



PROCEDURES FOR THE ENFORCEMENT OF THE NBCOT®
CANDIDATE/CERTIFICANT CODE OF CONDUCT

SECTION A. Preamble

In exercising its responsibility for promoting and maintaining standards of professional conduct in the practice of occupational therapy and in order to protect the public from those practitioners whose behavior falls short of these standards, the National Board for Certification in Occupational Therapy, Inc. ("NBCOT®," formerly known as "AOTCB") has adopted a Candidate/Certificant Code of Conduct. The NBCOT has adopted these enforcement procedures for resolving issues arising under the Candidate/Certificant Code of Conduct with respect to persons who have been certified by the NBCOT or who have applied for such certification. These procedures are intended to enable the NBCOT, through its Qualifications and Compliance Review Committee ("QCRC"), comprised of both professional and public members, QCRC Chair, (or Co-Chair when Chair is unavailable) and Staff to act fairly in the performance of its responsibilities to the public as a certifying agency, and to ensure that the rights of candidates and certificants are protected.

SECTION B. Basis for Sanction

A violation of the Candidate/Certificant Code of Conduct provides basis for action and sanction under these Procedures.

SECTION C. Sanctions

1. Violations of the Candidate/Certificant Code of Conduct may result in one or more of the following sanctions:
 - a. Ineligibility for certification, which means that an individual is barred from becoming certified by the NBCOT, either indefinitely or for a certain duration.
 - b. Reprimand, which means a formal expression of disapproval, which shall be retained in the certificant's file, but shall not be publicly announced.
 - c. Censure, which means a formal expression of disapproval which is publicly announced.
 - d. Probation, which means continued certification is subject to fulfillment of specified conditions, e.g., monitoring, education, supervision, and/or counseling.
 - e. Suspension, which means the loss of certification for a certain duration, after which the individual may be required to apply for reinstatement.
 - f. Revocation, which means permanent loss of certification.

2. All sanctions other than reprimand shall be announced publicly, in accordance with Section D.9. All sanctions other than reprimand shall be disclosed in response to inquiries in accordance with Section D.9.

SECTION D. Procedures For The Enforcement of
The Candidate/Certificant Code of Conduct

1. Jurisdiction

The NBCOT has jurisdiction over all individuals who have been certified as an OCCUPATIONAL THERAPIST REGISTERED OTR (OTR®) henceforth OTR, or CERTIFIED OCCUPATIONAL THERAPY ASSISTANT COTA (COTA®) henceforth COTA, or who have applied for certification, or have applied for Occupational Therapist Eligibility Determination (OTED) to take the NBCOT Certification Examination for OTR. In addition, NBCOT has jurisdiction over all individuals who have applied for an Early Determination Review to determine eligibility to take the Certification Examination for OTR or COTA; Jurisdiction, in this case, is for the limited purpose of acting upon a request for an Early Determination.

2. Initiation of the Review Process

The NBCOT Staff ("Staff") shall initiate the process upon receipt by the NBCOT of information indicating that an individual subject to NBCOT's jurisdiction may have violated the Candidate/Certificant Code of Conduct. Receipt of such information shall be considered a complaint for the purposes of these procedures, regardless of the source.

3. Staff Investigation and Action

- a. Staff shall evaluate all complaints and determine whether to dismiss the case or propose a sanction, as deemed appropriate.
- b. Staff may review any evidence, which it deems appropriate and relevant.
- c. If Staff determines that the evidence does not support the allegation(s), no file shall be opened and the complainant shall be notified of the Staff's decision.
- d. If the complaint has also been made to the regulatory authority but no decision has been rendered, Staff may stay action pending a decision by the regulatory authority.
- e. When a regulatory authority has imposed disciplinary action and Staff determines that the evidence does support the allegation(s) and the matter should be reviewed by NBCOT, the subject of the complaint shall be notified. This notification shall be in writing and shall include a brief description of the

complaint. The subject of the complaint shall have thirty (30) days from the date notification is sent to respond in writing to the complaint. The Staff may extend this period up to an additional thirty (30) days upon request, provided sufficient justification for the extension is given.

