



# Judicial and Ethics Committee

## *Operating Policies and Procedures*



## JUDICIAL AND ETHICS COMMITTEE

### **Operating Policies and Procedures (Revised December 2023)**

General .....	1
Purpose.....	3
Notification, Hearing and Appeal.....	3
Disciplinary Action .....	5
Conflict of Interest .....	8
Emergency Suspension Procedure.....	8
Code of Conduct for attending Judicial and Ethics Committee Hearing.....	11

### **GENERAL**

The Board of Trustees has approved the following items as reasons for which applications for NBRC examinations may be refused or for which already credentialed individuals may be disciplined:

1. Obtaining or attempting to obtain Certification, Registration, Recertification or Reregistration by fraud, deception, or artifice.
2. Knowingly assisting another person or other persons in obtaining or attempting to obtain Certification, Registration, Recertification or Reregistration by fraud, deception, or artifice.
3. Failure to follow examination security protocols.
4. Unauthorized use of a Certification or Registry certificate or falsification of credentials, or any other NBRC documents.
5. Unauthorized possession and/or distribution of any official NBRC testing or examination materials to include copying and/or reproduction of any part of NBRC examination questions or problems.
6. Credentialed practitioners and/or examination candidates may be disciplined for offenses related to their practice of respiratory therapy and/or pulmonary technology which gives cause to question the individual's ability to practice in a safe and competent manner. Such offenses include, but are not limited to:
  - a. Conviction in a court of law, after all appeals have been exhausted, of a drug or alcohol-related offense that would cause question as to the individual's ability to appropriately interact with patients and others on the job.

- b. Conviction in a court of law, after all appeals have been exhausted, of a job-related offense indicating the individual's intentional negligence and/or purposeful misconduct that results in endangering the health and/or safety of a patient.
  - c. Conviction in a court of law, after all appeals have been exhausted, of an act of physical violence (murder, assault, rape, robbery, etc.) that would cause question as to the individual's ability to appropriately interact with patients and others on the job.
  - d. Revocation or denial of a license to practice respiratory therapy and/or pulmonary technology, or another health related profession, by an authorized state agency due to:
    - (i) a drug or alcohol-related offense that would cause question as to the individual's ability to appropriately interact with patients and others on the job.
    - (ii) a job-related offense indicating the individual's intentional negligence and/or purposeful misconduct that results in endangering the health and/or safety of a patient.
    - (iii) an act of physical violence (murder, assault, rape, robbery, etc.) that would cause question as to the individual's ability to appropriately interact with patients and others on the job.
  - e. Voluntary surrender of a license to practice respiratory therapy and/or pulmonary technology, or another health related profession, by a credentialed individual and/or examination candidate to an authorized state agency after the filing of a complaint proceeding by an authorized state agency alleging:
    - (i) a drug or alcohol-related offense that would cause question as to the individual's ability to appropriately interact with patients and others on the job.
    - (ii) a job-related offense indicating the individual's intentional negligence and/or purposeful misconduct that results in endangering the health and/or safety of a patient.
    - (iii) an act of physical violence (murder, assault, rape, robbery, etc.) that would cause question as to the individual's ability to appropriately interact with patients and others on the job.
7. Use of any authorized designation (CRT, RRT, CPFT, RPFT, CRT-NPS, RRT-NPS, CRT-SDS, RRT-SDS, RRT-ACCS, AE-C or any other designation granted

by the NBRC) in any unauthorized manner, including, but not limited to, disparaging usage or usage for commercial gain.

## **PURPOSE**

To enforce and apply these policies when required, the Judicial and Ethics Committee has been established as a standing committee. Essentially, the committee will:

1. Receive reports of alleged violations of the items (1-7) listed above.
2. Determine whether or not the report warrants consideration or is appropriate for NBRC action.
3. Decide a course of action to deal with complaints received or with respect to applications of candidates which may be referred to it by the Admissions Committee and guide the Chief Executive Officer or designee in making the appropriate response.
4. Notify the candidate or credentialed individual of the action and provide opportunity for a hearing and appeal.
5. Notify the Board of Trustees of all actions and assist the Board in the event the Committee's decision is appealed.

