

DISCIPLINARY ACTION PROCEDURAL DOCUMENT BOD R03-16-02-02

[Amended BOD R03-04-11-23; BOD 11-99-05-11; BOD 03-96-04-07; BOD 11-94-05-11; BOD 03-92-33-119; BOD 11-90-19-73; BOD 11-89-29-117; BOD 11-88-24-97; BOD 03-87-15-55; BOD 03-86-13-52; BOD 11-84-07-33; BOD 03-84-12-43; BOD 03-82-07-26; BOD 11-79-06-20] [Procedure]

The American Physical Therapy Association (Association or APTA) has developed this *Disciplinary Action Procedural Document* (Procedural Document) to establish a procedure to process claims that a member of the Association has violated the Association's *Code of Ethics for the Physical Therapist* (Code) or *Standards of Ethical Conduct for the Physical Therapist Assistant* (Standards).

The APTA's Ethics and Judicial Committee (EJC or Committee) will process information and claims relating to ethical violations in accordance with this Procedural Document. The APTA's Board of Directors (Board) will consider appeals in accordance with this Procedural Document.

Wherever this Procedural Document calls for the use of certified mail, return receipt requested, an alternative form of delivery may be used, provided that it generates a reliable record of receipt.

1. CHAPTER RESPONSIBILITIES

(a) Adjudication and Confidentiality

On the state level, each APTA Chapter should notify and forward to the EJC a copy of any final (fully adjudicated) public disciplinary action taken by a licensing board or government agency against an APTA member.

On the federal level, each Chapter should notify and forward to the EJC a copy of any final (fully adjudicated) public federal action (e.g., U.S. Department of Health & Human Services) taken against an APTA member.

As set forth further in Section 10, each Chapter shall handle all matters with the strictest level of confidence and shall not forward or send any information about an APTA member to anyone other than the EJC, unless required to do so by law or unless instructed by the EJC or APTA staff. Attachments in an email shall be password protected.

(b) Education

To ensure that educational information and resources are available to physical therapists and physical therapist assistants and in order to provide educational materials to respondents, each Chapter should regularly review available materials to determine what ethics information and/or educational resources are available. Each Chapter should regularly update the Chapter website with information about such educational information and resources.

(c) Chapter President or other Designee

The President of each Chapter shall be responsible for actions under Section 1. (a) and 1. (b), except that a Chapter President may designate another person or persons working for the Chapter to carry out these responsibilities.

2. RELIABLE INFORMATION CASES – SERIOUS CRIME/LICENSURE REVOCATION CASES

This Section applies to cases involving a member's commission of a serious crime. A serious crime is one that (i) is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapist assistant and (ii) is classified as a felony by the applicable law, or is punishable by imprisonment for six months or more. This Section applies to cases involving (a) a member's plea of guilty or nolo contendere to a charge involving such a serious crime, (b) a finding of guilt after trial, or (c) a member's conviction of such a serious crime. Such a plea (if not withdrawn), finding, or conviction shall be deemed presumptive evidence that the member has engaged in the activity alleged in the criminal charges to which he/she pleaded, as to which there was a finding of guilt, or of which he/she was convicted.

This Section applies also to cases involving the revocation of a member's license to practice as a physical therapist or to work as a physical therapist assistant, except that it shall not apply if the revocation of the member's license is stayed. Such a revocation shall be deemed presumptive evidence that the member has engaged in the conduct on which the revocation was based.

If the EJC receives reliable information, from a Chapter or any other source, indicating that a member is guilty of a serious crime or that a licensing board/agency has revoked a member's license, the EJC shall prepare and send the member a notice of suspension and charges.

The notice of suspension and charges shall advise the respondent that the EJC has temporarily suspended his/her membership rights and privileges as specified in Section 7(b), effective thirty (30) days after the date of the notice and continuing until the EJC's decision. The notice shall describe the conduct that appears to constitute a violation of the Code or the Standards and shall specify which provision(s) of the Code or the Standards the conduct appears to have violated.

The notice shall advise the respondent that the respondent may submit a written statement responding to the charges, which shall be due by a time specified in the notice (not fewer than 30 days from the date of the notice).

