

# AMERICAN BOARD OF INDUSTRIAL HYGIENE (ABIH) ETHICS CASE PROCEDURES

## INTRODUCTION

The American Board of Industrial Hygiene (ABIH) develops and promotes high ethical standards for industrial hygienists, as set forth in the ABIH Code of Ethics, and such successor ethical standards. The following disciplinary procedures are the rules for processing possible violations of these ethics standards. These rules apply to those individuals seeking ABIH certification (candidates), and all individuals certified by ABIH (certificants), including the following certificant groups: Certified Industrial Hygienist (CIH) and Certified Associate Industrial Hygienist (CAIH).

This document establishes and describes the only procedure for handling ethics cases brought to the attention of ABIH. When practitioners apply for certification or recertification, they agree to abide by the ABIH policies, including the Code of Ethics and the Ethics Case Procedures. In addition, ABIH certificants and candidates agree that: these procedures are a fair process for resolving all ethics matters; they will be bound by decisions made pursuant to these procedures; these procedures are governed by the principles of the law of the State of Michigan; and these procedures do not constitute a contract between ABIH and the candidate or certificant.

### A. GENERAL

**1. Nature of the Process.** These procedures are the only means to resolve all ABIH ethics charges and complaints. ABIH has the exclusive authority to end any ethics inquiry or case, regardless of circumstances. By applying for certification or recertification, practitioners agree that they will not challenge the authority of ABIH to apply the Code of Ethics, the Ethics Case Procedures, or other policies, and will not challenge the results of any ABIH action taken under these policies in a legal or government forum. These ethics procedures are not formal legal proceedings, so many legal rules and practices are not observed. ABIH will review the pertinent information presented when considering ethics investigations, cases, and decisions.

The Ethics Case Procedures are designed to operate without the assistance of attorneys. Any party may be represented by an attorney with respect to ethics proceedings and procedures; however, if a party has retained an attorney, that party and attorney may be directed to communicate with ABIH only through ABIH Legal Counsel. The parties are encouraged to communicate directly with ABIH.

**2. Participants.** Ethics cases may be decided by the Chief Executive Officer, the Ethics Review Committee (ERC), the Board of Directors Appeals Committee (Board Appeal Committee), and/or any representative designated by the Chief Executive Officer or authorized by these procedures. A certificant or candidate who is the subject of an ethics charge or investigation will be, and is identified as, the respondent in these rules. The person(s) initiating an ethics complaint against a certificant or candidate will be, and is identified as, the complainant(s).

**3. Complainants/Ethics Charge Statement.** Any person, group, or, in appropriate cases, the ABIH, may initiate an ethics case and act as a complainant. A complainant other than ABIH must: contact the Chief Executive Officer and request an Ethics Charge Statement form; complete the information requested on the Charge Statement; and then submit the completed Charge Statement to the Chief Executive Officer. Each Ethics Charge Statement must include a detailed written description of the factual allegations supporting the ethics charge(s).

**4. Time Requirements.** ABIH will make every effort to follow the time requirements set forth in this document. However, ABIH's failure to meet a time requirement will not prohibit the final resolution of

any ethics matter. Complainants and respondents are required to comply with all time requirements specified in this document. Time extensions or postponements may be granted by the ABIH Chief Executive Officer, Chair of the Ethics Review Committee, or Chair of the Board Appeals Committee, if a timely written request explains a reasonable cause.

**5. Litigation/Other Proceedings.** ABIH may accept and resolve ethics complaints when civil, criminal litigation or other proceedings related to the complaint have been, or are presently, before a court, regulatory agency, or professional body. ABIH may also continue or delay ethics complaints in such cases.

**6. Complaints Concerning Non-Certificants.** In the event that ABIH receives an ethics inquiry or Ethics Charge Statement concerning an individual who does not hold any ABIH credential, or who is not a candidate, a representative of ABIH will inform the complainant and may refer the complainant to an appropriate authority.

**7. Improper Disclosure/False or Misleading Responses.** Any failure to disclose pertinent information or misleading disclosure by a certificant or candidate with respect to an ethics charge, criminal case, disciplinary proceeding, or similar matter concerning him/her may constitute a violation.