- f. When a regulatory authority has not imposed disciplinary action, (such as in the case of an OTED applicant, Early Determination Review, exam candidate who has responded affirmatively on the examination application to a character question or a third party complaint) Staff has the discretion to gather information in order to either dismiss the case, impose one or more sanctions, or refer to the QCRC for further review.
- g. Upon completion of its investigation, Staff may take action based on the evidence and violation of NBCOT guidelines. Staff shall either:
 - i. Dismiss the case due to insufficient evidence, the matter being insufficiently serious, or other reasons as may be warranted; or
 - ii. Notify the subject of the complaint that NBCOT will not pursue further action against the subject's certification due to appropriate action taken by the state; or
 - iii. Notify the subject of the complaint of the proposed sanction in writing. When disciplinary action is proposed, the subject of the complaint shall have thirty (30) days from the date notification is sent to accept the sanction or request a hearing in writing. Staff may extend this period up to an additional thirty (30) days upon request, provided sufficient justification for the extension is given.
- h. Staff will review with QCRC chair all proposals for Revocation or Ineligibility for Certification prior to sending notification to the subject.
- i. Staff will advise the QCRC Chair, on a periodic basis, of all imposed sanctions.
- j. If any sanction other than reprimand is imposed, public notice may be given in accordance with Section D. 9 of these procedures.

4. Voluntary Forfeiture

The subject of a complaint may voluntarily forfeit his or her certification. This forfeiture must be submitted in writing and can be made, at any time, while the complaint is either being reviewed or when disciplinary action has been taken by the NBCOT but the terms of the sanction remain incomplete.

Staff will advise the Qualifications and Compliance Review Committee (QCRC) Chair of any voluntary forfeiture.

If the subject requests reinstatement of certification, after voluntary forfeiture, the subject must meet all of the following requirements:

- a. submit reinstatement of certification request in writing,
- b. satisfy current certification examination eligibility requirements (including academic and fieldwork requirements),
- c. re-take and pass the national certification examination and
- d. comply with proposed sanction agreement and/or other informational requests, which will be resumed upon request to regain certification.

If the subject's certification is voluntarily forfeited, public notice may be given in accordance with Section D. 9 of these procedures.

5. Failure to Respond to Investigative Inquiry

Individuals who are non-responsive on a timely basis to NBCOT investigative inquiries will have their certification automatically suspended for a period of up to three (3) years and during such period, CANNOT a) identify themselves to the public as an OCCUPATIONAL THERAPIST REGISTERED (OTR) or CERTIFIED OCCUPATIONAL THERAPY ASSISTANT (COTA) or b) use the OTR or COTA credential after their name. If no response is received within the suspension period, NBCOT certification shall automatically be revoked.

If the subject requests to be reinstated during the suspension, the subject shall:

- a. submit reinstatement of certification request in writing,
- b. satisfy current certification renewal requirements,
- c. cooperate with and provide written response and supporting documentation to the NBCOT proposed sanction and/or other informational requests and
- d. provide documentation by the state board confirming the current status of subject's license upon request.

Upon receipt of a request to satisfy these requirements, the complaint will be handled in accordance with these Enforcement procedures, except that NBCOT certification status will remain in suspended status until the matter is resolved.

6. Procedures for the Sanction Agreement Letter

Upon receipt of the proposed sanction letter, the subject may either:

- a. Accept the sanction as proposed and thereby waive his/her right to a hearing. To accept the sanction, the subject must sign, date and return the sanction letter to NBCOT. Upon the subject's acceptance of the sanction agreement, the qualifications and compliance process shall be considered closed. The public notification standards of Section D.9 are applicable if the settlement contains a sanction that warrants such announcement be made; or

- b. Not accept the sanction as proposed and request a hearing before the QCRC. Request for a hearing must be submitted by the subject in writing. Hearing requests must include subject's reasons for requesting a hearing and may also include any additional information or documentation which the subject wishes to provide in support of his/her position.
- c. If the subject fails to respond to the sanction agreement letter, within thirty (30) days after the agreement has been sent to the subject, conditions and terms of the proposed agreement take effect immediately.

Prior to the hearing:

- i. Staff shall prepare a case report of its review to the Hearing Panel.
- ii. The report shall include any written responses, or other materials submitted by the subject or any other individual in relation to the complaint. A copy of the report shall be provided to the subject at least thirty (30) days prior to the hearing.
- iii. Additional information may be requested by the Hearing Panel prior to the hearing.

At the hearing:

- i. The subject of the complaint may be represented at the hearing by his/her legal counsel, or any other individual of his or her choosing.
- ii. The subject of the complaint shall be solely responsible for all of his/her own expenses related to the hearing. Hearings can be conducted via teleconference call or in person at the sole discretion of the QCRC. Should the subject cancel the hearing, he/she must notify the QCRC of the cancellation no less than fifteen (15) days prior to the hearing date. Should the subject cancel the hearing within fifteen (15) days of the hearing date or not appear at the scheduled hearing, all costs associated with the preparation of the hearing shall be paid by the subject (e.g. court reporting fees, teleconference fees, hearing manual preparation fees).
- iii. The subject of the complaint shall provide the QCRC with any and all materials he/she may wish to include for the hearing no less than fifteen (15) days prior to the hearing date.