The notice shall advise the respondent that such a written statement may request a hearing before the EJC, which request shall be due by a time specified in the notice (not fewer than 30 days from the date of the notice). The request for a hearing must include a short statement regarding the basis for a hearing request. The decision whether to grant a hearing is a matter of the EJC's discretion taking into account the statement by the respondent.

If the respondent requests a hearing, the EJC will notify the respondent whether such a hearing will be granted and, if so, when such a hearing will be held. Hearings will be held at APTA's national headquarters. The respondent is responsible for all of respondent's costs associated with the hearing. The respondent may bring counsel to the hearing, and counsel may participate in the manner the EJC, in its discretion, determines. Hearings will last no more than two (2) hours.

The EJC will make a decision, based on the information available to it, to dismiss the charges or to impose any form of discipline described in Section 7.

The EJC shall send the respondent its decision to dismiss the charges or to impose a form of discipline. It shall send the decision by certified mail, return receipt requested.

If the EJC decides to impose a form of discipline, its decision shall specify (i) its findings as to the conduct in which the respondent engaged and (ii) the provision(s) of the Code or the Standards that the respondent's conduct violated. In addition, the decision shall advise the respondent of the respondent's right to appeal to the APTA Board.

The EJC's decision to dismiss the charges is final and not subject to review.

The EJC's decision to impose a form of discipline is subject to review by the APTA Board if the respondent sends a notice of appeal to the Board and the EJC within thirty (30) days of receiving the EJC's decision.

A notice of appeal must set forth the reasons the respondent believes the Board should reverse or amend the EJC's decision.

If the EJC does not receive a notice of appeal within this period its decision to impose a form of discipline shall become final.

3. OTHER RELIABLE INFORMATION CASES

This Section applies to cases, not covered by Section 2, in which the EJC receives reliable information, from a Chapter or any other source, indicating that a member has violated the Code or Standards.

In such a case, the EJC's Chair, in consultation with staff, shall determine whether to initiate a disciplinary proceeding. The Chair may solicit input from the full Committee but is not required to do so.

In making this determination the Chair shall take into account the nature and severity of the violation, how long ago the violation occurred, the punishment already imposed, and other relevant circumstances.

(a) Disciplinary Proceeding Initiated

If the EJC's Chair, in consultation with staff, determines to initiate a disciplinary proceeding under this Section, then the EJC shall prepare and send the member a notice of charges.

The notice of charges shall describe the conduct that appears to constitute a violation of the Code or the Standards and shall specify which provision(s) of the Code or Standards the conduct appears to have violated.

The notice shall advise the respondent that the respondent may submit a written statement responding to the charges, which shall be due by a time specified in the notice (not fewer than 30 days from the date of the notice).

The notice shall advise the respondent that such a written statement may request a hearing before the EJC, which request shall be due by a time specified in the notice (not fewer than 30 days from the date

of the notice). The request for a hearing must include a short statement regarding the basis for a hearing request. The decision whether to grant a hearing is a matter of the EJC's discretion taking into account the statement by the respondent.

If the respondent requests a hearing, the EJC will notify the respondent whether such a hearing will be granted and, if so, when such a hearing will be held. Hearings will be held at APTA's national headquarters. The respondent is responsible for all of respondent's costs associated with the hearing. The respondent may bring counsel to the hearing, and counsel may participate in the manner the EJC, in its discretion, determines. Hearings will last no more than two (2) hours.

The EJC will make a decision, based on the information available to it, to dismiss the charges or to impose any form of discipline described in Section 7.

The EJC shall send the respondent its decision to dismiss the charges or to impose a form of discipline. It shall send the decision by certified mail, return receipt requested.

If the EJC decides to impose a form of discipline, its decision shall specify (i) its findings as to the conduct in which the respondent engaged and (ii) the provision(s) of the Code or the Standards that the respondent's conduct violated. In addition, the decision shall advise the respondent of the respondent's right to appeal to the APTA Board.

The EJC's decision to dismiss the charges is final and not subject to review.

The EJC's decision to impose a form of discipline is subject to review by the APTA Board if the respondent sends a notice of appeal to the Board and the EJC within thirty (30) days of receiving the EJC's decision.

A notice of appeal must set forth the reasons the respondent believes the Board should reverse or amend the EJC's decision.

If the EJC does not receive a notice of appeal within this period its decision to impose a form of discipline shall become final.

