

## **DISCIPLINARY PROCEDURES**

### **CONFIDENTIALITY OF PROCEEDINGS**

Except as is otherwise provided herein, all information received and all reports, decisions files, transcripts, or any other documents of any kind generated or received during a disciplinary proceeding, shall be kept confidential by the VCB and the respondent.

### **POSSIBLE SANCTIONS FOR VIOLATION OF THE CODE OF ETHICAL CONDUCT**

Possible sanctions for violation of the Code of Ethical Conduct include but are not limited to: denial of an application for certification; written caution; public reprimand; suspension of a credential; revocation of a credential.

Revocation of certification shall be construed as lasting a lifetime without the possibility of reinstatement.

The VCB may impose educational, supervisory, training, and treatment requirements in conjunction with any of the above disciplinary actions.

Based on the nature of an ethics complaint and at the discretion of the VCB Ethics Committee, disciplinary action imposed against a certified professional may affect all VCB credentials the certified professional holds.

Past disciplinary actions taken against a certified professional may be considered in setting sanctions. Two or more written cautions or reprimands issued against a certified professional in a two-year period shall result in a suspension or a revocation of the credential.

Except as may be provided for in a consent order, in all cases where a public reprimand, suspension, or revocation is issued by the VCB, there shall be cited on the VCB web site the name of the respondent, the sanction imposed, and the violated Rule(s). The same information shall be referred to the IC&RC. Further, VCB reserves the right to disclose information relative to disciplinary actions to other pertinent organizations such as but not limited to the VA Office of Recovery Services or the VA Board of Counseling and other appropriate certifying or licensing bodies.

Sealed records will only be opened with a court order.

### **COMPLAINTS**

Persons wishing to file a complaint against a certified professional or against a person under VCB jurisdiction seeking certification may do so by detailing their complaint, in writing, to the VCB. Verbal complaints and anonymous action complaints will not be considered for investigation except for publicly available information, such as but not limited to, newspaper articles, court records, or information on web sites that is made available to or secured by VCB.

All complaints must contain the complainant's full name, address, and a phone number where the complainant can be contacted. The complainant must sign and date the complaint document.

For ethical complaints to be considered, all complaints must be filed within four (4) years from date offense occurs.

Complaints shall be sent in an envelope marked "Confidential" to:

Ethics Committee  
Attention: Executive Director  
Virginia Certification Board, 298 S. Progress Avenue, Harrisburg, PA 17109

## **INVESTIGATION PROCESS**

The Executive Director shall conduct an initial review of all complaints filed with the VCB and shall initiate and direct an investigation, to the extent the Executive Director deems sufficient, of all instances of possible professional misconduct by a certified professional. In supervising investigations, the Executive Director may use investigators where deemed appropriate. Except as otherwise provided herein, all VCB investigatory information remains confidential. If during the investigation it appears that criminal behavior may have occurred, the VCB's Executive Director may report the alleged criminal behavior to the appropriate authority.

If a complaint has been filed, the Executive Director may, at his or her discretion, proceed with an investigation even if the complainant subsequently requests that the complaint be withdrawn.

If cases where, upon initial review, the Executive Director deems that no violation has occurred and that no further investigation is warranted, this conclusion shall be reported to the Ethics Committee for their review within ten working days of the completion of the investigation. The Ethics Committee shall either return the matter to the Executive Director for investigation or affirm the Executive Director's decision. If there is no further investigation, the Executive Director shall send a notice to the complainant, informing him or her that the complaint is dismissed.

The Executive Director shall, at the outset of the investigation, send the respondent a copy of the complaint through regular first-class mail, thereby notifying said respondent of the name of the complainant(s) and the alleged violation(s) pertaining to this VCB Code of Ethical Conduct. The Executive Director shall call upon the respondent to submit a typed response within 30 days from the date of the notice. The Executive Director may allow a respondent additional time if such is requested.

During the investigation, the respondent shall disclose all facts and circumstances pertaining to the alleged misconduct, as well as the respondent's interpretation of the situation or conduct which is the subject of the investigation. Misrepresentation by a respondent, failure to provide information, or failure to cooperate with the investigation shall be independent grounds for disciplinary action.

In cases in which an investigation has been conducted, the Executive Director shall, no sooner than 30 days after mailing of the request for response to the respondent, submit an investigation summary report to the Ethics Committee inclusive of the following: any and all written materials associated with the investigation; a summary of any further communications with either the complainant or the respondent; an outline of alleged code violation(s), if any; and a recommendation for dismissal, sanction or sanctions to be imposed, or a recommendation for an ethics hearing. After the review of the evidence provided in the case, the Ethics Committee will make their final decision by majority vote for dismissal, imposition of a sanction, or to convene a hearing.

In those cases, wherein the findings support a decision by the Ethics Committee to impose a sanction or sanctions upon the respondent, VCB will forward to the respondent a written document summarizing the rule(s) violated, the findings of fact, and the disciplinary action being taken. The respondent will sign the document indicating a voluntary acceptance of the sanction and return the document to the VCB within 10 business days of receipt.

