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## 5.1 Disciplinary Policy

### A. General

The Board of Directors has approved the following as reasons for which disciplinary actions may be taken against NBSTSA examination candidates, NBSTSA credentialed individuals:

1. Obtaining or attempting to obtain certification or recertification by fraud, deception or artifice.
2. Knowingly assisting another person or other persons in obtaining or attempting to obtain certification or recertification by fraud, deception or artifice.
3. Unauthorized use of a certification certificate or falsification of credentials or any other NBSTSA documents.
4. Unauthorized possession, use, copying, reproduction and/or distribution of any official NBSTSA examination materials, inclusive of any part of the NBSTSA examination questions or problems.
5. The following dispositions of offenses directly related to the practice of surgical technology and/or surgical first assisting which gives cause to question the individual's ability to practice in a safe and competent manner:

Conviction in a court of law, after all appeals have been exhausted, of:

1. a drug or alcohol-related offense in connection with the individual's practice.
2. 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.
3. 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.
  - a) Revocation or denial of a license or certificate to practice surgical technology and/or surgical first assisting or another health-related profession, by an authorized state agency due to:
    - 1) a drug or alcohol-related offense in connection with the individual's practice.
    - 2) 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.
    - 3) 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.
  - b) Voluntary surrender of a license or certificate to practice surgical technology and/or surgical first assisting, 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:

- 1) a drug or alcohol-related offense in connection with the individual's practice.
- 2) 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.
- 3) 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.

## **B. Purpose**

To enforce and apply these policies when required, the NBSTSA's Disciplinary Committee (the "Committee") has been established as a standing committee of NBSTSA. The Committee is comprised of the primary officers of the NBSTSA Board of Directors. The Committee will:

1. Receive reports or complaints of alleged violations or of dispositions involving matters described in items 1-5 listed in Part A above, after review by NBSTSA staff as described in item 1a) of Part C of this policy
2. With respect to matters described in items 1-4 of Part A, determine whether or not the report or complaint warrants consideration or is appropriate for action by the NBSTSA and, if so:
  - a) Establish a course of action to address reports and complaints received by the Committee.
  - b) Notify the candidate or credentialed individual of the course of action and provide opportunity for a hearing and appeal in accordance with the procedures outlined in Part C below.
3. With respect to matters described in item 5 of Part A, apply the procedures outlined in Part D below.
4. Notify the Board of Directors of all actions.

## **C. Notification, Hearing and Appeal: Matters Described in Items 1-4 of Part A**

The NBSTSA will follow these procedures with respect to matters described in items 1-4 of Part A above:

1. Notification of Complaint
  - a) Upon receiving a report or complaint of alleged violations of Items 1-4 of Part A of this document, NBSTSA staff (through the CEO or designee) shall have the authority to review the matter and determine whether there is any appropriate action to be taken prior to forwarding to the Committee.
  - b) Subsequent to review and subject to any action determined appropriate by NBSTSA staff, the CEO or designee shall forward the report of complaint to the Committee (by secure electronic or hard copy media).
  - c) At the next regularly scheduled meeting, or by telephone conference call, the Committee shall determine whether or not there appears to be reasonable basis to believe that the offense reported or charged has been committed.
    1. If there is reasonable doubt as to the validity of the report or charge, or if the matter is determined to not be appropriate for the Committee's attention, the CEO or designee shall be instructed to respond appropriately to the individual(s) who presented

the charge.

2. If reasonable belief is that the report or charge warrants consideration, the Committee shall instruct the CEO or designee to notify the charged party of the charge in writing and provide them with the opportunity for written response within 30 days from the date the letter is received.

3. All correspondence between the NBSTSA and the charged party will be sent certified mail, restricted delivery, return receipt requested.

2. Hearing

- a) At the end of the 30-day period, the Committee shall schedule a hearing on the complaint to be conducted by telephone conference call and shall provide written notification by certified mail to all parties. The NBSTSA will bear the telephone expense of the conference call. Notwithstanding the foregoing, if the charged party desires an in-person hearing they must notify the Committee in their written response, in which case the complaint will be heard by the Committee at its next regular meeting or such sooner time as determined by the Committee, to be held at a location determined by the Committee. The charged party will bear their own expenses of travel to and from, and accommodations while at, the location of an in-person hearing.
- b) If the charged party does not respond to the complaint or requests that a hearing not be conducted, the Committee shall consider the alleged violation(s) and all information available to the Committee to determine what disciplinary action, if any, is to be taken and shall send a written copy of its decision to the charged party, the complaining party and the Board of Directors.

3. Hearing Procedure

- a) The testimony of witnesses and any other available evidence, including written submissions, regarding the alleged violation(s) shall be received by the Committee. Testimony shall be taken under oath. All written materials must be submitted under oath, if not submitted in person.
- b) The parties shall have the opportunity to cross-examine witnesses and shall have access to any other evidence received by the Committee.
- c) The hearing shall be informal and conformity to legal rules of evidence will not be necessary.
- d) The Committee may exclude any individuals from the hearing conference call (or the hearing room, in the case of an in-person hearing) at any time at its discretion, except that the parties and their representatives, if any, shall be entitled to be present at all times.
- e) A record of the hearing shall be made at the expense of the NBSTSA. At the discretion of the Committee, the record may be in the form of a transcript or by tape recording.
- f) The Committee shall base its decision solely on the record of the hearing and shall provide findings of fact to support its conclusions on the offense(s) charged.
- g) A copy of the decision shall be sent by registered mail to the charged party and the complaining party. Signature required mail.

4. Appeal

- a) The charged party shall have 30 days following the date of the Committee's decision to file a note of appeal, by written correspondence, through the CEO or designee, to the Board of Directors. The appeal must be accompanied by a \$100 filing fee.