**8. Time Limitations Concerning Complaints.** ABIH may consider any ethics complaint, regardless of: (a) whether the respondent held an ABIH credential at the time of the alleged violation; (b) when the alleged violation occurred; or, (c) whether the respondent continues to hold or seek an ABIH credential during the course of any ethics case.

**9. Confidentiality.** In order to protect the privacy of the parties to an ethics case, all material prepared by or submitted to ABIH will be confidential. An exception will be made if a release of information or documents is authorized by these rules or required pursuant to a judicial proceeding. The identities of all members of the Ethics Review Committee and the Board Appeals Committee shall remain confidential, and will not be released without the specific authorization of each member.

Until an ethics case has been closed or finalized pursuant to Section L, all parties must maintain the confidentiality of all information related to the ethics case, including its existence, consistent with these rules. If any party discloses information related to the ethics case contrary to these rules, the Chief Executive Officer, the Ethics Review Committee, and/or the Board Appeals Committee may terminate the ethics complaint if such disclosure is by the complainant; or may impose any sanction included within these rules if such disclosure is by the respondent. This provision, however, does not limit or restrict the ability of a party to collect information relevant to the resolution of the ethics matter.

**10. Failure to Cooperate.** If any party refuses to fully cooperate or participate with ABIH or its representatives, and it is determined that the lack of cooperation was without good cause, ABIH may take the following actions: (a) The Chief Executive Officer, the Ethics Review Committee, and/or the Board Appeals Committee may terminate the ethics complaint of an uncooperative complainant; (b) If a respondent is uncooperative, the Ethics Review Committee; and/or, the Board Appeals Committee may impose any sanction included within these rules.

**11. Resignation from ABIH.** Should a respondent attempt to relinquish ABIH certification or withdraw an application during the course of any ethics inquiry or case, ABIH reserves the right to continue the matter to a final resolution according to these rules.

## **B. MEDIATION**

**1. Cases Appropriate for Mediation.** The Chief Executive Officer will receive all charges, complaints, and Ethics Charge Statements. The Chief Executive Officer will consider the seriousness of the allegations, the respondent's background, prior conduct, and any other pertinent material, and make a decision concerning the likelihood that the matter can be resolved fairly without formal disciplinary proceedings as described in these rules. Ethics cases concerning charges issued by a regulatory agency or professional body, and those involving criminal or civil litigation, are not appropriate for mediation.

**2. Mediation Determination.** Should the Chief Executive Officer determine that a particular ethics matter is appropriate for mediation and the complainant and respondent agree to mediation, the ED and the parties will make a reasonable and good faith effort to resolve the dispute to a fair, just, and voluntary conclusion.

**3. Successful Mediation.** In the event of successful mediation, the Chief Executive Officer will prepare a report summarizing the terms of each mediated resolution of an ethics matter, a copy of which will be forwarded to the parties.

**4. Unsuccessful Mediation.** In the event of unsuccessful mediation, the Chief Executive Officer will refer the case to the Ethics Review Committee for resolution consistent with these procedures.

## **C. ETHICS INQUIRIES/ETHICS CHARGE STATEMENTS**

**1. Ethics Inquiries.** Any person or group seeking to file a complaint concerning a certificant or candidate should contact the Chief Executive Officer. The Chief Executive Officer will forward to the complainant a copy of the ABIH Code of Ethics, Ethics Case Procedures and the form entitled "Ethics Charge Statement." The Chief Executive Officer will record all ethics inquiries and identify: the person(s) making the inquiry; the certificant/candidate identified; the State from which the inquiry originates; and the nature of the problem. This case log will remain confidential, and will be available only to authorized representatives of ABIH, or released for review to cooperating agencies and organizations.

**2. Ethics Charge Statement/Description of Charges.** In order for ABIH to consider an ethics complaint, a complainant other than ABIH must complete and submit to the Chief Executive Officer an Ethics Charge Statement, including all information required by the form. The Ethics Charge Statement is a formal written communication from a complainant describing the allegations against a certificant or candidate, and is the only form of complaint submission accepted. Public documents such as newspaper stories, court verdicts or agency decisions are not acceptable, and will not be considered, as Ethics Charge Statements, but such material may be submitted as documentation to support a complaint. When an Ethics Charge Statement is received by ABIH, the Chief Executive Officer will: **(a)** Review the material received and assign a case number to the matter; **(b)** Review the allegations made concerning the charges; **(c)** Determine whether the charges are presented in sufficient detail to permit ABIH to conduct a preliminary investigation; and, if necessary, **(d)** Contact the complainant and other parties with relevant information to request additional factual material. The Chief Executive Officer will send a letter to the complainant and respondent stating whether the charges submitted are accepted or rejected for a formal ethics investigation.