(b) Disciplinary Proceeding Not Initiated

If the EJC's Chair determines not to initiate a disciplinary proceeding under this Section, then the EJC may (but need not) send the member appropriate educational information and/or suggest educational resources.

4. COMPLAINTS - REFERABLE

Any person who wishes to bring an ethics complaint against an APTA member may do so by mailing to the EJC a signed, notarized and written complaint alleging that the member engaged in conduct that violated the Code or Standards. The EJC will not consider complaints submitted by fax or email.

In cases where a complaint involves alleged conduct by a member that appears to be amenable to disposition by a court (e.g., a defamation or malpractice lawsuit), a governmental agency (e.g., a licensing disciplinary proceeding or employment related agency), or some other person or entity, this Procedural Document supports allowing the complainant to pursue such an alternative.

Upon receipt of a complaint within this Section, the EJC's Chair, in consultation with staff, shall determine whether the complaint is one that appears to be amenable to disposition by a court, a governmental agency, or some other person or entity. The Chair may solicit input from the full Committee but is not required to do so.

If the determination is affirmative the Chair shall advise the complainant that the complaint appears to be amenable to disposition by a court, a governmental agency, or some other person or entity and that the Association will not take any further action on the complaint. If the determination is affirmative, the Chair may (but need not) suggest that the complainant consider pursuing relief from the alternative.

5. OTHER COMPLAINTS – GROUNDS FOR NOT PROCESSING

If the Chair has determined that a complaint reviewed under Section 4 does not appear to be amenable to disposition by a court, a governmental agency, or some other person or entity, then the Chair, in consultation with staff, shall determine whether the complaint alleges conduct that would constitute a violation of the Code or Standards. The Chair may solicit input from the full Committee but is not required to do so. If the determination is negative, then the Chair shall inform the complainant of the determination and shall advise the complainant that the Association will not take any further action on the complaint.

If the Chair determines that a complaint alleges conduct that would constitute a violation of the Code or Standards, then the Chair, in consultation with staff, shall determine whether it would be appropriate for the Association to process the complaint. In making this determination the Chair may take into account the nature and severity of the alleged violation, the Association's ability to investigate the allegations, and other relevant circumstances.

If the Chair determines that it would not be appropriate for the Association to process a complaint alleging conduct that would constitute a violation of the Code or Standards, then the Chair shall inform the complainant of the determination and shall advise the complainant that the Association will not take any further action on the complaint.

6. OTHER COMPLAINTS – APPROPRIATE FOR PROCESSING

If the Chair determines that it would be appropriate for the APTA to process a complaint alleging conduct that would constitute a violation of the Code or Standards, then the full Committee, in consultation with staff, shall prepare a notice of charges and shall determine how to conduct an appropriate investigation.

The notice of charges shall describe the conduct that appears to constitute a violation of the Code or the Standards and shall specify which provision(s) of the Code or Standards the conduct appears to have violated.

(a) Processing Solely at Association Level

If the Committee determines that it is appropriate to process the case entirely at the Association level, the notice of charges shall advise the respondent that the respondent may submit a written statement responding to the charges, which shall be due by a time specified in the notice (not fewer than 30 days from the date of the notice).

The notice shall advise the respondent that such a written statement may request a hearing before the EJC, which request shall be due by a time specified in the notice (not fewer than 30 days from the date of the notice). The request for a hearing must include a short statement regarding the basis for a hearing request. The decision whether to grant a hearing is a matter of the EJC's discretion taking into account the statement by the respondent.

If the respondent requests a hearing, the EJC will notify the respondent whether such a hearing will be granted and, if so, when such a hearing will be held. Hearings will be held at APTA's national headquarters. The respondent is responsible for all of respondent's costs associated with the hearing. The respondent may bring counsel to the hearing, and counsel may participate in the manner the EJC, in its discretion, determines. Hearings will last no more than two (2) hours.

The EJC will make a decision, based on the information available to it, to dismiss the charges or to impose any form of discipline described in Section 7.

The EJC shall mail the respondent its decision by certified mail, return receipt requested.

The EJC's decision to dismiss the charges is final and not subject to review. If the EJC decides to dismiss the charges it shall send to the complainant a copy of the decision sent to the respondent.

