

NATIONAL CERTIFICATION BOARD FOR THERAPEUTIC MASSAGE & BODYWORK

**RULES AND PROCEDURES REGARDING
ETHICAL AND PROFESSIONAL DISCIPLINE COMPLAINTS**

As of: August 28, 2020

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NATIONAL CERTIFICATION BOARD FOR THERAPEUTIC MASSAGE & BODYWORK

RULES AND PROCEDURES REGARDING ETHICAL AND PROFESSIONAL DISCIPLINE COMPLAINTS

I. Definitions.

- 1.1 Appeal Request:** A written request to appeal the Committee's decision by a Certificant or Applicant in accordance with Articles V and VI of these Rules and Procedures; or a written request to appeal the denial of an Applicant's Board Certification Application or a Certificant's Board Certification Renewal Application in accordance with Article IX of these Rules and Procedures.
- 1.2 Applicant:** An individual who has a complete, active application to become certified on file with NCBTMB but has not yet become a Certificant.
- 1.3 Board:** The Board of Directors of NCBTMB.
- 1.4 Board Panel:** A panel of Board members selected by the Chair of the Board to review an appeal.
- 1.5 Board Liaison:** The Chair of the Board and/or his or her designee in his or her role as a member of the Committee pursuant to Section 2.3(A).
- 1.6 Certificant:** An individual certified by NCBTMB.
- 1.7 Chief Executive Officer:** The Chief Executive Officer of NCBTMB.
- 1.8 Code:** The NCBTMB Code of Ethics.
- 1.9 Committee:** The NCBTMB Ethics and Standards Committee, which is a peer review committee.
- 1.10 Complainant:** An individual, group of individuals, or an organization, including NCBTMB, that files a Complaint with NCBMTB against a Certificant or Applicant in accordance with Section 3.2.
- 1.11 Complaint:** A complaint filed against a Certificant or Applicant in accordance with Section 3.2.
- 1.12 Investigative Team:** A group of two (2) or three (3) Committee members designated to investigate a Complaint in accordance with Section 4.2.
- 1.13 NCBTMB:** The National Certification Board for Therapeutic Massage & Bodywork. Inc.
- 1.14 Rules and Procedures:** These Rules and Procedures Regarding Ethical and Professional Discipline Complaints.
- 1.15 Standards:** The NCBTMB Standards of Practice.
- 1.16 Unethical Conduct:** Conduct that violates the Code and/or the Standards.

II. Purposes, Authority, and Structure of the Committee.

2.1 Purposes. The purposes of the Committee are:

- A. To enforce NCBTMB's Code, Standards, and these Rules and Procedures.
- B. To serve as a means for evaluating ethical questions about Applicants and Certificants on a peer review basis.
- C. To assist in protecting the public against Unethical Conduct by Certificants and Applicants.
- D. To investigate legitimate Complaints as determined by the Committee.
- E. To determine violations of the Code and Standards by Certificants or Applicants based on the results of its investigations.

2.2 Authority. The authority of the Committee is to:

- A. Receive, review, evaluate, initiate, investigate and respond to legitimate Complaints against Certificants and Applicants.
- B. Review, evaluate and investigate any cases of exam misconduct.
- C. Receive, review, evaluate and respond to appeals regarding NCBTMB's denial of an Applicant's Board Certification Application or a Certificant's Board Certification Renewal Application.
- D. Review these Rules and Procedures, Standards, and Code and to recommend changes to the Board for the Board's consideration.
- E. Conduct all Committee affairs in a manner and atmosphere free of discrimination based on race, color, gender, age, sexual orientation, ethnicity, national origin, religion, disability, and marital status, as defined and prohibited by applicable law.
- F. Conduct training sessions regarding the Committee's responsibilities under these Rules and Procedures.
- G. Perform other tasks commensurate with the Committee's purposes as requested by the Board.

2.3 Structure.

- A. *Composition.* The Committee shall consist of at least three (3) voting members, which shall include Certificants in good standing and at least one (1) public member. At no time shall the percentage of public members exceed more than twenty-five percent (25%) of the entire voting membership of the Committee. Members should, as feasible, reflect the geography, gender, and qualities of the therapeutic massage and bodywork profession. The Chair of the Board, as Board Liaison, or his or her designee, shall serve as an ex-officio, non-voting member of the Committee.