## **NOTIFICATION, HEARING AND APPEAL**

In performing its functions, the Judicial and Ethics Committee will follow these operating procedures:

### **I. Notification of Complaint**

- A. The Chief Executive Officer or designee shall forward by secure electronic or hard copy media to the Judicial and Ethics Committee all complaints received alleging violations of Items 1-7 of Pages 1 and 2 of this document.
- B. Upon receipt of a complaint involving alleged misconduct connected with an examination, the Chief Executive Officer, or designee, may temporarily suspend the charged party's eligibility to register for further examinations pending the outcome of the complaint.
- C. At the next regularly scheduled meeting, or by telephone communication, the committee shall determine whether or not there appears to be reasonable basis to believe that an offense has in fact been committed or whether the matter warrants further consideration. New cases can be considered by telephone conference call or secure electronic communication as deemed appropriate by the Committee.
  1. If there is not a reasonable basis to believe that an offense has been committed or if the charge is not appropriate for the committee's attention, the Chief

Executive Officer or designee shall be instructed to respond appropriately to the individual(s) who presented the charge.

2. If there is reasonable belief that an offense was committed or the matter warrants consideration, the committee shall instruct the Chief Executive Officer or designee to contact all parties to determine the facts surrounding the charge. At the same time, the charged party shall be sent a letter by tracked delivery, advising him (her) of the charge and providing the opportunity for written response within 30 days from the date the letter is mailed.
3. All correspondence between the NBRC and the charged party will be sent by tracked delivery.

## II. Hearing

- A. After the 30 day period for response to a complaint, set forth above, the matter shall be scheduled for a hearing on the complaint at the next regular committee meeting and written notice of the scheduled hearing shall be provided to the charged party by tracked delivery. In situations requiring more urgent consideration, the Committee, with the consent of all parties, may elect to conduct a hearing by telephone conference call.
- B. If the charged party does not respond to the complaint, or requests that a hearing not be conducted, or does not appear at a hearing, the Judicial and Ethics Committee shall consider the alleged violation(s) and all facts gathered, including any material submitted by the charged party, to determine what disciplinary action, if any, is to be taken and shall send a copy of its decision to the charged party.

## III. Hearing Procedure

At any hearing where the charged party appears in person, the following procedure shall be observed:

- A. The testimony of witnesses and any other available evidence, including written briefs, regarding the alleged violation shall be received by the committee. All written materials must be notarized if not submitted in person.
- B. The charged party shall have the opportunity to cross-examine witnesses and shall have access to any other evidence received by the committee.
- C. The rules of evidence applicable in courts of law shall not be binding at the hearing, but may be consulted by the committee at its discretion.
- D. The committee may exclude any individuals from the hearing room at any time at its discretion, except that the charged party and his legal counsel, if any, shall be entitled to be present at all times during the presentation of evidence.

- E. A record of the hearing shall be made at the expense of the NBRC.
- F. The Judicial and Ethics Committee shall base its decision solely on the record of the hearing.
- G. The Judicial and Ethics Committee shall reach its decision and list specific facts to support its conclusions on the offense(s) charged. A copy of the decision shall be sent by tracked delivery to the charged party.
- H. Right to Counsel. The charged party shall be entitled to be represented by counsel of his (or her) choice at his (or her) own expense. If the charged party wishes to be represented by his or her counsel at the hearing, at least twenty-one (21) days advance notice that counsel will appear at the hearing on behalf of the charged party must be provided to NBRC.

#### IV. Appeal

- A. The charged party shall have 30 days following the date of the Judicial and Ethics Committee's decision to request an appeal. The request for appeal must be in writing submitted to the Chief Executive Officer or designee.
- B. On appeal, the Board of Trustees, excluding the members of the Judicial and Ethics Committee who participated in the committee decision in the case, shall review the record of the hearing at its next regularly scheduled meeting and shall issue its decision affirming, modifying, vacating or remanding the decision of the Judicial and Ethics Committee. The matter will not be retried before the Board of Trustees. The decision of the Board will be based upon the record of the initial hearing. If there is additional written material the appellant desires to present, the Board of Trustees may refer the matter back to the Judicial and Ethics Committee and the initial matter will be re-opened by the committee.
- C. A majority vote of the Board of Trustees present (excluding the members of the Judicial and Ethics Committee who participated in the committee decision in the case) shall be required to reach a decision on any appeal. In all cases, the decision of the Board shall be deemed final. In the event the Board is evenly divided on a matter, the decision of the Judicial and Ethics Committee shall be considered affirmed.