If the EJC decides to impose a form of discipline, its decision shall specify (i) its findings as to the conduct in which the respondent engaged and (ii) the provision(s) of the Code or the Standards that the respondent's conduct violated. In addition, the decision shall advise the respondent of the respondent's right to appeal to the APTA Board.

The EJC's decision to impose a form of discipline is subject to review by the APTA Board if the respondent sends a notice of appeal to the Board and the EJC within thirty (30) days of receiving the EJC's decision.

A notice of appeal must set forth the reasons the respondent believes the Board should reverse or amend the EJC's decision.

If the EJC does not receive a notice of appeal within this period its decision to impose a form of discipline shall become final. In such a case the EJC shall send to the complainant a copy of the decision it sent to the respondent.

(b) Processing at Chapter and Association Levels

If the EJC determines that it is appropriate to begin the processing of the case at the Chapter level, then the EJC will direct the President of the member's Chapter to appoint a panel (Ethics Panel) with at least three members to investigate the allegations of the complaint. The President shall notify the EJC of the identity of the Ethics Panel members and of the Panel's Chair.

The Ethics Panel shall investigate the allegations of the complaint as directed by the EJC's Chair.

The Ethics Panel will make a decision, based on the information available to it, to dismiss the charges or to recommend to the EJC that it impose a form of discipline described in Section 7.

If the Ethics Panel decides to dismiss the charges then it shall send its decision to EJC and send a copy of its decision to the respondent and the complainant. A decision by the Ethics Panel to dismiss the charges is final and not subject to appeal.

If the Ethics Panel decides to recommend that the EJC impose a form of discipline it shall submit its decision to the EJC and send a copy of the decision to the respondent but not to the complainant.

After the Ethics Panel has sent its decision to the EJC the Ethics Panel shall forward to the EJC the complete record of its investigation and deliberations. Once the Chair of the Ethics Panel has confirmed the EJC's receipt of the record, the Panel shall destroy all copies of such record.

If the EJC receives a recommendation that it impose a form of discipline described in Section 7 it shall notify the respondent that the respondent may submit a written statement responding to the recommendation, which shall be due by a time specified in the notification (not fewer than 30 days from the date of the notification).

The notification shall advise the respondent that such a written statement may request a hearing before the EJC, which request shall be due by a time specified in the notice (not fewer than 30 days from the date of the notice). The decision whether to grant a hearing is a matter of the EJC's discretion taking into account the statement by the respondent.

If the respondent requests a hearing, the EJC will notify the respondent whether such a hearing will be granted and, if so, when such a hearing will be held. Hearings will be held at APTA's national headquarters. The respondent is responsible for all of respondent's costs associated with the hearing. The respondent may bring counsel to the hearing, and counsel may participate in the manner the EJC, in its discretion, determines. Hearings will last no more than two (2) hours.

The EJC will make a decision, based on the information available to it.

The EJC may decide to dismiss the charges. If the EJC determines that the respondent has violated the Code or the Standards, it may decide to impose the discipline recommended by the Ethics Panel or a less severe form of discipline. It may not decide to impose a more severe form of discipline.

The EJC shall send the respondent its decision to dismiss the charges or to impose a form of discipline. If the EJC decides to impose a form of discipline, its decision shall specify (i) its findings as to the conduct in which the respondent engaged and (ii) the provision(s) of the Code or the Standards that the respondent's conduct violated. In addition, the decision shall advise the respondent of the respondent's right to appeal to the APTA Board.

The EJC's decision to dismiss the charges is final and not subject to review. If the EJC decides to dismiss the charges it shall send to the complainant a copy of the decision sent to the respondent.

The EJC's decision to impose a form of discipline is subject to review by the APTA Board if the respondent sends a notice of appeal to the Board and the EJC within thirty (30) days of receiving the EJC's decision.

A notice of appeal must set forth the reasons the respondent believes the Board should reverse or amend the EJC's decision.

If the EJC does not receive a notice of appeal within this period its decision to impose a form of discipline shall become final. In such a case the EJC shall send to the complainant a copy of the decision it sent to the respondent.

7. KINDS OF DISCIPLINE

The EJC may take one of the following kinds of discipline if it determines that a respondent has violated the Code or the Standards.

(a) Reprimand

The EJC may issue a reprimand, which is a statement that the respondent's behavior was contrary to the Code or the Standards.