## **D. ACCEPTANCE/REJECTION OF ETHICS CHARGES**

**1. Charge Acceptance.** The Chief Executive Officer will review each charge presented in an Ethics Charge Statement submitted by a complainant and then determine if it will become the subject of a formal Ethics Complaint and Investigation. The following criteria will be considered to determine if a charge is accepted or rejected: **(a)** Whether the respondent is a certificant or candidate; **(b)** Whether a proven charge would constitute a violation of the Code of Ethics; **(c)** Whether the passage of time since the alleged violation requires that the complaint be rejected; **(d)** Whether relevant, reliable information or proof concerning the charge is available; **(e)** Whether the complainant is willing to provide proof or other information to ABIH concerning the complaint; and, **(f)** whether the charge appears to be justified or insupportable, considering the proof available to ABIH.

The ED will determine whether the charge(s) and available proof support a formal Ethics Complaint, and upon such determination, will refer the charge(s) to the Ethics Review Committee. The Ethics Review Committee may assist the Chief Executive Officer in reviewing the charge(s) in order to determine whether a formal Ethics Complaint will be issued.

**2. Charge Rejection.** If the Chief Executive Officer and/or the Ethics Review Committee determine that an allegation should not become the subject of a formal Ethics Complaint, the charge(s) will be rejected. The Chief Executive Officer will notify the complainant and respondent of the rejection, as well as the reason(s) for the rejection, by letter within approximately twenty-one (21) days of the determination.

**3. Appeal of Charge Rejection Determination.** Within thirty (30) days of the mailing date of a charge rejection letter, the complainant may appeal to the Ethics Review Committee. If the Ethics Review Committee conducted the review of the Ethics Charge Statement and rejected the Charge Statement allegations, the complainant may appeal to the ABIH Board Appeals Committee under the terms of this Section. In order to have the Ethics Review Committee or Board Appeals Committee reconsider the rejection, a complainant must state in writing the following: **(a)** the procedural errors possibly made by the Chief Executive Officer or Ethics Review Committee with respect to the charge rejection, if any; **(b)** the specific provisions of the Code of Ethics believed violated; and, **(c)** the specific information believed to support the acceptance of the charge(s).

The Ethics Review Committee or Board Appeals Committee will consider and decide any charge rejection appeal at the next scheduled meeting, and such decision cannot be appealed.

## **E. ETHICS COMPLAINTS AND INVESTIGATION**

**1. Ethics Complaint and Investigation Notices.** After an ethics charge is accepted, a formal Ethics Complaint and Investigation Notice will be sent to the respondent and the complainant which identifies each Code of Ethics violation alleged and the supporting factual basis for each complaint. This Notice will be delivered to the respondent, at the last known address(es) by regular mail and other verifiable delivery service, return receipt requested, and will be marked, "Confidential." The complaint will be resolved by the Ethics Review Committee under Section H of these Procedures.

## **F. ETHICS COMPLAINT RESPONSE/OPTIONAL REPLY AND OPTIONAL RESPONSE**

**1. Submitting an Ethics Complaint Response.** Within thirty (30) days of the mailing date of an Ethics Complaint and Investigation Notice, the respondent must submit an Ethics Complaint Response according to the instructions in the Notice. The Ethics Complaint Response must include the following: **(a)** a full response to each complaint matter; **(b)** the identification and a copy of each document that the respondent believes to be relevant to the resolution of the Ethics Complaint; and, **(c)** any other information that the respondent believes will assist ABIH in considering the Ethics Complaint fairly.

**2. Response Deficiencies.** The Chief Executive Officer or Ethics Review Committee may require the respondent to supplement or expand a response.

