

ADDICTION PROFESSIONALS OF SOUTH CAROLINA

Policy and Procedure for Violation of Ethical Standards Investigations and Hearings

I. DEFINITIONS

Addictions Counselor—Any person who has applied for (“in process”) or holds ADC, ADCAADC or CS certification.

Administrator – President of the company under contract with APSC to manage Counselor Certification.

ADC— Alcohol and Drug Counselor

AADC – Advanced Alcohol and Drug Counselor

CS—Certified Clinical Supervisor

Certified – A counselor who holds an ADC, AADC, or CS certification.

Chair—Head of a Standing Committee or Commission of the APSC.

Client/Patient—Any individual who seeks or receives the services of a counselor, regardless of the setting in which the counselor works.

Complainant—A person who has filed a complaint pursuant to this procedure and set of disciplinary procedures against any other person who fulfills the above definition of addiction counselor.

Ethics Committee—A three-person committee made up of the current Chair of the APSC Ethics Committee and two individuals who hold ADC, AADC or CS certification. The committee members are appointed by the Committee Chair and approved by the APSC Board.

Executive Committee – The President, President – Elect, Secretary and Treasurer of the APSC.

Hearing Committee—The Certification Commission Chair and four additional members of the Certification Commission.

NAADAC – The National Association of Addiction Professionals

Privileged – Related to an “in process” counselor. It is the authorization that an agency / organization grants to the counselor to provide clinical services independently or under supervision related to the Core Functions

Professional—A person who possesses specialized knowledge and skills in a particular field of endeavor.

Reprimand—A formal, written reproof or warning.

Respondent—An Addiction Counselor against whom a complaint has been filed.

Revocation—Permanent loss of certification.

APSC—Addiction Professionals of South Carolina
Counselors

Suspension—A time-limited loss of certification for a period of not less than 30 days nor more than 12 months.

Written Caution—A private letter issued to a Respondent by the Certification Commission cautioning him or her against certain conduct or behavior.

II. POLICY

A. General

The Ethical Standards of Alcoholism and Drug Abuse Counselors adopted by NAADAC and the Ethical Standards of the APSC shall govern the conduct of all addiction counselors.

A certified addictions counselor should be able to competently perform counseling skills and functions and be knowledgeable concerning the professional core functions that are outlined in the Certification Manual. An in process addictions counselor is responsible for only providing those services for which they have been privileged by their agency or organization. It is recognized that honest disagreements may exist between addiction counselors as to the best form of treatment for a given client: competency does not mean perfection nor is incompetence normally established by an isolated instance in which performance has been inadequate. When an addictions counselor demonstrates multiple failures in their counseling functions, or when a counselor's behavior in a particular instance evidences a willful or gross neglect of a client's counseling rights and needs, then a finding of incompetence will be warranted and disciplinary action imposed.

B. Purpose

These procedures are adopted in order to provide the APSC a means to adjudicate ethical complaints against individual addiction counselors. They are developed to provide for the protection of the rights of the certified and "in process" counselor while ensuring that the public interest and the rights of clients / patients are equally represented and protected.

C. Levels of Disciplinary Action

A violation of the ethical standards of addiction counselors may result in one or more of the following disciplinary actions:

- Written Caution
- Reprimand
- Suspension
- Revocation of Certification or
- Denial of Application for Certification.

Past disciplinary action taken against a counselor may be considered in the choice of sanction for a new offense. Selection of sanctions to be imposed shall be at the discretion of the Hearing Committee or in the event of an appeal the Executive Committee.

The Hearing Committee may impose additional education and training requirements in conjunction with any of the above disciplinary actions. Grounds for discipline are defined as:

- Falsifying information in the application process,
- Misrepresentation of state certification,
- Revocation/suspension of state certification,

- Breach of APSC Ethical Standards or
- Non-professional civil or criminal misconduct that may bring discredit to the counseling profession.

D. Determination of Violation and Disciplinary Action

The APSC Board of Directors will make the final determination that a violation of the Ethical Standards has occurred and the appropriate disciplinary action. The Hearing Committee and Executive Committee (serving as the Appeal Board) will make recommendations for the Board of Directors determination.

III. PROCEDURES

A. Complaints

1. The Ethical Complaint process of filing and processing a complaint will be confidential.
2. Persons wishing to file a complaint against an addictions counselor may do so by obtaining a APSC Ethical Standards Report (Ethical Complaint) Form from the APSC Website (www.addictionprofessionalsofsouthcarolina.org) which includes instructions on completing the form.
3. All complaints must be signed by the complainant and include the complainant's home address. Anonymous complaints will not be acted upon.
4. All complaints shall be mailed directly to APSC at its then current address and sent to the attention of the President.
5. The complainant must acknowledge, in writing, that he or she is aware that the person accused of an ethical violation will receive a copy of the complaint and any evidence submitted against him or her.
6. Only the Administrator who will initiate the process under these guidelines shall open mail addressed to the President of APSC. All such mail should be marked "Confidential." The Administrator will forward all Ethical Complaints to the President of APSC within 72 hours.
7. The President shall acknowledge receipt of the complaint within seven days and forward it to the Chair of the Ethics Committee within 14 days.

