

NATIONAL BOARD FOR CERTIFICATION OF ORTHOPAEDIC TECHNOLOGISTS, INC.  
(NBCOT)

**ETHICS CASE PROCEDURES**

**INTRODUCTION**

The NBCOT develops and promotes high ethical standards for Orthopaedic Technologists Certified and Orthopaedic Technologists – Surgery Certified. NBCOT requires that Orthopaedic Technologists Certified and Orthopaedic Technologists – Surgery Certified meet these standards. The following disciplinary procedures are the rules for processing possible violations of these ethics standards. These rules are applicable to NBCOT certificants and those who are seeking certification from the NBCOT. This document describes the only procedure for handling ethics cases brought to the attention of the NBCOT. When practitioners apply for certification or recertification, they agree to abide by the NBCOT policies, including the Code of Ethics and the Ethics Case Procedures. In addition, certified practitioners and practitioners seeking certification 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 New York; and, these procedures do not constitute a contract between the NBCOT and the candidate or certificant.

**A. GENERAL**

**1. Nature of the Process.** These procedures are the only means to resolve all NBCOT ethics charges and complaints. NBCOT has the exclusive authority to end any ethics inquiry or case, regardless of circumstances. By applying for certification or re-certification, practitioners agree that they will not challenge the authority of the NBCOT to apply the Code of Ethics, the Ethics Case Procedures, or other policies, and will not challenge the results of any disciplinary action taken under these policies in a legal or government forum. These ethics procedures are not formal legal proceedings, so many legal rules and practices are not observed. NBCOT will review the pertinent information presented when considering ethics investigations, cases and decisions.

NBCOT Ethics Case Procedures are designed to operate without the assistance of attorneys. Any party may be represented by an attorney with respect to ethics proceedings and procedures at the party's sole expense. However, if a party has retained an attorney, that party and attorney may be directed to communicate with NBCOT only through NBCOT Legal Counsel. The parties are encouraged to communicate directly with the NBCOT.

**2. Participants.** Ethics cases may be decided by the NBCOT Executive Director, the NBCOT Ethics Hearing Committee, the NBCOT Board Ethics Appeals Committee, and/or any representative designated by the Executive Director or authorized by these procedures. A NBCOT certificant or applicant who is the subject of an ethics charge or investigation will be, and is identified as, the respondent in these rules. The person(s) initiating an ethics complaint against a certificant or applicant will be, and is identified as, the complainant(s).

**3. Complainants/Ethics Charge Statement.** Any person, group or, in appropriate cases, NBCOT, may initiate an ethics case and act as a complainant. A complainant other than NBCOT must: contact the NBCOT Executive Director and request an Ethics Charge Statement form; complete the information requested on the Charge Statement; and, submit the completed Charge Statement to the Executive Director. Each Ethics Charge Statement must include a detailed written description of the factual allegations supporting the ethics charge(s).

**4. Time Requirements.** NBCOT will make every effort to follow the time requirements set forth in this document. However, NBCOT'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 this document. Time extensions or postponements may be granted by the NBCOT Executive Director, or Chair of the Ethics Hearing Committee, if a timely written request explains a reasonable cause.

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

**6. Complaints Concerning Non-certificants.** In the event that the NBCOT receives an ethics inquiry or Ethics Charge Statement concerning an individual who does not hold any NBCOT credential or who is not an NBCOT applicant, a representative of NBCOT will inform the complainant and may refer the complainant to an appropriate authority.

**7. Improper Disclosure/False or Misleading Responses.** Any failure to disclose pertinent information or misleading disclosure by a certificant or applicant with respect to an ethics charge, criminal case, disciplinary proceeding, or similar matter concerning him/her may constitute a violation of this and other NBCOT policies, and may be subject of discipline under these Procedures. In addition, such conduct may result in certification ineligibility.

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

**9. Confidentiality.** In order to protect the privacy of the parties to an ethics case, all material prepared by or submitted to NBCOT will be confidential. An exception will be

made if a release of information or documents is authorized by these rules. The identities of all members of the Ethics Hearing Committee and the Board Ethics Appeals Committee shall remain confidential, and will not be released without the specific authorization of each committee member.