- B. *Qualifications.* Committee members who are Certificants must possess thorough knowledge and understanding of the protocol of massage therapy and bodywork. Committee members who are Certificants shall have a minimum of five (5) years of experience in the profession. Committee members who are Certificants shall have adequate experience with professional standards. Public member(s) of the Committee may have some experience in the field of massage therapy and/or bodywork and shall have adequate experience with professional standards.
- C. *Selection.* The Chair of the Board shall appoint the Chair of the Committee. The Chair of the Committee shall interview, evaluate and select the members of the Committee.
- D. *Meetings.* The Committee shall meet at reasonable intervals, as needed, to carry out its responsibilities as set forth in these Rules and Procedures, but in any event not fewer than approximately every three (3) months. All meetings may be conducted by telephone or other type of communication allowing all Committee members to be heard and participate. Minutes shall be kept for each meeting as a record of the Committee's activities. Committee members must be given adequate advance notice of any Committee meeting, except that such notice may be waived by attendance at the meeting. The presence of a majority of the voting membership of the Committee shall constitute a quorum for meetings of the Committee. Committee decisions shall be made by a majority vote of a quorum present at a meeting.

III. Submission and Receipt of Complaints.

3.1 Parties That May Submit Complaints. A Complaint against a Certificant or Applicant may be submitted to the Committee by:

- A. any party claiming to have been harmed by the Unethical Conduct of a Certificant or Applicant;
- B. a Certificant or Applicant self-reporting Unethical Conduct;
- C. any Certificant or Applicant who, in good faith, believes that another Certificant or Applicant engaged in unprofessional conduct in violation of the Code and/or Standards;
- D. any national, regional, state, or local professional association of massage therapists and bodyworkers of which the Certificant or Applicant is a member;
- E. any licensing or certifying authority; or
- F. the Committee.

The Committee **may not** act solely on the basis of an anonymous Complaint or a Complaint by a Complainant who does not want his or her name to be disclosed to the Certificant or Applicant who is the subject of the Complaint.

3.2 Contents of a Complaint. All legitimate Complaints must include the following information:

- A. the name, address, and telephone number of the Certificant or Applicant;
- B. the name, address, and telephone number of the Complainant;
- C. a detailed description of the facts supporting the Complaint;
- D. a description of any steps that have been taken to address the situation explained in the Complaint, and the results thereof;
- E. the specific sections of the Code and/or Standards alleged to have been violated and an explanation as to how the sections were violated;
- F. the Complainant's approval for the Committee to disclose all information to the Certificant, Applicant, the Committee, NCBTMB staff, legal counsel, and experts involved in handling the Complaint; and
- G. the Complainant's signature.

Copies of these Rules and Procedures, the Code, and the Standards may be provided to the Complainant to assist the Complainant in drafting a Complaint and with complying with these Rules and Procedures.

3.3 Initial Evaluation of a Complaint. Within forty-five (45) days of receiving a legitimate Complaint in compliance with Section 3.2, the Committee shall evaluate the Complaint and determine whether the

allegations in the Complaint, if true, would constitute Unethical Conduct. If the Committee determines that the allegations, if true, would constitute Unethical Conduct, the Complaint shall be investigated in accordance with Article IV. If the Committee determines that the allegations, if true, would not constitute Unethical Conduct, the Chief Executive Officer shall inform the Complainant of the Committee's determination within thirty (30) days of such determination. No Committee member shall consider, evaluate or help determine the validity or disposition of a Complaint if such Committee member sufficiently knows any material party to the Complaint, is in direct competition with the Complainant, Certificant or Applicant, or otherwise should be recused due to an existing or potential conflict of interest.

IV. **Investigative Procedure.**

4.1 Informing Complainant and Certificant of Investigation. The Chief Executive Officer must inform the Complainant and Certificant or Applicant of the Committee's decision that the Complaint warrants investigation within fifteen (15) days of such determination. The correspondence to the Complainant shall include copies of these Rules and Procedures, the Code, and the Standards, if not already provided. The correspondence to the Certificant or Applicant must include:

- A. a copy of the Complaint;
- B. copies of these Rules and Procedures, the Code, and the Standards; and
- C. a request that the Certificant or Applicant respond in writing.