B. Disposition of Complaints

Upon receipt of any Violation of Ethical Standards Report (Ethical Complaint), the Chair of the Ethics Committee will review the written report to determine if it meets the criteria as outline in Section II.C Levels of Disciplinary Action.

1. If the Ethical Complaint does not meet the Criteria (i.e. is an individual agency policy violation not a APSC Ethical issue) the Chair will report this back to the President who in turn will respond in writing to the complainant within 14 days of receiving the decision from the Ethics Committee Chair. The complainant will be advised of the determination

that no violation of Ethical Standards occurred and that no further action will be taken.

2. If the Chair determines that the complaint does meet the Criteria, the Ethics Committee will conduct an investigation. The Chair will advise the President of this decision. The President will inform the complainant in writing that an investigation will take place. The President will additionally advise the Respondent in writing by certified mail of the Ethical Complaint and provide him or her with a copy of the Complaint, any supporting documentation and the Ethical Standards. The Respondent will be advised of their responsibility to fully and fairly disclose, in writing, any and all facts and circumstances pertaining to the alleged misconduct, as well as his or her view of the situation or conduct about which the complaint was made. They will also be advised that misrepresentation in a disclosure is misconduct in and of itself and may subject the Respondent to further disciplinary action. The Respondent will be advised that their response must be completed and postmarked for return within 30 days of being served by certified mail.

C. Investigation Process and Action by the Ethics Committee

1. The Chair of the Ethics Committee shall initiate and direct the investigation as deemed necessary of all instances of possible professional misconduct by addictions counselors. This includes, but is not limited to, directing the gathering of information from all applicable sources indicated by the complaint.
2. Following such investigation as the Ethics Committee deems necessary, a report shall be submitted to the President of APSC recommending either that the complaint be dismissed or that the complaint be forwarded to the Chair of the Certification Commission. The grounds for any recommendation shall be stated in the report.
3. In cases, where the Ethics Committee investigation indicates that no violation has occurred, the case is closed, and no further action is taken. The report is sealed and maintained in a confidential file. This conclusion shall be reported to the President of APSC within 30 days. The Ethics Committee shall inform the Respondent and the complainant in writing within 30 days that a decision has been reached that no action was warranted.
4. In cases where the findings of the investigation are inconclusive regarding the allegation of an ethical violation, the Chair of the Ethics Committee shall present the findings to the President of APSC and the Chair of the Certification Commission for discussion and disposition. They may choose to drop the case, to request further information, or to move forward with a hearing. Should they choose to drop the case or refer it to the Hearing Committee, this information will be conveyed to the Complainant and Respondent.
5. If the Ethics Committee investigation determines that a violation of the Ethical Standards has occurred the Committee will forward by mail a report of their conclusions along with any written statements and all

evidence that has been gathered during the investigation to the Chair of the Certification Commission and the Respondent.

6. Should the Respondent fail to reply in writing within 30 days, the Ethics Committee will follow the procedure outlined in the preceding paragraph, including in their report the lack of response on the part of the Respondent.
7. Within 14 days of receipt of the Ethics Committee Report and supporting evidence, the Chair of the Certification Commission will inform the Complainant and Respondent by certified mail of the Ethics Committee's decision that the complaint has merit and that a Hearing will be convened.
8. Such letter will specify the following:
 - a) Date, time, location of the hearing and the identity of the members of the Hearing Committee.
 - b) That the Respondent may, at his or her expense, be represented by counsel although this is not required.
 - c) That the Ethics Committee, or its representative, shall present evidence in support of its recommendations before the Hearing Committee, and the complainant may be called upon to give evidence. If the complainant is not in attendance at the proceedings, the complaint will be dismissed;
 - d) That the Respondent may present evidence and present and examine witnesses;
 - e) That the Hearing Committee will base its decision as to whether or not a violation of the Ethical Standards has occurred solely upon the evidence presented at the hearing;
 - f) That any request by the Respondent for postponement of the hearing must be in writing and received by the Chair Certification Commission 14 days in advance before the hearing; the decision to grant or deny such request is discretionary with the Hearing Committee; and
 - g) That there shall be no contact prior to the hearing between the complainant or the Respondent and any Hearing Committee member for the purpose of discussing, in any way, the complaint.
9. The Hearing date will be within 45 days of the date the Ethics Committee Report is forwarded to the Chair of the Certification Commission. All parties must receive notice a minimum of 14 days prior to the date of the hearing.
10. The Chair of the Ethics Committee will advise the President of the Ethics Committee's decision and that complaint has been forwarded to the Chair of the Certification Commission to convene a hearing.