Until an ethics case has been closed or finalized pursuant to Section M, all parties must maintain the confidentiality of all information 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 Executive Director, the Ethics Hearing Committee, and/or the Board Ethics Appeals Committee 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.

**10. Failure to Cooperate.** If any party refuses to fully cooperate or participate with NBCOT or its representatives, and it is determined that the lack of cooperation was without good cause, the NBCOT may take the following actions: **(a)** The Executive Director, the Ethics Hearing Committee, and/or the Board Ethics Appeals Committee may terminate the ethics complaint of an uncooperative complainant; **(b)** If a respondent is uncooperative, the Executive Director, the Ethics Hearing Committee, and/or the Board Ethics Appeals Committee may impose any sanction included within these rules. No appeal of such NBCOT actions is permitted.

**11. Resignation from NBCOT Certification:** Should a respondent attempt to relinquish NBCOT certification or withdraw an application during the course of any ethics inquiry or case, the NBCOT reserves the right to continue the matter to a final resolution according to these rules.

## **B. MEDIATION**

**1. Cases Appropriate for Mediation.** The Executive Director will receive all charges, complaints, and Ethics Charge Statements. The Executive Director 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 rules. Ethics cases concerning charges issued by a regulatory agency or professional body, and those involving criminal or civil litigation, are not appropriate for mediation.

**2. Mediation Determination.** Should the Executive Director determine that a particular ethics matter is appropriate for mediation and the complainant and respondent agree to mediation, he or she and the parties will make a reasonable and good faith effort to resolve

the dispute to a fair, just, and voluntary conclusion.

**3. Successful Mediation.** In the event of successful mediation, the Executive Director will prepare a report summarizing the terms of each mediated resolution of an ethics case, a copy of which will be forwarded to the parties. A mediated resolution of an ethics matter may not be appealed after the acceptance of the mediation report by all parties.

**4. Unsuccessful Mediation.** In the event of unsuccessful mediation, the Executive Director will refer the case to the Ethics Hearing Committee for resolution consistent with these procedures.

### **C. ETHICS INQUIRIES/ETHICS CHARGE STATEMENTS**

**1. Ethics Inquiries.** Any person or group seeking to file a complaint concerning a certificant or applicant should contact the Executive Director. The Executive Director will forward to the complainant a copy of the NBCOT Code of Ethics, Ethics Case Procedures and the form entitled "Ethics Charge Statement." The Executive Director will record all ethics inquiries and identify: the person(s) making the inquiry; the certificant/ applicant; the State from which the inquiry originates; and, the nature of the problem. This case log will remain confidential, and will be available only to authorized representatives of the NBCOT, or released for review to cooperating agencies and organizations.

**2. Ethics Charge Statement/Description of Charges.** In order for the NBCOT to consider an ethics complaint, a complainant other than the NBCOT must complete and submit to the Executive Director an Ethics Charge Statement, including all information required by the form. The Ethics Charge Statement is a formal written communication from a complainant describing the allegations against a certificant or applicant, and is the only form of complaint submission accepted. Documents, such as government agency disciplinary complaints and decisions, civil or criminal court complaints and decisions, or other public materials, may be submitted in support of an Ethics Charge Statement, or may serve as the basis of an Ethics Charge Statement by NBCOT.

When an Ethics Charge Statement is received by the NBCOT, the Executive Director will: **(a)** Review the material received and assign a case number to the matter; **(b)** Review the allegations made concerning the charges; **(c)** Determine whether the charges are presented in sufficient detail to permit NBCOT to conduct a preliminary investigation; and, if necessary, **(d)** Contact the complainant and request additional factual material. The Executive Director will send a letter to the complainant and respondent stating whether the charges submitted are accepted or rejected for a formal ethics investigation.

### **D. ACCEPTANCE/REJECTION OF ETHICS CHARGES**

**1. Charge Acceptance.** The Executive Director will review each charge presented in an Ethics Charge Statement submitted by a complainant and then determine if it will become the subject of a formal Ethics Complaint and Investigation. The following criteria will be considered to determine if a charge is accepted or rejected: **(a)** Whether the respondent is a certificiant or applicant; **(b)** Whether a proven charge would constitute a violation of the Code of Ethics; **(c)** Whether the passage of time since the alleged violation requires that the complaint be rejected; **(d)** Whether relevant, reliable information or proof concerning the charge is available; **(e)** Whether the complainant is willing to provide proof or other information to NBCOT concerning the complaint; and **(f)** Whether the charge appears to be justified or insupportable, considering the proof available to NBCOT.