**3. Optional Reply to Ethics Complaint Response.** The Chief Executive Officer or Ethics Review Committee will forward a copy of the Ethics Complaint Response to the complainant within approximately ten (10) days following the receipt of the Response by ABIH. The complainant may submit a Reply to the respondent's Ethics Complaint Response by letter or similar document within ten (10) days of the mailing date of the Response to the complainant. If submitted, this Reply must fully explain any objections that the complainant wishes to present to the ED or Ethics Review Committee concerning the Ethics Complaint Response.

**4. Optional Response to Complainant Reply.** If an optional Reply to the Ethics Complaint Response is submitted by the complainant, the Chief Executive Officer or Ethics Review Committee will forward a copy of the Reply to the respondent within approximately ten (10) days following the receipt of the Reply by ABIH. The respondent may submit a Response to the complainant's Reply by letter or similar document within ten (10) days of the mailing date of the Reply to the respondent. If submitted, the Response must fully explain, and is limited to, any objections that the respondent wishes to present to the Chief Executive Officer or Ethics Review Committee concerning the complainant's Reply to the Ethics Complaint Response.

## **G. PRELIMINARY ACTIONS AND ORDERS**

**1. Voluntary Temporary Suspension of Certification.** At any time following the issuance of an Ethics Complaint and Investigation Notice, the respondent may be asked to agree to a temporary suspension of ABIH certification, pending the final resolution of the ethics complaint. If the respondent accepts this request, the respondent will agree to and sign a Voluntary Suspension Agreement. This Agreement will state the temporary suspension and that the respondent voluntarily ceases from representing himself or herself as certified, credentialed or otherwise endorsed by ABIH until further notice. The respondent will also return any credential materials to ABIH to be held until the suspension, or other disciplinary action, has ended.

**2. Involuntary Suspension of Certification.** If a respondent fails to agree to and sign a Voluntary Suspension Agreement, pursuant to Section G.1, above, the Chief Executive Officer, the Ethics Review Committee, or the Board Appeals Committee may issue an Order suspending the respondent's certification(s). This Suspension Order will stay in effect until the final resolution of the complaint.

**3. Circumstances of Involuntary Suspension Orders.** Suspension Orders are authorized where: **(a)** The respondent has been convicted of a criminal or quasi-criminal act; or the respondent has not contested a criminal indictment under any statute, law or rule; **(b)** The respondent has been indicted or similarly charged with any criminal act or violation of criminal law under statute, law or rule; **(c)** The respondent has been found in violation of any law, regulation or rule by a professional regulatory body, or has been sanctioned or disciplined by such a regulatory body; **(d)** The respondent is the subject of a formal complaint or similar charge and/or investigation by a professional regulatory body; **(e)** The respondent has been found in violation of an ethics code of a professional association or certifying body; **(f)** The respondent is the subject of a formal complaint or similar charge and investigation by a professional association or certifying body concerning ethics or disciplinary matters; or, **(g)** the respondent is the subject of litigation or a petition relating to their industrial hygiene practice.

**4. Other Preliminary Orders.** The Chief Executive Officer, the Ethics Review Committee, or the Board Appeals Committee may require the respondent to do or to refrain from doing certain acts by preliminary and temporary Order, including the disclosure/submission of documents relevant to review of

an ethics investigation. Any temporary and preliminary Order requested will be reasonably related to the complaint under consideration; or to a party's responsibilities under the Code of Ethics.

**5. Failure to Comply with Preliminary Orders.** The Chief Executive Officer, the Ethics Review Committee, or the Board Appeals Committee may discipline a respondent who fails to comply with a temporary or preliminary order. The Chief Executive Officer, the Ethics Review Committee, or the Board Appeals Committee will consider the severity of the failure to comply and other relevant factors in determining the discipline. Preliminary and temporary orders cannot be appealed.

## **H. ETHICS REVIEW COMMITTEE/ETHICS COMPLAINT HEARINGS**

**1. Ethics Review Committee.** The Chief Executive Officer will appoint: a Chair; a Vice-Chair; and, at least three (3) other members of the Ethics Review Committee. The Chair or Vice-Chair will chair a panel, and will preside over and conduct each Ethics Complaint Hearing, with at least two (2) Ethics Review Committee panel members. No Ethics Review Committee member may serve on a panel where: s/he has had a substantial professional or personal relationship with a party; a conflict between the interests of a party and the Committee member exists; or, there would appear to be an impropriety by such service.

