.** Should a respondent attempt to relinquish NABCEP certification or withdraw an application during the course of any ethics case, NABCEP reserves the right to continue the matter to a final and binding resolution according to these procedures.

### **B. SUBMISSION OF ETHICS COMPLAINTS/ACCEPTANCE OR REJECTION**

**1. Ethics Complaint.** Any person, group, organization, or in appropriate cases, NABCEP, may initiate an ethics complaint. Each complainant must submit to the Ethics Committee a detailed written description of the factual allegations supporting the ethics complaint. The Ethics Committee will be responsible for the review, investigation, and resolution of each ethics complaint. Upon receipt of a complaint, the Committee will determine whether sufficient detail is presented to constitute a formal Ethics Complaint and to permit the Committee to conduct an appropriate review regarding the acceptance or rejection of the complaint.

**2. Acceptance/Rejection Criteria.** In order to determine if an ethics complaint is accepted or rejected, the Ethics Committee will consider whether: a proven complaint would constitute a violation of the Code of Ethics and Ethical Standards of Conduct; the passage of time since the alleged violation requires that the complaint be rejected; relevant, reliable information or proof concerning the charge is available; the complainant is willing to provide information or other evidence concerning the complaint; and, the charge appears to be justified or insupportable, considering the proof available.

**3. Ethics Complaint Acceptance.** Upon a determination that an ethics complaint is appropriate, the Ethics Committee will issue a formal Ethics Complaint Notice identifying each Code of Ethics and Ethical Standards of Conduct violation alleged and the supporting factual basis for each complaint. This Notice will be delivered to the respondent and complainant, and will be marked "Confidential."

**4. Ethics Complaint Response.** Within thirty (30) days of the mailing date of an Ethics Complaint Notice, the respondent must submit a response to the Ethics

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Committee. The Ethics Complaint Response must include: a full response to each complaint allegation; a copy of each document relevant to the resolution of the Ethics Complaint; and, any other information that the respondent believes will assist the Ethics Committee in considering the Ethics Complaint fairly.

**5. Response Deficiencies.** The Ethics Committee may require the respondent to supplement, clarify, or expand a response.

**6. Optional Reply to Ethics Complaint Response.** The Ethics Committee will forward a copy of the Ethics Complaint Response to the complainant within approximately ten (10) days following the receipt of the Response by NABCEP. The complainant may submit a Reply to the respondent's Ethics Complaint Response by letter or similar document within ten (10) days of the mailing date of the Response to the complainant. If submitted, this Reply must fully explain any information and objections that the complainant wishes to present to the Ethics Committee concerning the Ethics Complaint Response.

**7. Optional Response to Complainant Reply.** If a Reply to the Ethics Complaint Response is submitted by the complainant, the Ethics Committee will forward a copy of the Reply to the respondent within approximately ten (10) days following the receipt of the Reply by NABCEP. The respondent may submit a Response to the complainant's Reply by letter or similar document within ten (10) days of the mailing date of the Reply to the respondent. If submitted, the Response must explain fully, and is limited to, any information and objections that the respondent wishes to present to the Ethics Committee concerning the complainant's Reply to the Ethics Complaint Response.

**8. Complaint Rejection.** If the Ethics Committee determines that an allegation or an entire complaint should not be accepted as a formal ethics complaint, the Committee will notify the complainant in writing of the rejection and its basis.

**9. Appeal of Complaint Rejection Determination.** Within thirty (30) days of the mailing of a complaint rejection letter, the complainant may appeal to NABCEP Board of Directors by stating in writing: the alleged procedural errors made by the Ethics Committee with respect to the complaint rejection, if any; the specific provisions of the Code of Ethics and Ethical Standards of Conduct believed violated; and, the specific information believed to support the acceptance of the complaint.

### **C. MEDIATION**

**1. Cases Appropriate for Mediation.** All Ethics Complaints will be reviewed by the Ethics Committee to determine whether the ethics matter is appropriate for resolution by mediation. The Ethics Committee will consider the seriousness of the allegations, the respondent's background, prior conduct, and any other pertinent material, and make a decision concerning the likelihood that the matter can be resolved fairly without formal disciplinary proceedings, as described in these procedures. Ethics cases concerning

charges issued by a regulatory agency or professional body, and those involving criminal matters, are not appropriate for mediation.

**2. Mediation Determination.** Should the Ethics Committee determine that a case is appropriate for mediation, the Ethics Committee may appoint an appropriate, disinterested mediator and refer the matter for resolution. The cost of the mediator, if any, shall be divided equally between the parties.