The Executive Director will determine whether the charge(s) and available proof support a formal Ethics Complaint, and upon such determination, will issue a formal Ethics Complaint and Investigation Notice.

**2. Charge Rejection.** If the Executive Director determines that an allegation should not become the subject of a formal Ethics Complaint, the Executive Director will reject the charge(s). The Executive Director will notify the complainant and respondent of the rejection, as well as the reason(s) for the rejection, by letter within approximately twenty-one (21) days of the determination.

**3. Appeal of Charge Rejection Determination.** Within thirty (30) days of the mailing date of a charge rejection letter, the complainant may appeal to the Ethics Hearing Committee. In order to have the Ethics Hearing Committee reconsider the rejection, a complainant must state in writing the following: **(a)** the procedural errors possibly made by the Executive Director with respect to the charge rejection, if any; **(b)** the specific provisions of the Code of Ethics believed violated; and **(c)** the specific information believed to support the acceptance of the charge(s).

The Ethics Hearing Committee will consider and decide any charge rejection appeal at the next scheduled Committee meeting, and such decision cannot be appealed.

## **E. ETHICS COMPLAINTS AND INVESTIGATION**

**Ethics Complaint and Investigation Notices.** After an ethics charge is accepted, the Executive Director will issue a formal Ethics Complaint and Investigation Notice identifying each Code of Ethics violation alleged and the supporting factual basis for each complaint. This Notice will be delivered to the respondent, at the last known address (es) by regular mail and other verifiable delivery service, return receipt requested, and will be marked,

“Confidential.” The Notice will also state that the respondent may submit the case for review and resolution to either: the Executive Director; or the Ethics Hearing Committee, which will include a hearing. If the respondent does not request a hearing, the complaint will be resolved by the Executive Director under Section H of these Procedures. |

## **F. ETHICS COMPLAINT RESPONSE**

**1. Submitting an Ethics Complaint Response.** Within thirty (30) days of the mailing date of an Ethics Complaint and Investigation Notice, the respondent must submit an Ethics Complaint Response according to the instructions in the Notice. The Ethics Complaint Response must include the following: **(a)** a full response to each complaint; **(b)** the identification and a copy of each document that the respondent believes to be relevant to the resolution of the Ethics Complaint; and **(c)** any other information that the respondent believes will assist the NBCOT in considering the Ethics Complaint fairly.

**2. Response Deficiencies.** The Executive Director or the Ethics Hearing Committee may require the respondent to supplement or expand a response.

**3. Optional Reply to Ethics Complaint Response.** The NBCOT will forward a copy of the Ethics Complaint Response to the complainant within approximately ten (10) days following the receipt of the Response by the NBCOT. 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 objections that the complainant wishes to present concerning the Ethics Complaint Response.

**4. Optional Response to Complainant Reply.** If an optional Reply to the Ethics Complaint Response is submitted by the complainant, NBCOT will forward a copy of the Reply to the respondent within approximately ten (10) days following the receipt of the Reply by NBCOT. 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 fully explain, and is limited to, any objections that the respondent wishes to present concerning the complainant’s Reply to the Ethics Complaint Response.

## **G. PRELIMINARY ACTIONS AND ORDERS**

**1. Voluntary Temporary Suspension of Certification.** At any time following the issuance of an Ethics Complaint and Investigation Notice, the respondent may be asked to agree to a temporary suspension of NBCOT certification, pending the final resolution of the

ethics complaint. If the respondent accepts this request, the respondent will agree to and sign a Voluntary Suspension Agreement. This Agreement will state the temporary suspension and that the respondent voluntarily ceases from representing himself or herself as certified, credentialed or otherwise endorsed by the NBCOT until further notice. The respondent will also return any certifications to the NBCOT to be held until the suspension, or other disciplinary action, has ended.