Following the hearing, Staff shall notify (in writing) the complainant and the subject of the complaint of the QCRC's decision within thirty (30) days of the decision. The decision shall take effect immediately unless otherwise provided by the QCRC.

7. Appeals Process

Within thirty (30) days after the notification of the QCRC's decision, any individual(s) sanctioned by the QCRC at the hearing may appeal the hearing decision to the NBCOT Directors. A notice of appeal, which must be in writing and signed by the subject, shall be sent by the subject to the NBCOT Chairperson in care of the President/Chief Executive Officer. The basis for the appeal shall be fully explained in this notice.

The Chairperson of the Board of Directors shall form a three (3) person Appeals Panel within 30 days after receipt of the notice of appeal. At least one (1) member of the Appeals Panel shall be a member of the QCRC who did not serve on the Hearing Panel. No member of the QCRC who participated in the hearing shall serve on the Appeals Panel nor shall the QCRC Chair serve on the Appeals Panel if the Chair participated in the decision to offer a proposed sanction. Two-three members of the Board of Directors will be selected by the Chairperson of the Board of Directors to fill out the Panel.

An appeal must relate to evidence, issues and procedures that are part of the record of the QCRC hearing and decision. The appeal may also address the substance of the disciplinary action. However, the Panel may in its discretion consider additional evidence.

Within fifteen (15) days after the notice of appeal is received by the Appeals Panel, the Panel shall provide the subject with an opportunity to schedule an appeals hearing. The subject may be represented at the hearing by legal counsel or any other individual of his/her choosing. The subject shall be solely responsible for all of his/her own expenses related to the hearing.

Within fifteen (15) days after the appeals hearing or if the subject elects not to request a formal hearing, the Panel shall decide the appeal and notify the Chairperson of its decision.

The Appeals Panel may either:

- a. Affirm the QCRC's sanction agreement;
- b. Deny the QCRC's sanction agreement;
- c. Refer the case back to the Staff for further investigation and resolution with full right of appeal; or
- d. Modify the QCRC's sanction agreement, but not in a manner that would be more adverse to the subject.

The Chairperson shall promptly notify the subject of the Appeals Panel's decision. The decision of the Appeals Panel shall be final.

8. Cooperation with NBCOT Enforcement Procedures

Failure to respond to any aspect of the Enforcement Procedures, will be considered a violation of the Candidate/Certificant Code of Conduct, Principle 2, and is sufficient grounds for the imposition of sanction by the NBCOT.

9. Announcement of Sanction

If an individual's certification status is voluntarily forfeited, suspended or revoked, or he/she is censured or placed on probation, occupational therapy state regulatory bodies shall be notified and an announcement included in NBCOT's online resources and in one or more publications of general circulation to persons engaged or otherwise interested in the profession of occupational therapy. The NBCOT may also disclose its final decision, including ineligibility for certification, to others as it deems appropriate, including, but not limited to, persons inquiring about the status of an individual's certification, employers, third party payers and the general public.

10. Notification

All notifications referred to in these procedures shall be in writing and if the subject does not respond, shall be by confirmation of signature, return receipt mail, unless otherwise indicated. Subjects of complaints who live outside of the U.S. may be given additional time to respond to any notifications they are sent, as determined by the Staff in its discretion.

11. Records and Reports

At the completion of this procedure, all records and reports shall be returned to the Staff. The complete files in the qualifications and compliance review proceedings shall be maintained.

12. Expedited Action

The NBCOT may expedite a matter by shortening any notice or response period provided for under these procedures if the responsible party determines in its sole discretion that shortening the period is appropriate in order to protect against the possibility of harm to recipients of occupational therapy services.

In matters where the severity of the allegations and evidence provided warrant such action in order to protect the public, the NBCOT may authorize immediate suspension/revocation of certification. The subject will be duly notified of the action and given fifteen (15) days to contest the suspension or revocation.

13. Standard Of Proof

The NBCOT shall take disciplinary action against an individual only where there is clear and convincing evidence of a violation of the Candidate/Certificant Code of Conduct.

14. Accommodations

The NBCOT recognizes the definition of disability as defined by the Americans with Disabilities Act (ADA) and acknowledges the provisions and protections of the Act. The NBCOT shall offer hearings related to qualifications and compliance review or the appeals process in a site and manner, which is architecturally accessible to persons with disabilities or offer alternative arrangements for such individuals.

An individual with a documented disability may request accommodations for a hearing by providing reasonable advance notice to the NBCOT of his or her disability and of the modifications or aids needed at the hearing at his or her own expense.

15. Amendment to Procedures

These procedures may be amended at any time by the NBCOT Directors.