**3. Successful Mediation.** In the event of successful mediation, the mediator would prepare the resolution report summarizing the terms of each mediated resolution of an ethics matter, a copy of which will be forwarded to the parties.

**4. Unsuccessful Mediation.** In the event of unsuccessful mediation, the appointed mediator would refer the case back to the Ethics Committee consistent with these procedures.

### **D. PRELIMINARY ACTIONS AND ORDERS**

**1. Voluntary Temporary Suspension of Certification.** At any time following the acceptance and issuance of a formal Ethics Complaint, the respondent may be asked to accept and agree to a Voluntary Temporary Suspension Agreement stating that he/she will voluntarily and immediately cease from representing himself or herself as certified or otherwise endorsed by NABCEP until further notice, in addition to any other directives issued by NABCEP.

**2. Involuntary Suspension of Certification.** If a respondent fails to accept to and sign a Voluntary Temporary Suspension Agreement, the Ethics Committee may issue an Order suspending the respondent's certification(s) until the final resolution of the Complaint. Suspension Orders are authorized when:

**a.** The respondent has been indicted for, similarly charged with, or convicted of any violation of criminal law under statute, law, or rule pertaining to professional practice, or which would otherwise reflect negatively on the profession or NABCEP.

**b.** The respondent is the subject of a formal complaint, similar charge, and/or investigation, or has been found in violation of any law, regulation or rule, by a professional regulatory body;

**c.** The respondent is the subject of a formal complaint, similar charge, and/or investigation concerning an ethics or disciplinary matter, or has been found in violation of an ethics code, by a professional association or credentialing body; or,

**d.** The respondent is the subject of litigation or a government agency proceeding relating to his/her professional practice(s).

**3. Other Preliminary Orders.** The Ethics Committee or the Board of Directors may require the respondent to do, or to refrain from doing, certain acts by preliminary and temporary Order reasonably related to the Complaint under consideration. The Ethics Committee or the Board of Directors may discipline a respondent who fails to comply with a temporary or preliminary order. Preliminary and temporary orders are not subject to appeal.

**E. ETHICS COMMITTEE COMPLAINT HEARINGS**

**1. Ethics Committee.** At least three (3) members of the NABCEP Appeals, Grievance, and Ethics Committee will be appointed to serve as the Ethics Committee to resolve to review, investigate and resolve each Ethics Complaint matter, including a Committee Chair who will supervise the business of the Committee. Three (3) or more disinterested members of the Ethics Committee will be assigned to each case, and will conduct an informal Ethics Complaint Hearing designed to collect and weigh all of the available information and proof, and will have full authority to convene, preside over, continue, decide, and conclude an ethics hearing.

**2. Hearing Schedule, Notice, and Attendance.** The hearing date, time, and location for each ethics case will be scheduled by the Ethics Committee in consultation with the parties, and both parties will be notified in writing. Each party may attend the hearing in person, or via telephone conference where all participants will be able to hear each other.

**3. Participation of Legal Representatives.** Should the NABCEP Legal Counsel be present at an Ethics Complaint Hearing, Legal Counsel shall have the privilege of the floor and may conduct the hearing with the Ethics Committee. Legal or other representatives of the parties do not have such privilege and are bound by the determinations and rulings of the NABCEP Ethics Committee and Legal Counsel. No formal legal rules of evidence, cross-examination, oath, and other procedures will apply to hearings. The candidate or certificant, or a legal representative, will be permitted to ask questions of witnesses at the discretion of the Ethics Committee. Objections relating to relevance of information and other procedural issues will be decided by the Ethics Committee, and these decisions are not subject to appeal.

**4. Record of the Hearing.** A taped, written or other record of the hearing will be made, as determined by the Ethics Committee.

**5. Hearing and Other Expenses.** Parties will be responsible for their expenses associated with the case. NABCEP will bear other general costs of conducting the hearing, including costs associated with the activities of NABCEP representatives.

**6. Closing of the Hearing Record.** Any hearing may proceed to a conclusion and decision whether or not the parties are present based on the appropriate case record, as determined by the Ethics Committee. The Ethics Committee will review the hearing

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record, as well as any submissions presented by the parties and other relevant information, and thereafter, will determine the outcome of the ethics case by majority vote in a closed session. The hearing record will be closed following the conclusion of the hearing, unless otherwise directed by Ethics Committee.

**7. Ethics Committee Decision and Order.** A Decision and Order will be prepared by the Ethics Committee after the closing of the record, which will include: a summary of the case, including the positions of the parties; a summary of the relevant factual findings based on the case record; a final ruling on each Code of Ethics and Ethical Standards of Conduct violation charged; and, a statement of any disciplinary action(s) and other directives issued by the Committee. Copies of the Ethics Committee Decision and Order will be sent to the parties. The parties will also be notified that the final decision may be published consistent with the requirements of these procedures.