**2. Involuntary Suspension of Certification.** If a respondent fails to agree to and sign a Voluntary Suspension Agreement, pursuant to Section G.1, above, the Executive Director, the Ethics Hearing Committee, or the Board Ethics Appeals Committee may issue an Order suspending the respondent's certification(s). This Suspension Order will stay in effect until the final resolution of the complaint.

**3. Circumstances of Involuntary Suspension Orders.** Suspension Orders are authorized where: **(a)** The respondent has been convicted of a criminal or quasi-criminal act; or the respondent has not contested a criminal indictment under any statute, law or rule; **(b)** The respondent has been indicted or similarly charged with any criminal act or violation of criminal law under statute, law or rule; **(c)** The respondent has been found in violation of any law, regulation or rule by a professional regulatory body, or has been sanctioned or disciplined by such a regulatory body; **(d)** The respondent is the subject of a formal complaint or similar charge and/or investigation by a professional regulatory body; **(e)** The respondent has been found in violation of an ethics code of a professional association or certifying body; **(f)** The respondent is the subject of a formal complaint or similar charge and investigation by a professional association or certifying body concerning ethics or disciplinary matters, or **(g)** the respondent is the subject of litigation or a petition relating to their professional practice.

**4. Other Preliminary Orders.** The Executive Director, the Ethics Hearing Committee, or the Board Ethics Appeals Committee may require the respondent to do or to refrain from doing certain acts by preliminary and temporary Order, including the disclosure/submission of documents relevant to review of an ethics investigation. Any temporary and preliminary Order requested will be reasonably related to the complaint under consideration; or to a party's responsibilities under the Code of Ethics.

**5. Failure to Comply with Preliminary Orders.** The Executive Director, the Ethics Hearing Committee, or the Board Ethics Appeals Committee may discipline a respondent who fails to comply with a temporary or preliminary order. The Executive Director, the Ethics Hearing Committee, or the Board Ethics Appeals Committee will consider the severity of the failure to comply and other relevant factors in determining the discipline. Preliminary and temporary orders cannot be appealed.

## H. EXECUTIVE DIRECTOR/COMPLAINT RESOLUTION

**1. Executive Director Resolution of Complaints.** In the event that the respondent does not request a Hearing before the Ethics Hearing Committee, the Executive Director will consider the matter under these Procedures, resolve the ethics complaint, and issue a Final Decision and Order.

**2. Final Resolution/Decision and Order.** The final resolution, Decision and Order of the Executive Director is binding on the parties, but may be appealed to the Board Ethics Appeals Committee, consistent with the requirements of these Procedures.

## I. ETHICS HEARING COMMITTEE/ETHICS COMPLAINT HEARINGS

**1. Ethics Hearing Committee.** The Chair of the NBCOT Board of Directors shall appoint a Chair and Vice-Chair of the Ethics Hearing Committee. The Chair or Vice-Chair will preside over and conduct each Ethics Complaint Hearing, with at least two (2) Ethics Hearing Committee members, including the Executive Director, who shall be a permanent member of the Committee. In the event that the respondent requests a Hearing, the Ethics Hearing Committee will conduct an Ethics Complaint Hearing designed to collect and weigh all of the available information and proof. Unless a case has been resolved by the Executive Director under the Procedures, the Ethics Hearing Committee will be the initial decision-making body to determine whether violations of the Code of Ethics or these Procedures have occurred. The Ethics Hearing Committee will have full authority and responsibility to convene, preside over, continue, and conclude an Ethics Hearing.

**2. Hearing Schedule and Location.** The Hearing date for each ethics case will be scheduled by the Executive Director, in consultation with the Ethics Hearing Committee and the parties. Each Hearing will be held at a site determined by the Executive Director and, if practical, held no less than sixty (60) days and no more than one hundred twenty (120) days from the receipt of an Ethics Charge Statement by the NBCOT. Hearings will not be held prior to the date permitted in these rules in order to permit each party to submit a Response or a Reply.