The Ethics Review Committee will conduct an Ethics Complaint Hearing designed to collect and weigh all of the available information and proof. Unless a case has been resolved by the Chief Executive Officer under the Procedures, the Ethics Review Committee will be the initial decision-making body to determine whether violations of the Code of Ethics or these Procedures have occurred. The Ethics Review Committee will have full authority and responsibility to convene, preside over, continue, and conclude an Ethics Complaint.

**2. Hearing Schedule and Location.** The Hearing date for each ethics case will be scheduled by the Chair or Vice-Chair, in consultation with the parties. Each Hearing will be held at a site determined by the Chair or Vice-Chair and, if practical, held no less than sixty (60) days and no more than one hundred twenty (120) days from the receipt of an Ethics Charge Statement by ABIH. Hearings will not be held prior to the date permitted in these rules in order to permit each party to submit a Response or a Reply.

**3. Hearing Notice and Attendance.** The Chair or Vice-Chair will notify the parties of the hearing schedule and location in writing. Each party will be given the option to attend the hearing in person and will be required to indicate the following at least seven (7) days before the hearing: **(a)** Whether the party intends to appear at and participate in the hearing in person; **(b)** Whether the party intends to participate in the hearing via telephone; if so, the telephone number where the party is to be reached during the hearing; **(c)** Whether the party intends to appear at the hearing with an attorney or other representative; if so, the name, address and telephone number of such attorney or representative; **(d)** Whether the party intends to present witnesses at the hearing; if so, the name, address and telephone number of each witness and a brief summary of the content of the witness' proposed testimony; and **(e)** Whether the party intends to present or offer any documentary information or other written proof during the course of the hearing that has not been previously considered by ABIH. If such information is offered, the party must provide a copy of each document and a brief description of the document's relevance. Any Ethics Complaint may proceed to a conclusion and decision whether or not the parties are present.

**4. Postponement of Hearing.** A respondent or complainant may request a hearing postponement. This request must be in writing and received by ABIH at least ten (10) days prior to the Hearing date. The Chair of the ERC may grant a postponement. Postponement decisions cannot be appealed.

**5. Participation of ABIH Legal Counsel.** Should ABIH legal counsel be present at an ethics case

hearing, legal counsel shall have the privilege of the floor and may conduct the hearing with the Ethics Review Committee. Legal or other representatives of the parties do not have such privilege, and are bound by the determinations and rulings of the Ethics Review Committee and legal counsel.

**6. Responsibilities and Rights of the Parties.** In addition to other responsibilities and rights, the respondent and the complainant may do, or be required to do, the following: **(a)** Attend the hearing and be present during the testimony of all witnesses; **(b)** Present witnesses, written information and argument on their behalf; **(c)** Review or inspect all oral or written information presented in the case; and, **(d)** Comply with all orders or directives issued by the ABIH.

**7. Witnesses.** All witnesses will be excluded from the hearing room except during the presentation of their testimony. The Ethics Review Committee Chair or Vice-Chair will rule on any request to the contrary, and the ruling will not be subject to appeal.

**8. Confidentiality/Inclusion of Other Persons.** All hearings are confidential and private. No observers are permitted without special permission. A party may request the presence of an observer in the hearing room during all or part of a hearing. The Ethics Review Committee or the Chair will rule on these requests, and the ruling cannot be appealed.

**9. Information and Proof Accepted.** The Ethics Review Committee will receive and consider all information appearing to be relevant to an ethics complaint, including any information that may be helpful to a complete understanding of the case. The Ethics Review Committee may consider information concerning relevant prior conduct. Objections relating to relevance of information and similar issues will be decided by the Ethics Review Committee or the ERC Chair, and these decisions cannot be appealed.

**10. Record of the Hearing.** A taped, written or summary record of the Hearing will be made by the Ethics Review Committee, another ABIH representative, or a stenographer/recorder; however, no taped, video, or other electronic recording of the Hearing will be permitted, unless specifically authorized by the Ethics Review Committee Chair. Off-the-record conversation may be requested by parties and will not be part of the hearing record.

**11. Hearing Expenses.** Parties will be responsible for their expenses associated with the case. Should a party request a written transcript or recorded copy of the hearing, a reasonable fee will be assessed for preparation. ABIH bears the cost of the hearings and investigations that are performed by ABIH representatives.