**8. Disciplinary Actions Available.** When a respondent has been found to have violated one or more provisions of the Code of Ethics and Ethical Standards of Conduct, NABCEP may issue and order one or more of the following disciplinary or remedial actions:

- a. The denial and rejection of any certification or recertification application;
- b. Specific training, supervision and/or instruction concerning his or her professional activities, or other appropriate conditions;
- c. Private reprimand and censure, including any conditions or directives;
- d. Public reprimand and censure, including any conditions or directives;
- e. Certification probation for any period up to three (3) years, including any conditions or directives;
- f. Suspension of certification for a period of no less than six (6) months and no more than three (3) years, including any conditions or directives; and,
- g. Revocation of certification, including any directives.

### **F. BOARD OF DIRECTORS/APPEAL**

**1. Time Period for Submitting Appeal.** Within thirty (30) days of the mailing date of an adverse Ethics Committee Decision and Order, the respondent may submit a written appeal of all, or a portion of, the Decision and Order to the Board of Directors consistent with the requirements of these procedures.

**2. Grounds for Appeal.** An adverse Ethics Committee Decision and Order may be affirmed, reversed, or otherwise modified by the Board of Directors. The grounds for appeal of an adverse decision are strictly limited to the following:

- a. **New or Previously Undiscovered Information.** Following the closing of the hearing record, the respondent has located relevant proof that: was not previously in his/her possession; was not reasonably available prior to closure of the record; and, should have affected the Ethics Committee decision in the respondent's favor;
  - b. **Contrary to the Information Presented.** The Ethics Committee Decision is contrary to the most substantial information provided in the record;
  - c. **Procedural Error.** The Ethics Committee misapplied a procedure contained in these rules and significantly prejudiced the respondent; or,
  - d. **Misapplication of the Ethics Rules.** The Ethics Committee misapplied the relevant provisions of the Code of Ethics and/or Ethical Standards of Conduct, and the misapplication significantly prejudiced the respondent;
  - e. With respect to Subsections 2.c. and 2.d. above, the Board of Directors will consider only arguments that were presented to the Ethics Committee prior to the closing of the hearing record.
3. **Contents of Appeal Letter.** The respondent must submit an appeal letter or other document to the Board of Directors and to the complainant which contains the following information and material: the ethics case name and number, and the date that the Ethics Committee decision was issued; a statement and complete explanation of the reasons for the appeal under Section F.2, including any discipline reduction request, or other modification of the decision issued by Ethics Committee; and, copies of any material supporting the appeal.
4. **Appeal Deficiencies.** The Board of Directors may require respondent to clarify, supplement, or amend an appeal submission.
5. **Appeal Rejection.** If the Board of Directors determines that an appeal does not meet the appeal requirements or otherwise warrant further formal review, consistent with the requirements set forth in these procedures, the appeal will be rejected. The complainant and respondent will be notified of the rejection, as well as the reason(s) for the rejection, by letter within approximately thirty (30) days of the determination. Appeal rejection determinations are not subject to appeal.
6. **Optional Reply to Appeal Letter.** Within fifteen (15) days of the mailing date of a respondent's appeal, the complainant may submit to the Board of Directors a Reply to the appeal, by letter or other document. If submitted, this Reply must fully explain any objections that the complainant wishes to present to the Board of Directors concerning the appeal.
7. **Optional Response to Complainant Reply.** If a Reply to the Appeal is

submitted by the complainant, the Board of Directors will forward a copy of the Reply to the respondent within approximately ten (10) days following the receipt of the Reply by NABCEP. The respondent may submit a Response to the complainant's Reply by letter or other document within ten (10) days of the mailing date of the Reply to the respondent. If submitted, the Response must fully explain, and is limited to, any objections that the respondent wishes to present to the Board of Directors concerning the complainant's Reply to the Appeal.