D. Ethical Standards Hearing

1. The Hearing will be conducted as outlined in Attachment 1 and the hearing shall be audio taped. Both the Committee and the Respondent have the right to be represented by legal counsel at the hearing.
2. Any votes conducted by the Hearing Committee will be determined by simple majority of the Committee

3. The Committee has the right to dismiss the Complaint in the event the Complainant does not appear.
4. The tape of the proceedings shall be transcribed and the transcription along with any evidence provided by the Complainant and Respondent will be placed in a confidential file.
5. Any notes or copies of documents of investigation shall be collected from Committee members and destroyed.
6. The hearing shall be governed by the following rules:
 - a. Evidence may be presented and both sides may examine witnesses.
 - b. The Hearing Committee shall not be bound by common law or statutory rules of evidence and may consider all evidence having reasonable probative value.
 - c. If the Respondent denies the facts in the Ethics Committee Decision and there is no evidence or direct, first-hand testimony as to those facts, the complaint shall be dismissed.
 - d. The decision of the Hearing Committee as to whether a violation of the Ethical Standards occurred shall be based solely upon the testimony and evidence presented at the hearing.
 - e. The Hearing shall be closed to the public.

E. Hearing Conclusion

1. The Chair of the Certification Commission will send a letter by certified mail to the Respondent informing them of the conclusions and recommendations of the Hearing Committee and outlining the Right of Appeal. A copy of this letter will also be forwarded to the President of APSC. The Respondent will have 30 days from the receipt of this letter to inform the President of APSC via certified mail of the Respondents desire to appeal the decision of the Hearing Committee.
2. Should the Respondent waive the Right of Appeal or fail to respond within the 30 day time frame, the Chair of the Certification Commission will present the Hearing Committee's findings and recommendations to the APSC Board of Directors, within 10 days for final determination.
3. The President shall notify the Respondent, in writing, of the Hearing Committee's findings and the decision of the Board of Directors within seven days after the final determination has been made.
4. Notification of the findings shall be sent to the complainant and other interested parties, as appropriate.
5. Any Certification or Licensing bodies issuing certification or licensure to the Respondent will also be notified of the findings.

F. Appeal Process

1. If the Hearing Committee rules that disciplinary action be taken, the Respondent may appeal the decision by submitting a request for a hearing. The Appeal is not to be construed as a new Hearing, but as a review of the original and as an opportunity for the Respondent to present extenuating

- and mitigating factors as to why the disciplinary action recommended by the Hearing Committee is excessive or the findings were in error.
2. Such request shall be mailed and postmarked no later than 14 days after the decision was mailed by the Committee and shall be addressed to APSC at its then current address, and sent to the attention of the President.
 3. If the appeal request is submitted in a timely fashion, the Executive Committee of the APSC Board will hear the appeal. No member of the Executive Committee shall be a member of the Hearing Committee or Ethics Committee nor anyone with a potential conflict of interest with a complainant or Respondent, shall be appointed. Should one or members of the Executive Committee be disqualified, another elected board member who would meet the eligibility criteria shall replace them.
 4. The hearing will be scheduled no less than 21 days and no more than 60 days from the date of the request for an appeals hearing.
 5. The letter confirming an appeals hearing will advise the Respondent of the following:
 - a. The date, time and location of the hearing and the identity of the members of the Executive Committee;
 - b. That the Respondent may, be represented by counsel although this is not required;
 - c. That the Chair of the Certification Commission, or its representative, shall present evidence in support of the Hearing Committee's recommendations
 - d. That the Executive Committee will have reviewed the transcript of and evidence presented at the original hearing
 - e. That the Respondent may present extenuating and mitigating circumstances to support the appeal that the disciplinary action is excessive, or the findings were in error;
 - f. That the Executive Committee will base its decision as to whether or not a violation of the Ethical Standards has occurred on the evidence presented at the original hearing and any extenuating and mitigating circumstances presented at the appeal;
 - g. That the Executive Committee has the option of recommending increasing or decreasing the severity of the disciplinary action,
 6. The hearing shall be governed by the following rules:
 - a. The President-Elect will serve as the Chair of the Appeal Hearing.
 - b. The Appeal Hearing will be audio taped and the tape will be transcribed.
 - c. Any notes made by members of the Executive Committee will be collected and destroyed at the conclusion of the Appeal Hearing.
 - d. The decision of the Appeal Hearing will be by simple majority vote.
 - e. Members of the Executive Committee will have reviewed the transcript and additional evidence presented at the original hearing prior to the appeal hearing. The Respondent will be allowed to present any extenuating or mitigating circumstances and to state to the Executive Committee why the disciplinary