#### **DISCIPLINARY ACTION**

After duly conducting a hearing as outlined in these policies, the Judicial and Ethics Committee may take one of the following types of disciplinary action against the charged party if, in its judgment, action is warranted by the offense committed:

- A. For examination candidates and other non-credentialed individuals:

1. Admonishment - A letter signed by the President of the NBRC will be sent to the individual indicating that the NBRC is displeased by the violation committed and that, should an additional incident occur, more stringent action is possible. A copy of this letter will remain in the individual's file for two years and shall be removed and destroyed at the end of that time, provided no additional incidents are reported.
2. Formal Censure - The Judicial and Ethics Committee may approve censure of the individual. If censure is approved, the individual shall be sent a letter signed by the President of the NBRC advising the individual of the severe disapproval. Notice of this action shall remain on file in the Executive Office unless revoked by a majority vote at a future meeting of the Committee.
3. Suspension of Examination Eligibility for a Specified Period - The Committee, acting on behalf of the NBRC, may impose this disciplinary action, prohibiting the acceptance of an application for any examination for a specified length of time. At the end of the specified period, the individual would again be eligible to apply to the examination programs under the current admission requirements, provided no additional sanctions have been imposed for other violations of NBRC policies. To be reinstated, the individual must petition the NBRC for reconsideration of its decision and provide cause as to why reconsideration should be made.

This action may apply to any stage of the examination process including the withholding of the formal credential certificate for an examination already passed.

4. Suspension of Examination Eligibility for an Indefinite Period of Time - The same provisions outlined in Item 3 above may be invoked by the Committee, acting on behalf of the NBRC, with the difference being that the individual shall be barred from all examination programs indefinitely. To be reinstated, the individual must petition the NBRC for reconsideration of its decision and provide cause as to why reconsideration should be made.

B. For credentialed practitioners:

1. Admonishment - A letter signed by the President of the NBRC will be sent to the individual indicating that the NBRC is displeased by the violation committed and that, should an additional incident occur, more stringent action is possible. A copy of this letter will remain in the individual's file for two years and shall be removed and destroyed at the end of that time, provided no additional incidents are reported.
2. Formal Censure - The Judicial and Ethics Committee may approve censure of the individual. If censure is approved, the individual shall be sent a letter signed by the President of the NBRC advising the individual of the censure. Notice of

this action shall remain on file in the Executive Office unless revoked by a majority vote at a future meeting of the Committee.

3. Exclusion from Online Credential Search for a Specified Period of Time - The Judicial and Ethics Committee may disqualify those who hold the CRT, RRT, CPFT, RPFT, CRT-NPS, RRT-NPS, CRT-SDS, RRT-SDS, RRT-ACCS, AE-C or any other designation granted by the NBRC from the online credential search. During the period, the individual shall not use any official designation (CRT, RRT, CPFT, RPFT, CRT-NPS, RRT-NPS, CRT-SDS, RRT-SDS, RRT-ACCS, AE-C or any other designation granted by the NBRC) for any purpose whatsoever. At the end of the period, the individual will again qualify to be listed in the online credential search provided all requirements are satisfied and no additional violations of NBRC policies occur. All inquiries concerning the individual's status shall be answered to the effect that the individual is recognized as a credentialed person and has successfully completed the appropriate examinations, but that he or she is not listed due to disciplinary action taken for violation of NBRC policies.
4. Additional disciplinary actions applicable to practice-related offenses -Where credentialed individuals are found to have committed one of the offenses described in the "General" section, Item 6, the Judicial and Ethics Committee may, in its judgment, choose from the following disciplinary actions, in addition to the possible disciplinary measures already listed in this section:
  - A) Suspension of a credential(s) for an indefinite or specified period of time. During the suspension the individual shall not use any official designation (CRT, RRT, CPFT, RPFT, CRT-NPS, RRT-NPS, CRT-SDS, RRT-SDS, RRT-ACCS, AE-C or any other designation granted by the NBRC) for any purpose whatsoever.
  - B) Suspension from the examination system(s) for an indefinite or specified period of time. During the suspension the individual shall not use any official designation (CRT, RRT, CPFT, RPFT, CRT-NPS, RRT-NPS, CRT-SDS, RRT-SDS, RRT-ACCS, AE-C or any other designation granted by the NBRC) for any purpose whatsoever.
  - C) Mandatory reexamination to document continued competence as a credentialed practitioner - failure of the examination could lead to suspension of a credential for an indefinite or specified period of time.
- C. In the event the disciplinary action results from a conviction, the disciplinary action shall not exceed the length of the court-imposed punishment.
- D. For credentialed individuals who may also be examination candidates or who may be eligible for an NBRC examination:



if a CRT, RRT, CPFT, RPFT, CRT-NPS, RRT-NPS, CRT-SDS, RRT-SDS, RRT-ACCS, AE-C or holder of any other designation granted by the NBRC violates NBRC policies and punishment is determined appropriate by the Judicial and Ethics Committee, and the individual is eligible for, or a candidate in another NBRC examination, the committee may impose punishment upon the individual as both a candidate and as a credentialed person.

## **CONFLICT OF INTEREST**

To avoid any conflict of interest, or the appearance of a conflict of interest, no member of the Judicial and Ethics Committee will participate in the hearing or decision of a matter which involves, as a party or witness, an individual who graduated within the previous year from an educational program for which the Committee member serves as an instructor, or who is employed in a position which is currently supervised by the Committee member, or with whom the Committee member is personally acquainted. Similarly, in the event of an appeal to the Board of Trustees, no Trustee will participate in the appeal of a matter which involves, as a party or witness, an individual who graduated within the previous year from an educational program for which the Trustee serves as an instructor, or who is employed in a position which is currently supervised by the Trustee, or with whom the Trustee is personally acquainted. Further, if the proposed disciplinary action is the result of an action taken by a state licensure board, then no Committee member or Trustee who served on the state board at the time its action was taken may participate in the consideration of the matter by the Committee or NBRC Board. In addition, no Committee member or Trustee shall participate in the decision or appeal of a matter in which the individual has a personal financial interest. It is the responsibility of the Committee member, or Trustee on appeal, to notify the Committee chair (or Board president) of any such Conflict of Interest and to recuse himself or herself from consideration of the matter.

## **EMERGENCY SUSPENSION PROCEDURES**

### **General**

The Board of Trustees has recognized that there are certain circumstances which justify the suspension of a credentialed individual or an examination candidate on an emergency basis. The Judicial and Ethics Committee may invoke these procedures only in the following circumstances:

1. In the event that a credentialed individual or an examination candidate has had such individual's license to practice in the area of respiratory care suspended by the action of a state under the provisions of such state's emergency licensure suspension procedures. This reason will be invoked only if, before taking any such action, the NBRC has received documentary evidence of the action taken by the licensing body of such state with respect to such credentialed individual.
2. In the event that the NBRC has received substantial evidence of the commission of a crime by a credentialed individual or an examination candidate which directly or indirectly is related to the practice of respiratory care by such individual, including, but not limited to intentional conduct on the part of such individual that results in endangering the health and/or safety of a patient or an

act of physical violence (murder, assault, rape, robbery, etc.) that would cause a question as to the individual's ability to appropriately interact with patients and others on such person's job.

### Notification, Hearing, and Appeal

In performing its functions under these emergency suspension procedures, the Judicial and Ethics Committee will follow the following operating procedures:

#### I. Notification of Complaint

- A. The Chief Executive Officer or designee shall forward to the Judicial and Ethics Committee all complaints received alleging violations of Items 1 and 2 under this procedure.
- B. By telephone conference call, the Committee shall determine whether or not there appears to be reasonable basis to believe that a violation of Items 1 or 2 has in fact been committed.
  - 1. In the event that the Committee determines that a state licensure authority has suspended the license of a credentialed individual or an examination candidate under an emergency suspension procedure, the Committee may suspend such individual's credential or suspend such examination candidate from all NBRC examination programs pending the resolution of the emergency suspension procedure of the state involved. At the same time, the suspended individual shall be sent a letter by tracked delivery, advising such individual of the action taken by the Committee. The individual shall be notified that the NBRC has suspended the person's credential or examination eligibility pending resolution of the action of the State under such State's emergency suspension procedure.
  - 2. If there is a reasonable belief of the occurrence of an event described at item 2 of these procedures, and there has been no action by a State to suspend such credentialed individual's or examination candidate's license, the charged party shall be sent a letter by tracked delivery, advising such individual of the charge and providing the opportunity for a hearing by telephone conference call with the Committee. The written notification by tracked delivery to the charged party shall advise the charged party of the names of any witnesses that may be called at the hearing.