4.2 Certificant's or Applicant's Response to Complaint. The Certificant or Applicant must respond, in writing, to the allegations contained in the Complaint within thirty (30) days of receiving the Complaint. The response shall include a detailed description of the facts surrounding the allegations contained in the Complaint and the situation giving rise to the Complaint. Failure to respond to the Complaint will not constitute a waiver of the Certificant's or Applicant's right to appeal any sanction imposed by the Committee in response to the Complaint. Failure to respond may be considered as a factor by the Committee when considering the merits of the Complaint. Moreover, the Certificant's or Applicant's, failure to respond shall not prevent the Investigative Team from completing its investigation or prevent the Committee from taking action based on the information available.

4.3 Assignment to Investigative Team

- A. *Referral.* In the event that the Committee determines that a Complaint warrants investigation, such Complaint shall be investigated by an Investigative Team. At the time the Committee reviews the certificant's response to the Complaint and determines the Complaint warrants investigation, the Committee Chair shall assign an Investigative Team to investigate the Complaint. The Committee may indicate key questions and issues that it identified in its review of the Complaint to the Investigative Team though the Investigative Team shall not be required to limit its investigation solely to these questions and issues.
- B. *Conflict of Interest.* No Investigative Team member shall consider, evaluate or help determine the disposition of a Complaint if such Investigative Team member sufficiently knows any material party to the Complaint, is in direct competition with the Complainant, Certificant or Applicant, or otherwise should be recused due to an existing or potential conflict of interest.

4.4 Investigation by Investigative Team. The Investigative Team shall conduct an investigation of the allegations contained in the Complaint using reasonable methods, including without limitation telephone interviews and/or written requests for information or documentation. The Investigative Team may consult with any individuals who may have information regarding the allegations contained in the Complaint. With the consent of the Committee Chair, the Investigative Team may consult with experts, as necessary. Such experts shall agree in writing to be bound by the confidentiality obligations in Section 11.1.

- 4.5 Interview with the Certificant or Applicant.** Upon the request of the Investigative Team, the Certificant or Applicant shall participate in a telephone interview with the Investigative Team prior to the Investigative Team submitting the report to the Committee as described in Section 4.6 below. During the interview, the Certificant or Applicant will be informed of the general nature of the evidence supporting the Complaint and shall be invited to discuss, explain, or refute the Complaint. The interview shall be informal in nature. Failure by a Certificant or Applicant to participate in an interview with the Investigative Team shall not constitute waiver of any right to appeal under these Rules and Procedures. The Certificant's failure to participate in the interview may be considered as a factor by the Investigative Team. A summary of the interview will be made by the Investigative Team and shall be included with the Investigative Team's report to the Committee. The Certificant's or Applicant's failure to participate in a telephone interview shall not prevent the Investigative Team from submitting its report to the Committee or prevent the Committee from taking action based on the information available.
- 4.6 Report to Committee.** Upon the completion of its investigation, the Investigative Team shall submit a written report of the investigation to the Committee. The report must include the names of the Committee members who participated in the investigation, a description of the facts of the situation that gave rise to the Complaint, a description of the Unethical Conduct, if any, and the Code sections and/or Standards violated, if any. Within sixty (60) days of receiving the report, the Committee shall review the report.

V. Disposition of Complaint.

5.1 Committee Actions Regarding Certificants and Applicants. Upon either: (i) a determination by the Committee that it has sufficient information to make a decision; or (ii) the receipt and acceptance of the Investigative Team's report, the Committee shall review the relevant information, including any Investigative Team's report and take one (1) or more of the following actions, as appropriate:

- A. no action;
- B. issuance of a written warning;
- C. issuance of a letter of reprimand;
- D. imposition of terms of probation, which may include a requirement for the Certificant to take appropriate continuing education course(s);
- E. suspension of a Certificant's certification indefinitely or for a defined period of time;
- F. permanent revocation of a Certificant's certification;
- G. denial of an Applicant's application;
- H. such other action as it deems appropriate.

5.2 Notice of Action. The Chief Executive Officer shall provide written notice to the Certificant or Applicant within fifteen (15) days of the Committee's action under Sections 5.1. The notice shall include a brief description of the reasons for the action, the Unethical Conduct, the Code section and/or Standard violated, and information about the process for appealing the Committee's action.