- action is too severe, or the determination of an ethical violation was in error. Committee members may ask the Chair of the Certification Commission for clarification of events, questions, or statements from the transcript of the original hearing.
- f. The decision of the Hearing Committee as to whether a violation of the Ethical Standards occurred shall be based solely upon the testimony and evidence presented at the hearing.
 - g. The Hearing shall be closed to the public.
7. In the event that a request for appeal is not filed within the time period prescribed hereafter, the decision of the Hearing Committee and recommended disciplinary action will be presented to the Board of the APSC for final approval.
 8. Failure of the Respondent to attend the hearing shall be deemed as a waiver of the appeal. In such cases, the hearing will be dismissed, and the decision and recommendation of the Hearing Committee will be presented to the Board of Directors for determination.
 9. Within 21 days of the completion of the Appeal hearing, the Executive Committee shall prepare a written conclusion and recommendation. This along with the report of the Hearing Committee will be presented to the Board of Directors.

G. Final Determination and Implementation

1. The Chair of the Certification Commission will present the findings, conclusions and recommendations of the Hearing Committee to the Board of Directors. In the event of an appeal, the President Elect will present the findings, conclusions and recommendations of the Appeal Committee.
2. The Board of Directors will by a simple majority vote of members present approve a conclusion and disciplinary action.
3. The President will inform the Complainant and Respondent of the decision of the Board of Directors by a certified letter within 10 days.
4. Any disciplinary action will commence 10 days following mailing such letter by the Respondent.
5. A copy of the Hearing Committee report, transcript and any other documentation along with a copy of Appeal Hearing report, transcript of the appeal hearing, and any documentation presented at the Appeal will be place in a sealed envelope marked "Confidential" maintained separately from the Respondents file in the APSC Office.

H. Procedures for Certification Following Disciplinary Action

1. Reinstatement of Certification Following Suspension: Upon expiration of the suspension period, the Certification Commission can authorize reinstatement of the counselor for the balance of the certification period, unless another suspension or revocation of his or her certification has occurred.
2. Recertification When Certification Expires During Suspension: If the counselor's certification expires during the suspension, the counselor must

submit a new recertification application and fee and meet the recertification requirements before reinstatement with the original recertification anniversary date.

3. Possible Reinstatement Following Revocation: It is recognized that there may be mitigating circumstances that could warrant granting permission to apply for certification following revocation. However, such permission shall be considered only after passage of 24 months from the effective date of the revocation and is granted solely within the discretion of the APSC Certification Commission. An individual seeking such permission must submit a written request to the Certification Commission giving the reasons why permission should be granted and shall otherwise follow the procedures prescribed for normal applications for certification meeting certification requirements in place at the time.

I. Reporting

The action of the Board of Directors shall be reported in an official publication of APSC informing of the sanction imposed. Additionally, it will be reported to any other licensure or certification body with which the Respondent may be involved.

Attachment 1

Ethical Standards Hearings

1. Call to Order
2. Opening statement by Chair
 - a) Introduction of Committee members and staff present
3. Presentation of Complaint
 - a) Documents, Letters
 - b) Statement by Complainant, witnesses
 - c) Questions by Committee members
 - d) Questions by Respondent
4. Presentation of Response by Respondent
 - a) Written documents
 - b) Statement by Respondent, witnesses
 - c) Questions by Committee members
5. Summary
 - a) The Chair states that the Hearing Committee will review all evidence that has been presented in order to come to its decision.
 - b) Advises participants that the Committee will go into Executive Session (and explain what that means) and decide if and ethical violation has occurred and if so, what are the appropriate consequences for the Respondent. The Chair will explain the various consequences available to the Committee.
 - c) Respondent will be informed within 10 days of the Committee's decision by certified letter.
 - d) The Chair will advise the Respondent that in the event that the consequence is a disciplinary action, the Respondent has the right to appeal the Hearing Committee's decision to the Executive Committee of the APSC Board of Directors.
 - e) The Respondent will be advised that they must contact the President of APSC by certified letter within 30 days of receiving the Committee's letter to request an appeal
 - f) Motion to go into Executive Session
 - g) Dismissal of outside Parties
5. Executive Session
 - a) Discussion of information
 - b) Findings of fact
 - c) Conclusion of Law
 - d) Penalties (if appropriate)
 - e) Motion to go out of Executive Session
7. Motion to adjourn