### **G. BOARD OF DIRECTORS APPEAL HEARINGS**

- 1. Board of Directors.** The Board of Directors will appoint at least three (3) disinterested Directors to serve as the Board to resolve each ethics appeal, including a Hearing Chair by majority vote, who will preside over the appeal hearing. The assigned Board Directors will have full authority to convene, preside over, continue, decide, and conclude an ethics appeal.
- 2. Appeal Hearings.** Following receipt of a complete and proper written appeal, the Board of Directors will schedule a date for an appeal hearing, and the parties will be notified of the date in writing. The Board will review the hearing record, as well as any appeal submissions presented by the parties and other relevant information, and thereafter, will determine the outcome of the appeal by majority vote in a closed session.
- 3. Board of Directors Appeal Decision and Order.** Following the conclusion of an appeal hearing, the Board of Directors will issue an Appeal Decision and Order stating and explaining the outcome of the appeal, and including: a summary of any relevant portions of the Ethics Committee Decision and Order; a summary of any relevant procedural or factual findings made by the Board of Directors; the Board's ruling(s) and decisions with respect to the matters under appeal; and, the Board's final Order affirming, reversing, amending, or otherwise modifying any portion of the Ethics Committee Decision and Order, including any final disciplinary action or sanction issued by the Board. Copies of the Board of Directors Appeal Decision and Order shall be sent to the parties. The parties will also be notified that the final decision may be published consistent with the requirements of these procedures.

### **H. FINALIZING ETHICS CASES**

**1. Events Which Will Cause Closure of an Ethics Case.** An ethics case will be closed when any of the following occur: the ethics complaint has been rejected pursuant to these procedures; a final decision has been issued by the Ethics Committee and/or the Board of Directors pursuant to these procedures without appeal; or, an Ethics Complaint has been terminated or withdrawn by the complainant(s).

**2. Events Which Will Cause an Ethics Case Decision and Order to Become Final.** The Ethics Case Decision and Order issued by the Ethics Committee that is not appealed within the prescribed time requirements will be considered final. The Ethics Case Decision and Order issued by the Board of Directors will be considered final.

**3. Referral and Notification Action.** NABCEP may notify appropriate governmental, professional, or similar bodies of any disciplinary action taken against a respondent by sending a copy of the final Ethics Case Decision and Order issued by the Ethics Committee and/or the Board of Directors, or by sending another appropriate notice. This notification may be done at any point after the time period for the respondent to appeal an adverse decision has elapsed. During the appeal period, NABCEP may respond to inquiries regarding the existence of ethics cases and indicate the existence of such proceedings.

**4. Publication of Final Disciplinary Action.** Following the lapse of any appeal rights and upon case closure, NABCEP may release or publish a final ethics case Decision and Order, or related notice, following the issuance of an adverse Ethics Committee or Board of Directors ruling. Any party or interested individual may request publication of any final decision, consistent with these procedures. However, the Ethics Committee or Board of Directors may deny such requests, and such decisions cannot be appealed.

**I. REVOCATION, SUSPENSION, AND PROBATION ORDERS/REAPPLICATION AND REINSTATEMENT PROCEDURES**

**1. Revocation Orders/Reapplication Petition.** Five (5) years after the issuance of a final revocation order issued under these procedures, a respondent may submit to the Board of Directors a Petition For Permission To Reapply For Certification, which will include: a statement of the relevant ethics case name and number, and the date that the final ethics Decision and Order was issued; a statement of the reasons that support or justify the acceptance of the Reapplication Petition; and, copies of any relevant documentary or other material supporting the Petition.

**2. Suspension Orders/Reinstatement Requests.** After the expiration of a final suspension order issued under these procedures, a respondent may submit to the Board of Directors a Request For Certification Reinstatement, which will include: a statement of the relevant ethics case name, docket number, and the date that the final ethics Decision and Order was issued; a statement of the reasons that support or justify the acceptance of the Reinstatement Request; and, copies of any relevant documents or other materials supporting the Request.

**3. Probation Orders/Reinstatement or Referral.** Following the expiration of a final probation order under these procedures, the Board of Directors will determine whether the respondent has satisfied the terms of the probation order, and will do the following: if the respondent has satisfied the terms of probation in full, the Board will immediately verify that the probation has been completed and reinstate the individual to full certification status; or, if the respondent has not satisfied the terms of probation in full, the Board will issue any appropriate action consistent with these procedures.

**4. Board of Directors Reapplication Petition and Reinstatement Request Decisions.** Following the submission of a complete Reapplication Petition or Reinstatement Request, the Board of Directors will schedule and conduct a hearing to review and rule on the Petition or Request. Each Petition or Request will be considered by a quorum of the Board. During these deliberations, the Board of Directors will review the information presented by the respondent and any other relevant information. The Board will then determine the outcome of the appeal by majority vote in closed session. The Board will prepare and issue a final Decision and Order indicating whether the Petition or Request is granted, denied, or continued to a later date, and if appropriate, any conditions of certification or recertification. Copies of the Board of Directors Decision and Order will be sent to the parties. While no appeal of the Decision and Order is permitted, the respondent may submit a new Petition or Request pursuant to this Section, one (1) year or more after the issuance of the Board of Directors Decision and Order.