5.3 Request for Appeal. A Certificant or Applicant shall have thirty (30) days from the date of the written notice pursuant to Section 5.2 to file a written Appeal Request. The Appeal Request shall be sent to the Chief Executive Officer by certified mail, overnight express mail, or such other delivery method containing written verification of its delivery. By requesting an appeal, the Certificant or Applicant agrees to be bound by the provisions of these Rules and Procedures in all matters relating thereto. The Chief Executive Officer shall notify the Chair of the Committee, the Chair of the Board and the Ethics and Standards Manager about the Appeal Request.

5.4 Waiver by Failure to Request an Appeal. Absent extraordinary circumstances, in the event that a Certificant or Applicant fails to properly submit the Appeal Request within the time and manner specified in Section 5.3, the Certificant or Applicant shall be deemed to have waived the right to such appeal. The Committee's action shall thereupon be final.

5.5 Request for Reconsideration. If a Certificant's certification has been suspended as a result of his or her failure to respond to a Complaint, the Certificant may petition the Committee to reconsider the suspension for good cause. Such request for reconsideration must include an adequate and complete explanation of why the Certificant failed to respond to the Complaint, as well as the information required in Section 4.3.

Based on the totality of the circumstances, including but not limited to, the reasons the Certificant did not timely respond, the Committee may, in its sole discretion, reconsider the suspension of the Certificant's certification and: (i) open an investigation into the underlying Complaint, and/or (ii) impose a different sanction as set forth in Section 5.1.

VI. Appeal Procedure.

- 6.1 Requirements of an Appeal Request.** Certificant or Applicant must include in his or her written Appeal Request proof that the: (1) violations found by the Committee lack a factual basis, and/or (2) resulting sanction, the basis of the Committee's decision, or the conclusions drawn therefrom are arbitrary, unreasonable, or capricious. The Appeal Request must include all evidence that is to be considered by the Board Panel. All such evidence must be new and different than the evidence considered by the Committee and must set forth adequate reasons why such evidence was not provided to the Committee. If the Certificant or Applicant's Appeal Request does not adequately address one or both of these requirements, the Appeal Request will be denied, and the Committee's decision will be final.
- 6.2 Granting of an Appeal Request.** Upon the receipt of the Appeal Request, the Chief Executive Officer shall deliver the Appeal Request to NCBTMB's Ethics & Standards Manager ("E&S Manager") for consideration. Within thirty (30) days from the Chief Executive Officer's receipt of the Appeal Request, and after consultation with NCBTMB's legal counsel, the E&S Manager shall determine if the Appeal Request is likely to meet the requirements set forth in Section 6.1. If the E&S Manager determines that the Appeal Request is likely to meet the requirements of Section 6.1, the Board Panel shall review the Appeal Request. If the E&S Manager determines that the Appeal Request is not likely to meet the requirements for Section 6.1, the Committee's decision shall be final. Within five (5) days from the E&S Manager's determination, the E&S Manager shall notify the: (i) Certificant or Applicant who submitted the Appeal Request; (ii) Chief Executive Officer; (iii) Chair of the Committee and (iv) Chair of the Board of the decision.
- 6.3 Board Panel.**
- A. *Appointment.* The Appeal Request shall be considered by a Board Panel and composed of three (3) Board members, at least two (2) of which shall be Certificants. One (1) of the appointees to the Board Panel shall be designated as the Chair.
- B. *Restrictions.* No member of the Board who filed the Complaint or served on the Committee or Investigative Team while the Complaint was active shall serve as a member of the Board Panel. Board Panel members shall not be in direct economic competition with the Certificant or Applicant requesting the appeal. No Board Panel member shall consider, evaluate or help determine the disposition of an appeal if such Board Panel member sufficiently knows any material party to the Complaint, is in direct competition with the Complainant, Certificant Applicant, or otherwise should be recused due to an existing or potential conflict of interest.
- 6.4 Attendance.** The Board Panel's consideration of the Appeal Request shall be closed to all third parties, except for witnesses, experts, NCBTMB staff, the Committee Chair, and legal counsel if requested by the Board Panel. The Board Panel's review of the Appeal Request may be conducted in person, by telephone conference or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. The Board Panel may allow the Certificant or Applicant to attend on a case-by-case basis.
- 6.5 Background Information.** The Chair of the Committee or his or her designee shall provide the members of the Board Panel with all relevant information and materials collected during the Investigative Team's investigation and the Committee's consideration. Such information shall include the Investigative Team's

report, a record of the Committee's final decision and sanction, correspondence, and any other relevant documents. This background information should be provided at least ten (10) days in advance of the appeal.