**3. Hearing Notice and Attendance.** The Executive Director will schedule the hearing and notify the parties in writing. Each party will be given the option to attend the hearing in person and will be required to indicate the following at least seven (7) days before the hearing: (a) Whether the party intends to appear at and participate in the hearing in person; (b) Whether the party intends to participate in the hearing via telephone; if so, the telephone number where the party is to be reached during the hearing; (c) Whether the party intends to



appear at the hearing with an attorney or other representative; if so, the name, address and telephone number of such attorney or representative; **(d)** Whether the party intends to present witnesses at the hearing; if so, the name, address and telephone number of each witness and a brief summary of the content of the witness' proposed testimony; and **(e)** Whether the party intends to present or offer any documentary information or other written proof during the course of the hearing that has not been previously considered by the NBCOT. If such information is offered, the party must provide a copy of each document and a brief description of the document's relevance. Any Ethics Hearing may proceed to a conclusion and decision whether or not the parties are present.

**4. Postponement of Hearing.** A respondent or complainant may request a hearing postponement. This request must be in writing and received by the NBCOT at least ten (10) days prior to the Hearing date. The Executive Director, or the Chair or Vice-Chair of the Ethics Hearing Committee, may grant a postponement. Postponement decisions cannot be appealed.

**5. Participation of NBCOT Legal Counsel.** Should NBCOT Legal Counsel be present at an ethics case hearing, Legal Counsel shall have the privilege of the floor and may conduct the hearing with the Ethics Hearing Committee. Legal or other representatives of the parties do not have such privilege, and are bound by the determinations and rulings of the Ethics Hearing Committee.

**6. Responsibilities and Rights of the Parties.** In addition to other responsibilities and rights, the respondent and the complainant may do, or be required to do, the following: **(a)** Attend the hearing and be present during the testimony of all witnesses; **(b)** Present witnesses, written information and argument on their behalf; **(c)** Review or inspect all oral or written information presented in the case; and **(d)** Comply with all orders or directives issued by the NBCOT, including those of the Executive Director and the Ethics Hearing Committee.

**7. Witnesses.** All witnesses will be excluded from the hearing room except during the presentation of their testimony. The Ethics Hearing Committee Chair or Vice-Chair will rule on any request to the contrary, and the ruling will not be subject to appeal.

**8. Confidentiality/Inclusion of Other Persons.** All hearings are confidential and private. No observers are permitted without special permission. A party may request the presence of an observer in the hearing room during all or part of a hearing. The Ethics Hearing Committee or the Ethics Committee Chair will rule on these requests, and the ruling cannot be appealed.

**9. Information and Proof Accepted.** The Ethics Hearing Committee will receive and

consider all information appearing to be relevant to an ethics complaint, including any information which may be helpful to a complete understanding of the case. The Ethics Hearing Committee may consider information concerning relevant prior conduct. Objections relating to relevance of information and similar issues will be decided by the Ethics Hearing Committee or the Ethics Hearing Committee Chair, and these decisions cannot be appealed.

**10. Record of the Hearing.** A written summary record of the Hearing will be made by the Ethics Hearing Committee, another NBCOT representative, or a stenographer/recorder; however, no taped, video, or other electronic recording of the Hearing will be permitted, unless specifically authorized by the Executive Director or the Ethics Hearing Committee Chair. Off-the-record conversation may be requested by parties and will not be part of the hearing record.

**11. Hearing Expenses.** Parties will be responsible for their expenses associated with the case. Should a party request a written transcript or recording copy of the hearing, a reasonable fee will be assessed for preparation. The NBCOT bears the cost of the hearings and investigations which are performed by NBCOT representatives.

**12. Closing of the Hearing Record.** The hearing record will be closed following the conclusion of the hearing, unless otherwise directed by the NBCOT. Any party, including the Ethics Hearing Committee Chair, may request that the record remain open for thirty (30) days for the purpose of receiving additional documentary information and proof. The Ethics Hearing Committee Chair may deny requests to keep records open, and such decisions cannot be appealed.

## **J. ETHICS CASE DECISIONS AND ORDERS**

**1. Ethics Case Decision and Order.** A Decision and Order will be prepared by the Executive Director or Ethics Hearing Committee (Ethics Case Decision) within thirty (30) days of the closing of the case record, or as soon thereafter as practical.