**12. Closing of the Hearing Record.** The hearing record will be closed following the conclusion of the hearing, unless otherwise directed by ABIH. Any party, including the ERC Chair, may request that the record remain open for thirty (30) days for the purpose of receiving additional documentary information and proof. The Ethics Review Committee Chair may deny requests to keep records open, and such decisions cannot be appealed.

## **I. ETHICS REVIEW COMMITTEE DECISIONS AND ORDERS**

**1. Ethics Review Committee Decision and Order.** A Decision and Order will be prepared by the Ethics Review Committee within thirty (30) days of the closing of the hearing record, or as soon thereafter as practical.

**2. Contents of the Ethics Review Committee Decision.** The following information will be included in the Ethics Case Decision: **(a)** A summary of the case, including the positions of the parties; **(b)** A summary of all relevant factual findings based on the record; **(c)** A final ruling on each Code of Ethics

violation charged; **(d)** A statement of any disciplinary action(s) and/or sanction(s) issued; and, **(e)** Any other material that the Ethics Review Committee determines to be appropriate.

**3. Contents of the Ethics Review Committee Disciplinary Order.** The Order may include any of the following items: **(a)** An order directing the respondent to cease and desist from any behavior or acts found to be in violation of the Code of Ethics; **(b)** A statement of the disciplinary action(s) imposed and mandate directing the respondent to comply immediately with these disciplinary action(s); and, **(c)** Any other appropriate directive consistent with the Decision.

## **J. DISCIPLINARY ACTIONS**

**1. Disciplinary Actions Available.** When a respondent has been found to have violated one or more provisions of the Code of Ethics, ABIH may issue and order one or more of the following disciplinary and remedial actions: **(a)** A recommendation to the Board of Directors that the certificant or candidate be ineligible for recertification or certification, and that any reapplication of the respondent for ABIH certification be denied; **(b)** A requirement that the respondent take corrective action(s); **(c)** A private reprimand and censure of the respondent concerning the Code of Ethics violation(s); **(d)** A public reprimand and censure of the respondent concerning the Code of Ethics violation(s); **(e)** The imposition of a term of certification probation for any period up to three (3) years, which may include conditions on the respondent's conduct during that period, such as the condition that the respondent be monitored with respect to industrial hygiene activities; **(f)** The suspension of any ABIH certification held by the respondent for a period of not less than six (6) months and not more than two (2) years, which shall include the requirements that the respondent return to ABIH all original or copied credential materials for the suspension period, and immediately stop any professional identification or affiliation with ABIH during the suspension period; and, **(g)** The revocation of any ABIH certification held by the respondent, which shall include the requirements that the respondent return to ABIH all original or copied credential materials, and to immediately stop any and all professional identification or affiliation with ABIH.

**2. Referral and Notification Action.** ABIH may notify appropriate government or professional bodies of any final disciplinary action taken against a respondent by sending a copy of the ethics case Decision and Order issued by the Ethics Review Committee, or the Board Appeals Committee. Such notification may be sent by ABIH at any point after the time period for the respondent to appeal an adverse decision has lapsed. ABIH will not notify governmental and professional bodies until after a final ruling on the case has been made, if necessary. During an appeal period, ABIH may respond to inquiries concerning ethics cases, and may indicate the existence of such proceedings.

**3. Publication of Disciplinary Action.** Following the lapse of any appeal rights and upon case closure, ABIH may publish or release a final ethics Decision and Order following the issuance of an adverse Ethics Review Committee, or Board Appeals Committee Decision or ruling. Any party or interested individual may request publication of any final decision, consistent with these Procedures. However, the Chief Executive Officer, Ethics Review Committee, or Board Appeals Committee may deny such requests, and such decisions cannot be appealed.

## **K. BOARD OF DIRECTORS APPEALS COMMITTEE**

**1. Board Appeals Committee.** The Chair of the Board of Directors shall appoint three (3) or more Directors to serve as the Board Appeals Committee, which shall be responsible for resolving all appropriate appeals concerning decisions of the Ethics Review Committee. The Board Chair shall appoint a Board Appeal Committee Chair and Vice-Chair to preside over and conduct each ethics appeal, consistent with these Procedures.