(b) Suspension

The EJC may suspend the respondent's rights and privileges of membership under the Association's Bylaws, with the exception of the privilege of receiving the official journal of the Association. The suspension shall be for a period of at least six months of membership, as specified by the EJC.

(c) Expulsion

The EJC may expel the respondent from the Association.

8. APPEAL TO ASSOCIATION BOARD

If the EJC receives a timely notice of appeal under Section 2, 3, or 6, it shall assemble the record of the case and forward it to the Board.

The Board shall send a notice advising the respondent that the respondent may submit a written statement in support of the appeal, which shall be due by a time specified in the notice (not fewer than 30 days from the date of the notice).

The notice shall advise the respondent that such a written statement may request a hearing before the Board and that the decision whether to grant a hearing is a matter of the Board's discretion.

If the respondent requests a hearing, the Board will notify the respondent whether such a hearing will be granted and, if so, when such a hearing will be held. The respondent is responsible for all of respondent's costs associated with the hearing. The respondent may bring counsel to the hearing, and counsel may participate in the manner the Board, in its discretion, determines.

The Board shall limit its consideration of the appeal to the question whether the EJC's decision is supported by evidence and is otherwise appropriate.

The Board may decide (i) to affirm the EJC's decision, (ii) to reverse the EJC's decision by dismissing the charges, or (iii) to amend the EJC's decision by imposing a form of discipline less severe than that imposed by the EJC. The Board's decision is final.

If the Board decides to affirm the EJC's decision or to amend the EJC's decision by imposing a form of discipline less severe than that imposed by the EJC, the Board's decision shall specify (i) its findings as to the

conduct in which the respondent engaged and (ii) the provision(s) of the Code or the Standards that the respondent's conduct violated.

The Board shall send its decision on appeal to the respondent and the EJC.

If the Board decides to affirm the EJC's decision it shall send the complainant (if any) a copy of the EJC's decision and the Board's decision.

If the Board decides to reverse or amend the EJC's decision it shall send the complainant (if any) a copy of the Board's decision but not the EJC's decision.

9. POST-DECISIONAL MATTERS

(a) Suspension

A suspension of a respondent's membership rights and privileges under Section 7 shall run for the length of time specified by the EJC (or by the Board, in the case of an appeal), commencing with the first day of the month immediately after the date on which the decision of the EJC (or of the Board, in the case of an appeal) becomes final.

If a respondent whose membership rights and privileges have been suspended ceases to be a member (e.g., by reason of failure to pay dues or resignation) the time the respondent is not a member shall not count toward the period of suspension. The EJC may confirm that a respondent's membership rights and privileges are no longer suspended upon the request of the respondent or the President of the respondent's chapter.

(b) Expulsion

A respondent who has been expelled may be reinstated to membership only as provided in the Association's Bylaws.

10. CONFIDENTIALITY

In order to protect the legitimate interests of respondents, complainants, and others, the confidential nature of a proceeding under this Procedural Document shall be preserved (except as explicitly provided herein).

In any case processed at the Chapter level under Section 6, the Chapter President and the members of the Ethics Panel shall take due precautions to assure the confidential nature of the proceeding and any individual working on an ethics matter shall sign a confidentiality agreement prepared by the Association. They shall endeavor to restrict knowledge of the existence and substance of any proceeding to those individuals having a need to know.

They shall not reveal to state licensing agencies (or other parties) information or documentation developed in the course of a proceeding under this Procedural Document.

The APTA's Chief Executive Officer or President may take appropriate steps (including cessation of the processing of ethics complaints and charges in a state) to protect the interests of individual participants in the ethics process, the Chapter, and the Association itself upon determining (i) that the law or practice of any state requires (or could require) the disclosure of the existence of a complaint or proceeding under this

Procedural Document or the reporting or disclosure of information or documentation developed hereunder and (ii) that such requirement would be unfair to affected parties or could expose any participant, the Chapter, or the Association itself to an undue risk of civil or criminal liability.

Explanation of Reference Numbers:

BOD P00-00-00-00 stands for Board of Directors/month/year/page/vote in the Board of Directors Minutes; the "P" indicates that it is a position (see below). For example, BOD P11-97-06-18 means that this position can be found in the November 1997 Board of Directors minutes on Page 6 and that it was Vote 18.

P: Position | S: Standard | G: Guideline | Y: Policy | R: Procedure