**2. Contents of the Ethics Case Decision.** The following information will be included in the Ethics Case Decision: **(a)** A summary of the case, including the positions of the parties; **(b)** A summary of all relevant factual findings based on the record; **(c)** A final ruling on each Code of Ethics violation charged; **(d)** A statement of any disciplinary action(s) and/or sanction(s) issued; and **(e)** Any other material determined to be appropriate.

**3. Contents of the Ethics Disciplinary Order.** The Order may include any of the following items: **(a)** An order directing the respondent to cease and desist from any behavior or acts found to be in violation of the Code of Ethics; **(b)** A statement of the disciplinary

action(s) imposed and mandate directing the respondent to comply immediately with these disciplinary action(s); and (c) Any other appropriate directive consistent with the Decision.

## **K. DISCIPLINARY ACTIONS**

**1. Disciplinary Actions Available.** When a respondent has been found to have violated one or more provisions of the Code of Ethics, the NBCOT may issue and order one or more of the following disciplinary and remedial actions: **(a)** A recommendation to the Board of Directors that the NBCOT certificant or applicant be ineligible for recertification or certification, and that any reapplication of the respondent for NBCOT certification be denied; **(b)** A requirement that the respondent take corrective action(s); **(c)** A private reprimand and censure of the respondent concerning the Code of Ethics violation(s); **(d)** A public reprimand and censure of the respondent concerning the Code of Ethics violation(s); **(e)** The imposition of a term of certification probation for any period up to three (3) years, which may include conditions on the respondent's conduct during that period, such as the condition that the respondent be monitored with respect to professional practice activities; **(f)** The suspension of any NBCOT certification held by the respondent for a period of not less than six (6) months and not more than two (2) years, which shall include the requirements that the respondent return to the NBCOT all original or copied credential materials for the suspension period, and immediately stop any professional identification or affiliation with the NBCOT during the suspension period; and, **(g)** The revocation of any NBCOT certification held by the respondent, which shall include the requirements that the respondent return to NBCOT all original or copied credential materials, and to immediately stop any and all professional identification or affiliation with NBCOT.

**2. Referral and Notification Action.** The NBCOT may notify appropriate government or professional bodies of any final disciplinary action taken against a respondent by sending a copy of the Ethics Case Decision and Order issued by the Executive Director or the Ethics Hearing Committee, or the Ethics Appeals Decision and Order issued by the Board Ethics Appeals Committee. Such notification may be sent by the NBCOT at any point after the time period for the respondent to appeal an adverse decision has lapsed. The NBCOT will not notify governmental and professional bodies until after a final ruling on the case has been made, if necessary. During an appeal period, the NBCOT may respond to inquiries concerning ethics cases, and may indicate the existence of such proceedings.

**3. Publication of Disciplinary Action.** Following the lapse of any appeal rights and upon case closure, the NBCOT may publish or release a final Ethics Case Decision or Ethics Appeals Decision. Any party or interested individual may request publication of any final decision, consistent with these Procedures. However, NBCOT may deny such requests, and such decisions cannot be appealed.

## **L. BOARD OF DIRECTORS ETHICS APPEALS COMMITTEE**

**1. Board Ethics Appeals Committee.** The Chair of the NBCOT Board of Directors shall appoint three (3) or more Directors to serve as the Board Ethics Appeals Committee (Appeals Committee), which shall be responsible for resolving all appropriate appeals concerning decisions of the Executive Director and the Ethics Hearing Committee. The Chair shall appoint an Appeals Committee Chair and Vice-Chair to preside over and conduct each ethics appeal, consistent with these Procedures.

**2. Time Period for Appeals to the Board Ethics Appeals Committee.** Within thirty (30) days of the mailing date of an adverse Ethics Case Decision, the respondent may appeal all or a portion of the Decision and Order to the Appeals Committee pursuant to this Section. Any appeals received beyond this time period will not be reviewed or considered by the Appeals Committee.