- b) The Board of Directors, excluding the members of the 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 or vacating the decision of the Committee. The matter will not be retried before the Board of Directors. The decision of the Board will be based upon the record of the hearing.
- c) A majority vote of the Board of Directors present (excluding the members of the 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 Committee shall be considered affirmed.

5 Right to Counsel

The parties shall be entitled to representation by counsel of their choice during all stages of the proceedings, at their own expense.

6 Expenses

Except as otherwise stated above, the parties will bear their own expenses associated with the proceedings.

#### **D. Automatic Discipline: Matters Described in Item 5 of Part A**

In the event of the occurrence of an offense described in Item 5 of Part A above, the Committee shall proceed directly to impose discipline in accordance with Item 2 of Part E below; provided, however, that this may be done only if, before taking any such action, the NBSTSA has received documentary evidence of the action taken by the court or state licensing agency with respect to such individual (or of the voluntary surrender of a license or certificate by such individual), and counsel for the NBSTSA has advised the NBSTSA that the action so documented falls within the offenses described in Item 5 of Part A.

#### **E. Disciplinary Action**

1. After conducting a hearing as outlined in Part C of these policies, the 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 NBSTSA will be sent to the individual indicating that the NBSTSA is concerned 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 2 years and shall be removed and destroyed at the end of that time, provided no additional incidents are reported.
    - 2) Formal Censure - The individual shall be sent a letter signed by the President of the NBSTSA expressing a formal censure. Notice of this action shall remain on file in the individual's file unless revoked by a majority vote at a future meeting of the Board of Directors.
    - 3) Removal from the Examination Process(es) for a Specified Period - This disciplinary action shall prohibit the acceptance of an application for any examination including the self-assessment program, 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

NBSTSA policies. This action may be applied to all individuals eligible for any examination offered by the NBSTSA. This action may apply to any stage of the examination process including the withholding of the formal certificate of recognition of an examination already completed.

- 4) Removal from the Examination Process for an Indefinite Period of Time- The same provisions outlined in Item c) above may be invoked by the NBSTSA with the difference being that the individual shall be barred from all examination programs indefinitely. To be reinstated, the individual must petition (in writing) the NBSTSA for reinstatement and provide cause as to why reinstatement should occur.
- b) For credentialed individuals:
- 1) Admonishment - A letter signed by the President of the NBSTSA will be sent to the individual indicating that the NBSTSA is concerned 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 2 years and shall be removed and destroyed at the end of that time, provided no additional incidents are reported.
  - 2) Formal Censure - The individual shall be sent a letter signed by the President of the NBSTSA expressing a formal censure. Notice of this action shall remain on file in the individual's file unless revoked by a majority vote at a future meeting of the Board of Directors.
  - 3) Deletion of Current Certification for a Specified Period of Time - A CST or CSFA may be disqualified from eligibility for "active" status with the NBSTSA for a specified length of time. This will result in the individual's name being listed as "Temporarily Suspended" in the RECORD of CSTs, and CSFAs. During the period of suspended classification, the individual shall not use any official designation (CST/CSFA) for any purpose whatsoever. At the end of the period, the individual will again qualify for active status provided all requirements of the Board are satisfied and no additional violations of NBSTSA policies occur.
  - 4) Deletion from Current Certification for an Indefinite Period of Time - The name of a CST or CSFA shall be deleted indefinitely from the RECORD of CSTs and CSFAs. During the period of deletion from the record, the individual shall not use any official designation (CST/CSFA) for any purpose whatsoever. 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 in the RECORD due to disciplinary action taken for violation of NBSTSA policies. To be reinstated, the individual must petition (in writing) the NBSTSA for reinstatement and provide cause as to why reinstatement should occur.
  - 5) Disqualification from Recredentialing or Self-Assessment Programs - A CST or CSFA may be disqualified from participating in any re-credentialing or self-assessment program administered by the NBSTSA. Such disqualification may be for a specified period of time or for an indefinite period as determined by the committee. During the period of deletion from the RECORD, the individual shall not use any official designation (CST/CSFA) for any purpose whatsoever.
- c) For credentialed individuals who may also be examination candidates or who may be eligible for an NBSTSA examination:
- 1) If a CST or CSFA violates NBSTSA policies and punishment is determined appropriate by the Committee, and the individual is eligible for, or a candidate in another NBSTSA

examination system, the committee may impose punishment upon the individual as both a candidate and as a credentialed person. For example, it would be possible for the committee to disqualify a CST from active status in the annual record and prevent the CST from being admitted to the CSFA examination process due to his or her violation of NBSTSA policies.

- 2) Where an individual has committed one of the offenses described in Item 5 of Part A, the Committee shall, in its judgment, impose one of the following disciplinary actions:
  - a. Deletion from "active" credentialed status for a period of time equal to the length of the punishment imposed by the court or state agency, or as was voluntarily agreed to by the individual in the case of a voluntary surrender of their license or certificate. During the period of deletion from the record, the individual shall not use any official designation (CST/CSFA) for any purpose whatsoever.
  - b. Suspension of a credential(s) for a period of time equal to the length of the punishment imposed by the court or state agency, or as was voluntarily agreed to by the individual in the case of a voluntary surrender of their license or certificate. During the period of deletion from the record, the individual shall not use any official designation (CST/CSFA) for any purpose whatsoever.
  - c. Suspension from the examination system(s) for a period of time equal to the length of the punishment imposed by the court or state agency, or as was voluntarily agreed to by the individual in the case of a voluntary surrender of their license or certificate. During the period of deletion from the record, the individual shall not use any official designation (CST/CSFA) for any purpose whatsoever.
  - d. 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.

All appeals are tracked, documented accordingly to include any and all actions undertaken in response to them.