- 6.6 Consideration of New or Additional Matters.** New or additional matters not presented to the Committee or Investigative Team during its review and not otherwise reflected in the record shall be used only in compliance with Section 6.1 above. The Board Panel, in its sole discretion, shall determine whether it is appropriate to consider such additional matters or evidence.
- 6.7 Burden of Proof.** The Board Panel shall reverse, remand or modify the Committee's recommended sanction only in the event that the written Appeal Request shows, by clear and convincing evidence, that the grounds for the Committee's sanction lack a factual basis or that such bases or the conclusion drawn therefrom are arbitrary, unreasonable, or capricious.
- 6.8 Board Panel's Deliberations.** After reviewing the Appeal Request, the Board Panel shall conduct its deliberations. Upon the conclusion of those deliberations, the appellate review shall be declared finally adjourned.
- 6.9 Board Panel's Decision.** Within fifteen (15) days from the date of the consideration of the Appeal Request, the Board Panel shall notify the Chief Executive Officer, in writing, of its decision and action. The Board Panel's decision is final and cannot be appealed. The Chief Executive Officer shall provide the Certificant or Applicant with written notification of the Board Panel's decision and shall provide copies of the Board Panel's written report to the Chair of the Board and the Chair of the Committee. Upon request of the Chair of the Committee, the Chair of the Board Panel shall advise the Chair of the Committee, who shall likewise advise the Committee, about the reasons for any variation between the Board Panel's decision and the Committee's decision.

VII. Notification of Final Action.

- 7.1 Notification to Complainant.** If the Certificant or Applicant does not file an Appeal Request, the Chief Executive Officer shall inform the Complainant in writing of the Committee's action within fifteen (15) days of the expiration of the time period within which the Certificant or Applicant was required to file the Appeal Request. If the Certificant or Applicant requests an appeal, the Chief Executive Officer shall inform the Complainant of the Board Panel's decision within fifteen (15) days of receipt of the Board Panel's written report of its decision.
- 7.2 Publication of Sanctions Against Certificants.** The following sanctions against a Certificant shall be published: imposition of terms of probation, suspension of a Certificant's certification, and revocation of a Certificant's certification. The Certificant's name, city, state of record and the Certificant's certification number, the numerical references to the Code sections and/or the Standards violated, and the sanction(s) imposed shall be published in NCBTMB's newsletter and on NCBTMB's website. This and additional information also may be disclosed to interested private, public, governmental, quasi-governmental, and regulatory bodies, and third party payors, at NCBTMB's sole discretion.
- 7.3 Inclusion in NCBTMB's Database.** All final actions taken against Certificants and Applicants pursuant to these Rules and Procedures shall be noted in NCBTMB's internal database of information.

VIII. Other Actions.

8.1 Felony Conviction or Guilty Plea While an Applicant or Certificant. If the Committee finds that a Certificant or Applicant has been convicted of, or has plead guilty or nolo contendere to, a felony while an Applicant or Certificant, the Committee shall review the relevant court records and may suspend or revoke the Certificant's certification or deny the Applicant's application without further proceedings, except that the Certificant shall have the right to appeal the Committee's decision in accordance with Articles V and VI. The Certificant or Applicant may reapply for certification in accordance with Article X.

8.2 Conviction of Crimes Involving Sexual Misconduct While an Applicant or Certificant. If the Committee finds that a Certificant or Applicant has been convicted of, or has plead guilty or nolo contendere to, a crime involving sexual misconduct while a Certificant or Applicant, the Committee may review the relevant court records and shall revoke the Certificant's certification or deny the Applicant's application without further proceedings, except that the Certificant shall have the right to appeal the Committee's decision in accordance with Articles V and VI. The Certificant or Applicant may reapply for certification in accordance with Article X.