## **HEARING PROCESS**

A hearing may be held at any point in the investigatory or decision-making process at the discretion of the Ethics Committee. The hearing is typically undertaken in those cases wherein there is sufficient evidence for the allegation of an ethics code violation but there remain undetermined details of the case that the committee believes might be resolved through the hearing process. A hearing may also be requested by a respondent after exhausting the appeal process (see appeal process). Should a respondent request a hearing in response to the decision of the Appeal Committee, a one-time hearing fee of \$250.00 will be charged to the respondent. This fee must be received by the VCB before the hearing process will be initiated. In either event, a notice of hearing shall advise the respondent and the complainant of the following:

1. The date, time, and the location of the hearing.
2. Both the respondent and the complainant may be represented by counsel at the hearing at their own expense.
3. Both parties to the complaint may present and rebut evidence and present and cross-examine witnesses.
4. The Hearing Panel shall not be bound by common law or statutory rules of evidence, and the Hearing Panel may consider all evidence having reasonable probative value, but a decision to impose discipline may not be based solely on a declarant's oral hearsay statement unless it would be admissible under common law or statutory rules of evidence.
5. The Hearing Panel will base its decision as to whether a violation of the Code of Ethical Conduct has occurred solely upon the evidence presented at the hearing and gathered during the investigatory process.
6. At the respondent's own expense, the respondent may have a registered court reporter present to transcribe the proceedings, provided that the VCB is notified of such election at least 5 days prior to the hearing and is supplied with a copy of the transcript at no cost.
7. No discovery shall be permitted, and no access to VCB files shall be allowed to the respondent, the complainant, or their representatives.
8. Except in the most emergent of circumstances, no postponement requested less than 48 hours prior to a scheduled hearing will be considered.
9. There shall be no contact prior to the hearing between the complainant and the respondent, nor shall the complainant or the respondent be in contact with any VCB member for discussing in any way the complaint or influencing the decision of the Hearing Panel.
10. The hearing shall be presided over by a Hearing Officer, and the Officer shall resolve objections concerning evidence.
11. The hearing shall be closed to the public.

Failure of either the complainant or the respondent to attend the hearing shall be deemed a waiver of their right to a hearing. In such cases, the hearing may proceed with disciplinary action being taken or be dismissed as determined by VCB. The Hearing Panel shall decide based on the evidence presented through the investigatory process.

Within 30 days after the completion of the hearing, the Hearing Panel shall prepare a written decision containing Findings of Fact and a Conclusion as to whether any of the ethical principles or rules of the Code of Ethical Conduct have been breached. If the Hearing Panel determines that the respondent did breach the Code of Ethical Conduct, the panel shall impose a disciplinary sanction, which shall be specified in the panel's decision. The Hearing Panel shall mail a copy of the decision to the respondent and the complainant by regular first-class mail. The decision of the Hearing Panel shall be deemed that of the VCB, shall be effective upon issuance or at such date as the Hearing Panel shall specify, and shall be final, without further action by the VCB.

#### **ACTION BY THE ETHICS COMMITTEE**

Within 30 days of a hearing or a recommendation for dismissal from the Executive Director, the Ethics Committee shall issue a decision concerning the complaint, based on the materials provided by the Executive Director or gleaned from the hearing.

The decision shall include Findings of Fact, a Conclusion as to which Rules of Conduct, if any, have been violated, and any sanction to be imposed. The decision shall recite the nature of the complaint, the investigation conducted, and the respondent's rebuttal to the complaint. Within 7 days after the issuance of the Hearing Panel's decision, the Executive Director shall mail a copy to the respondent, by regular first-class mail, together with a notice of the right to appeal any Hearing Panel's decision which calls for disciplinary action.

If a request for an appeal is timely filed, any disciplinary action imposed by the Hearing Panel shall be stayed pending the decision of the Appeal Committee. However, if a request for appeal is not filed within the time period prescribed hereafter, the decision of the Hearing Panel shall be final, and any disciplinary action imposed shall take effect upon

passage of the prescribed time period. When any disciplinary action takes effect, the Executive Director shall notify the complainant of the results of the disciplinary process.

### **APPEAL PROCESS**

If disciplinary action is taken, the respondent may appeal the decision by submitting a request for an appeal to the VCB. Request for an appeal must state reason for the appeal. Such requests shall be mailed to the VCB by certified mail and postmarked no later than 30 days after receipt of the decision. Appeal requests should be addressed to:

President, Board of Directors  
Virginia Certification Board  
298 S. Progress Avenue  
Harrisburg, PA 17109

If a timely request for an appeal is submitted to the VCB, the Board shall appoint from the VCB a three-person Appeal Committee. No member of the Appeal Committee shall be a member of the Ethics Committee, nor shall anyone be appointed to the Appeal Committee who has a potential conflict of interest with either the complainant or the respondent. All potential conflicts of interest will be discussed prior to the appointment. Within 30 days after the VCB receives a request for an appeal, a review into the facts contained in the decision of the Hearing Panel shall be scheduled. The review shall be scheduled no less than 31 days or more than 45 days from the date of receipt of the request.

Such review shall be limited to the issues and charges contained in the decision of the Hearing Panel previously served on the respondent and procedural issues relevant to the case. Within 30 days of the decision by the Appeal Committee, respondent will be notified in writing of said decision. The decision of the Appeal Committee will be considered final.

### **PROCEDURES AND REINSTATEMENT FOLLOWING DISCIPLINARY ACTION**

If a respondent's VCB credential has been suspended or revoked and the respondent does not appeal the Hearing Panel's decision, or if the Appeal Committee upholds the respondent's suspension or revocation, the respondent shall return his or her credential certificate to the VCB Office no later than 21 days after the suspension or revocation takes effect. The VCB credential certificate remains the property of the VCB.

VCB credential reinstatement following a suspension: Upon expiration of the suspension period, the Ethics Committee shall authorize reinstatement of the professional for the balance of his/her certification period, unless:

1. another suspension or revocation of the respondent's certification has occurred; or
2. the respondent has committed another violation of the Code of Ethical Conduct; or
3. the respondent has failed to remit the recertification fees or make an application for recertification in a timely manner, according to the respondent's recertification date; or
4. the respondent has failed to comply fully with the terms of his or her suspension.

Revocation shall be construed as lasting a lifetime without the possibility for reinstatement.