#### II. Hearing

- A. At the end of a seven day period next following the date on which notice has been sent to such credentialed individual or examination candidate, the Judicial and Ethics Committee shall hold a hearing on the complaint by telephone conference call or in person.

- B. If the charged party does not respond to the complaint or requests that a hearing not be conducted, or does not appear for the hearing, the Judicial and Ethics Committee shall consider the alleged violation and all facts gathered, including any material submitted by the charged party, to determine whether an emergency suspension of the individual's credential or examination eligibility is to be taken and should send a copy of its decision to the charged party and to the Board of Trustees.

### III. Hearing Procedure

If the charged party participates in a hearing, the following procedure shall be observed:

- A. The testimony of witnesses and any other available evidence, including written briefs, regarding the alleged violation shall be received by the Committee. All written materials may be received by fax or e-mail.
- B. The charged party shall have the opportunity to cross-examine the witnesses during the hearing and shall have access to any other evidence received by the Committee.
- C. The rules of evidence applicable in courts of law shall not be binding in the hearing, but may be consulted by the Committee at its discretion.
- D. A record of the telephonic hearing shall be made at the expense of the NBRC.
- E. The Judicial and Ethics Committee shall base its decision solely on the testimony and records received during the course of the hearing. All written materials to be referred to during the course of the hearing shall be faxed or e-mailed to each member of the Committee participating in a telephonic hearing prior to the hearing.
- F. The Judicial and Ethics Committee shall reach its decision on the specific facts to support its conclusions on the offense charged. A copy of the decision shall be sent by fax or e-mail and also by tracked delivery to the charged party.
- G. The charged party shall be entitled to be represented by counsel of the individual's choice at such individual's own expense.

### IV. Appeal

- A. The charged party shall have seven days following the date of the Judicial and Ethics Committee's decision to request an appeal. The request for appeal must be in writing, which may be transmitted by fax or e-mail, to the Chief Executive Officer or designee.
- B. On appeal, the Board of Trustees, excluding the members of the Judicial and Ethics Committee who participated in the Committee decision in the case, shall by telephonic conference call, or in person, review the record of the hearing not less than seven days after receipt of the charged party's notice of appeal and shall issue its decision

affirming, modifying, vacating or remanding the decision of the Judicial and Ethics Committee. The matter will not be retried before the Board of Trustees. The decision of the Board will be based upon the record of the hearing. If additional written material is presented by the appellant, the Board may refer the matter back to the Judicial and Ethics Committee for further consideration.

- C. A majority vote of the Board of Trustees who participates in the telephonic conference call (excluding the members of the Judicial and Ethics Committee who participated in the committee decision in the case) shall be required to reach a decision on any appeal. In all cases, the decision of the Board shall be deemed final. In the event the Board is evenly divided on a matter, the decision of the Judicial and Ethics Committee shall be considered affirmed.

### **CODE OF CONDUCT FOR ATTENDING A JUDICIAL AND ETHICS COMMITTEE HEARING**

When participating in an in-person hearing, the attendee agrees to the following code of conduct:

1. Must wait in the hotel lobby to be escorted to the hearing room.
2. Any materials used at the hearing must be prepared and presented to NBRC staff prior to entering the hearing room. Copies of all materials must be sent to [je@nbrc.org](mailto:je@nbrc.org) at least 10 days prior to the hearing.
3. Access to material in bags and/or pockets in the hearing room is strictly prohibited. Any bag, backpack or other item brought into the hearing room is subject to search.
4. All attendees entering the hearing room consent to be searched.
5. No weapons will be allowed on premises for the hearing. This includes concealed carry weapons.
6. Attendees will be provided with ten minutes to present testimony; after which, the committee may ask follow up questions if applicable.
7. Attendees must leave the premises once hearing is complete.

Violation of this Code of Conduct will be taken into consideration by the Judicial and Ethics Committee in ruling on the matter. A candidate/credentialed practitioner who does not wish to abide by these rules is free to request a hearing not be held.