8.3 Loss of State Licensure, Certification or Registration due to Revocation, Suspension, Denial or Voluntary Relinquishment While Under Investigation.

A. *Covered Actions.* If the Committee finds the following:

- i. a Certificant's or Applicant's state license, certificate, or registration to practice massage therapy and/or bodywork has been denied, revoked or suspended, after final adjudication, on the basis of unprofessional conduct, as defined in Section 8.3(B); or
- ii. a Certificant or Applicant has voluntarily relinquished or surrendered his/her state license, certificate, or registration while under investigation for alleged unprofessional conduct, as defined in Section 8.3(B);

the Committee shall review the relevant records and may suspend or revoke the Certificant's certification or deny the Applicant's application without further proceedings, except that the Certificant shall have the right to appeal the Committee's decision in accordance with Articles V and VI. The Certificant or Applicant may reapply for certification in accordance with Article X.

B. *Unprofessional Conduct.* Notwithstanding state law definitions of the term "unprofessional conduct," for purposes of Sections 8.3 and 8.5, the term "unprofessional conduct" means and includes, but is not limited to, engaging in and/or offering to engage in sexual activity with a client; engaging in conduct that could result in harm or injury to the public; engaging in gross negligence or malpractice in the practice of therapeutic massage and bodywork; using drugs or alcohol to an extent that results in the inability to practice therapeutic massage and bodywork with reasonable judgment, skill, and safety; practicing beyond the individual's scope of practice as a practitioner of therapeutic massage and bodywork; fraudulently or deceptively obtaining, attempting to obtain, or using a license, certificate, or registration to practice therapeutic massage and bodywork; using fraud or deceit in communications with the public or with health care professionals; charging grossly unreasonable or fraudulent fees for services performed or not performed; failing to cooperate with a lawful investigation conducted by a federal, state, local or other regulatory entity;

failing to cooperate with a lawful investigation conducted by NCBTMB, and acting in a way that is inconsistent with generally accepted professional standards in the practice of massage therapy and bodywork.

8.4 Emergency Suspension or other Emergency Action against State License, Certification or Registration. If an Applicant's or Certificant's state license, certification or registration has been suspended by a federal, state or local government or agency authority ("Body") on an emergency basis, or an emergency restriction has been placed on the Applicant's or Certificant's state license, certification or registration, the Committee shall review the relevant records available to it, and may suspend the Certificant's certification or deny the Applicant's application without further proceedings until: (i) the relevant Body has made a final determination regarding the Applicant's or Certificant's state license, certification or registration, or (ii) the Committee conducts its own investigation of the Applicant or Certificant pursuant to these Rules and Procedures, and a final action is issued by the Committee or the Board Panel. This Section 8.4 does not require the Committee to open an investigation of the Certificant. Such decision shall be made on a case by case basis in the Committee's sole discretion.

8.5 Other Revocation, Suspension or Denial of State Licensure, Certification, or Registration or Association Membership and Malpractice. If the Committee finds the following:

- A. a Certificant's or Applicant's state licensure, certification, or registration to practice massage therapy and/or bodywork has been revoked, denied or suspended for reasons other than unprofessional conduct as defined in Section 8.3(B) above or a Certificant or Applicant has been placed on probation, reprimanded, or otherwise subjected to disciplinary action for any reason;
- B. a Certificant or Applicant has been expelled or suspended from a national, regional, state, or local professional massage therapists' and bodyworkers' association; or
- C. a Certificant or Applicant has been found, in a civil action, to have engaged in malpractice in the practice of therapeutic massage and bodywork, the Committee may draft a Complaint against the Certificant or Applicant in accordance with Article III.