**3. Grounds for Board Appeal.** An adverse Ethics Case Decision may be reversed, or otherwise modified, by the Appeals Committee on appeal. However, the grounds for appeal of an adverse decision are strictly limited to the following: **(a)** Procedural Error: The Executive Director/Ethics Hearing Committee misapplied a procedure contained in these rules and prejudiced the respondent; **(b)** 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, could have affected the Ethics Case Decision; **(c)** Misapplication of the Ethics Code: The Executive Director/Ethics Hearing Committee Decision has misapplied the provisions of the Code of Ethics, and the misapplication prejudiced the respondent; and/or **(d)** Contrary to the Information Presented: The Ethics Case Decision is contrary to the most substantial information provided in the record.

With respect to Sub-sections **3(a)** and **(c)**, above, the Appeals Committee will consider only arguments that were presented to the Executive Director/Ethics Hearing Committee prior to the closing of the hearing record.

**4. Contents of Appeal/Letter of Appeal.** In order to complete an appeal to the Appeals Committee under this Section, the respondent must submit a letter or other document to the Appeals Committee and to the complainant, within the prescribed time period, which contains the following information and material: **(a)** The ethics case name, docket number, whether the case was decided by the Executive Director or the Ethics Hearing Committee, and the date of the Ethics Case Decision; **(b)** A statement of the grounds for the appeal under Subsection L.3, above, and a complete explanation of the reasons that the respondent

believes that the Ethics Case Decision should be reversed or otherwise modified; and, (c) Accurate, complete copies of any material which supports the respondent's appeal.

**5. Appeal Deficiencies.** The Appeals Committee Chair may require the respondent to clarify, supplement, or amend an appeal submission.

**6. Appeal Rejection.** If the Appeals Committee Chair 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 Appeals Committee Chair will reject the appeal. The Appeals Committee Chair will notify the complainant and respondent of the rejection, as well as the reason(s) for the rejection, by letter within approximately twenty-one (21) days of the determination. Appeal rejection determinations are not subject to appeal.

**7. Optional Reply to Appeal Letter.** Within fifteen (15) days of the mailing date of a respondent's appeal, the complainant may submit to the Appeals Committee a Reply to the Appeal by letter or similar document. If submitted, this Reply must fully explain any objections that the complainant wishes to present to the Appeals Committee concerning the appeal.

**8. Optional Response to Complainant Reply.** If an optional Reply to the Appeal is submitted by the complainant, the Appeals Committee will forward a copy of the Reply to the respondent within approximately ten (10) days following the receipt of the Reply by Certified Mail. 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 fully explain, and is limited to, any objections that the respondent wishes to present to the Appeals Committee concerning the complainant's Reply to the Appeal.

**9. Request to Appear Before the Board Ethics Appeals Committee.** The complainant or respondent may request the opportunity to appear before the Appeals Committee concerning an appeal under this Section. The Appeals Committee Chair will determine whether a request to appear before the Committee is accepted. In the event that a request to appear before the Committee is approved, the Chair may limit the appearance in any manner. Denials of requests to appear before the Appeals Committee cannot be appealed.

**10. Board Ethics Appeals Committee Hearings.** Within one hundred and eighty (180) days after the submission of a complete appeal, or as soon after as practical, the Appeals Committee will conduct a hearing to determine the outcome and final resolution of the appeal. During the course of appeal hearings, the Appeals Committee members will review: the hearing record; any appeal submissions presented by the parties; and/or any other

information determined to be relevant. Thereafter, the Appeals Committee will determine the outcome of the appeal by majority vote in closed session.

**11. Board Ethics Appeals Committee Decisions and Orders.** Within thirty (30) days of conclusion of an appeal hearing, or as soon after as practical, the Appeals Committee, by the Committee Chair, will issue an Ethics Appeals Decision and Order (Appeals Decision) stating and explaining the outcome of the appeal. With respect to each appeal, the Appeals Decision shall include the following: **(a)** A summary of any relevant portions of the Ethics Case Decision and Order; **(b)** A summary of any relevant procedural or factual findings made by the Appeals Committee; **(c)** The ruling(s) and decisions with respect to each matter under appeal; and **(d)** The Appeals Committee final Order affirming, reversing, amending or otherwise modifying any portion of the Ethics Case Decision and Order, including any disciplinary or remedial action or sanction.

Copies of the Appeals Decision shall be sent to the parties, via U.S. mail, return receipt requested, or other appropriate delivery method.

#### **M. FINALIZING AND CLOSING ETHICS CASES**

**1. Events Which Will Cause Closure of an Ethics Case.** An ethics case will be closed and all proceedings ended when any of the following occur: **(a)** Following the lapse of any appeal rights, the ethics case has not been accepted and the charges have been rejected as the basis for an Ethics Complaint and Investigation pursuant to these rules; **(b)** Following the lapse of any appeal rights, a final Ethics Case Decision or Ethics Appeals Decision has been issued pursuant to these Procedures; or, **(c)** An Ethics Complaint has been terminated or withdrawn by the complainant(s).

**2. Events Which Will Cause an NBCOT Ethics Case Decision and Order to Become Final.** An Ethics Case Decision and Order that is not appealed will be final. The Decision of the Appeals Committee will be final, and no further appeals are available to any party.

#### **N. REAPPLICATION AND REINSTATEMENT PROCEDURES FOLLOWING REVOCATION, SUSPENSION, AND PROBATION ORDERS**

**1. Revocation Orders/Reapplication Petition.** Five (5) years after the issuance of a final Certification Revocation Order issued under these rules, a respondent may submit to the Board of Directors a Petition For Permission To Reapply For Certification (Reapplication Petition), as set forth in Section 4, below.

**2. Suspension Orders/Reinstatement Requests.** After the expiration of a final suspension

order issued under these rules, a respondent may submit to the Board of Directors a Request For Certification Reinstatement (Reinstatement Request), as set forth in Section 4, below.

**3. Probation Orders/Reinstatement or Referral.** Following the expiration of a final probation order included with an Ethics Case Decision or Ethics Appeals Decision, the Executive Director will determine whether the respondent has or has not satisfied the terms of the probation order, and will do the following: **(a)** If the respondent has satisfied the terms of probation in full, the NBCOT, via the Executive Director, will immediately verify that the probation has been completed and reinstate the respondent to full certification status; or, **(b)** If the respondent has not satisfied the terms of probation in full, the Executive Director will refer the case to the final decision maker for review and action consistent with these rules, including, but not limited to, continuation of the probation order and issuance of additional disciplinary or remedial actions concerning the probation terms.

**4. Contents of Reapplication Petitions and Reinstatement Requests.** Subject to the time requirements above, the Board of Directors will consider Reapplication Petitions and Reinstatement Requests from those who have been the subject of a final revocation or suspension orders, respectively. Reapplication Petitions and Reinstatement Requests must include the following information: **(a)** A statement of the relevant ethics case name, docket number, and the date that the final Ethics Decision was issued; **(b)** A statement of the reasons that the respondent believes support or justify the acceptance of the Reapplication Petition or the Reinstatement Request, including a statement explaining why the respondent should now receive NBCOT certification; and, **(c)** Copies of any relevant documentary or other material upon which the respondent relies in support of the Petition or Request.

**5. Board of Directors Reapplication Petition and Reinstatement Request Review.** Within ninety (90) days after the submission of a complete Reapplication Petition or Reinstatement Request, or as soon after as practical, 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 will review the information presented by the respondent and any other relevant information. The Board will then determine the final outcome of the appeal by majority vote in closed session.

**6. Board of Directors Reapplication Petition and Recertification-Reinstatement Determination Orders.** Within thirty (30) days of conclusion of the Board of Directors' review of a Reapplication Petition or Reinstatement Request, or as soon as practical, the Board, by the Board Chair or the Executive Director, will prepare and issue a Determination Order explaining the decision with respect to the Petition or Request. The final Board Determination Order will indicate whether the Petition or Application is granted, denied, or continued to a later date. If appropriate, the Board Determination Order will indicate any

conditions of certification or recertification. Copies of the Determination Order will be sent to the parties, via U.S. mail, return receipt requested, or other appropriate delivery method. While no appeal of the Determination Order is permitted by the NBCOT, the respondent may submit a new Petition or Request pursuant to this Section, two (2) years or more after the issuance of the Determination Order.

| Approved by the NBCOT Board of Directors: [March 16, 2007](#) Amended: [March 16, 2007](#)

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