- IX. Appeal of a Board Certification Application or Board Certification Renewal Application Denial.**
- 9.1 Request for an Appeal.** Within thirty (30) days of the date of notice that an Applicant's Certification Application or a Certificant's Board Certification Renewal Application has been denied, the Applicant or Certificant may file a written Appeal Request. The Appeal Request will be sent to the Ethics and Standards Manager and forwarded to the Committee for its review, evaluation and final determination.
- 9.2 Waiver by Failure to Request an Appeal.** Absent extraordinary circumstances, in the event that a Certificant or Applicant fails to properly submit the Appeal Request within the time and manner specified herein, the Certificant or Applicant shall be deemed to have waived the right to such appeal.
- 9.3 Requirements of an Appeal Request.** An Applicant or Certificant must include in his or her written Appeal Request clear and convincing evidence that: (1) the denial lacked a factual basis, and/or (2) the basis of the denial or the conclusions drawn therefrom were arbitrary, unreasonable or capricious. The Appeal Request must include all evidence that is to be considered by the Committee. All such evidence must be new and different than the evidence previously considered by NCBTMB and must set forth adequate reasons why such evidence was not previously provided to NCBTMB.
- 9.4 Evaluation of an Appeal Request.** Within forty-five (45) days of receiving an Appeal Request, the Committee shall evaluate the Appeal Request and determine whether the Appeal Request meets the requirements of an Appeal Request in accordance with Article 9.3.
- 9.5 Determination of an Appeal Request.** Should the Committee determine the Appeal Request does not meet the requirements of an Appeal Request as set forth in Article 9.3, the Appeal Request will be denied and NCBTMB's decision to deny the Board Certification Application or the Board Certification Renewal Application will be final. In the event the Appeal Request shows, by clear and convincing evidence, that the grounds for denial lack a factual basis or that such basis or the conclusions drawn therefrom are arbitrary, unreasonable or capricious, the Committee may reverse NCBTMB's denial of a Board Certification Application or Board Certification Renewal Application and/or take other remedial action it deems appropriate. The Ethics and Standards Manager shall inform the Applicant or Certificant of Committee's determination within ten (10) days of such determination.

X. Reapplication after Denial.

10.1 Eligibility to Reapply for an Applicant. An Applicant whose application has been denied shall not be eligible to reapply for NCBTMB certification until such time as determined by the Committee, in its sole discretion. The Committee shall determine, in its sole discretion, whether to approve or deny an Applicant's reapplication for certification with NCBTMB.

10.2 Processing of Reapplications. Any reapplication under this Article X shall be processed as an initial application. The Applicant shall submit such additional information requested by the Committee.

XI. Information and Processing.

- 11.1 Confidentiality.** All information disclosed to the Committee and Board Panel during the processes contained in these Rules and Procedures shall be maintained as confidential. Notwithstanding the above, NCBTMB may disclose such information when compelled by law. In addition, all information that is submitted to NCBTMB, including photographs, may be provided to law enforcement agencies and state, county, and/or local governmental agencies upon their request and at NCBTMB's discretion. NCBTMB also may disclose such information to parties essential to the processes contained in these Rules and Procedures, including NCBTMB staff, legal counsel, and experts. Experts must agree in writing to maintain all such information as confidential.
- 11.2 Recordkeeping.** Once a case is closed, the Committee shall work with NCBTMB staff to ensure that the confidentiality of the record is maintained. Committee members and Board members, in accordance with NCBTMB's document destruction policy, shall shred or return to NCBTMB for destruction all information received and notes generated during the course of the procedures contained in these Rules and Procedures. Upon the shredding of all information received and generated during the course of the procedures contained in these Rules and Procedures, Committee members and Board Panel members shall notify NCBTMB in writing about such shredding within ten (10) days from the date they are notified of the closing of the case. At the conclusion of a case, all members of the Committee and the Board Panel shall use reasonable and commercially accepted means to permanently delete and remove all information that is in electronic format and that is under their control, and shall verify with NCBTMB staff that such efforts have been undertaken.
- 11.3 Time Periods for Processing.** Certificants, Applicants, and Complainants acknowledge that, while good faith efforts will be made to consider Complaints and appeals in a reasonably timely manner and within the time periods specified in these Rules and Procedures, the specified time periods requiring Committee action shall not be deemed to create any rights on the part of Certificants, Applicants, or Complainants to have information processed within those periods. Failure of any body or individual to comply with the time periods shall in no event prevent continuation or conclusion of a proceeding.

XII. Amendments.

- 12.1 By the Committee.** The Committee may propose written amendments to the Rules and Procedures in writing to the Board at any time, provided that such amendments have been approved by a majority of Committee members. Such amendments shall become effective only upon approval by the Board.
- 12.2 By the Board.** The Board may amend the Rules and Procedures at any time it deems such amendment necessary to promote NCBTMB's best interests. Such amendments shall become effective only upon approval by the Board.

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