**2. Time Period for Appeals to the Board Appeals Committee.** Within thirty (30) days of the mailing date of an adverse Decision by the Ethics Review Committee, the respondent may appeal all or a portion of the Decision and Order to the ABIH Board Appeals Committee pursuant to this Section. Any appeals received beyond this time period will not be reviewed or considered by the Board Appeals Committee.

**3. Grounds for Appeal to the Board Appeals Committee.** An adverse Decision of the Ethics Review Committee may be reversed, or otherwise modified by the Board Appeals Committee on appeal. However, the grounds for appeal of an adverse decision are strictly limited to the following: **(a)** Procedural Error: The Ethics Review Committee misapplied a procedure contained in these rules and prejudiced the respondent; **(b)** New or Previously Undiscovered Information: Following the closing of the hearing record, the respondent has located relevant proof that: was not previously in his/her possession; was not reasonably available prior to closure of the record; and, could have affected the Ethics Review Committee Decision; **(c)** Misapplication of the Ethics Code: The Ethics Review Committee Decision has misapplied the provisions of the Code of Ethics, and the misapplication prejudiced the respondent; and/or, **(d)** Contrary to the Information Presented: The Ethics Review Committee Decision is contrary to the most substantial information provided in the record.

With respect to Sub-sections **3(a)** and **(c)**, above, the Board Appeals Committee will consider only arguments that were presented to the Ethics Review Committee prior to the closing of the hearing record.

**4. Contents of Appeal/Letter of Appeal.** In order to complete an appeal to the Board Appeals Committee under this Section, the respondent must submit a letter or other document to the Board Appeals Committee and to the complainant, within the prescribed time period, which contains the following information and material: **(a)** The ethics case name, docket number, and the date of the Decision; **(b)** A statement of the grounds for the appeal under Subsection K.3, above, and a complete explanation of the reasons that the respondent believes that the Decision should be reversed or otherwise modified; and, **(c)** Accurate, complete copies of any material which supports the respondent's appeal. A copy of all appeal materials received from the respondent will be forwarded to the complainant promptly upon receipt by the Board Appeals Committee.

**5. Appeal Deficiencies.** The Board Appeals Committee Chair may require the respondent to clarify, supplement, or amend an appeal submission.

**6. Appeal Rejection.** If the Board Appeals Committee Chair determines that an appeal does not meet the appeal requirements or otherwise warrant further formal review, consistent with the requirements set forth in these Procedures, the Board Appeals Committee Chair will reject the appeal. The Board Appeals Committee Chair will notify the complainant and respondent of the rejection, as well as the reason(s) for

the rejection, by letter within approximately twenty-one (21) days of the determination. Appeal rejection determinations are not subject to appeal.

**7. Optional Reply to Appeal Letter.** Within fifteen (15) days of the mailing date of a respondent's appeal, the complainant may submit to the Board Appeals Committee a Reply to the Appeal by letter or similar document. If submitted, this Reply must fully explain any objections that the complainant wishes to present to the Board Appeals Committee concerning the appeal.

**8. Optional Response to Complainant Reply.** If an optional Reply to the Appeal is submitted by the complainant, the Board Appeals Committee will forward a copy of the Reply to the respondent within approximately ten (10) days following the receipt of the Reply by ABIH. The respondent may submit a Response to the complainant's Reply by letter or similar document within ten (10) days of the mailing

date of the Reply to the respondent. If submitted, the Response must fully explain, and is limited to, any objections that the respondent wishes to present to the Board Appeals Committee concerning the complainant's Reply to the Appeal.

**9. Request to Appear Before the Board Appeals Committee.** The complainant or respondent may request the opportunity to appear before the Board Appeals Committee concerning an appeal under this Section. The Chair of the Board Appeals Committee will determine whether a request to appear before the Committee is accepted. In the event that a request to appear before the Committee is approved, the Chair of the Board Appeals Committee may limit the appearance in any manner. Denials of requests to appear before the Board Appeals Committee cannot be appealed. The complainant and/or respondent will be responsible for their expenses associated with the appeal.

**10. Board Appeals Committee Hearings.** Within one hundred and eighty (180) days after the submission of a complete appeal, or as soon after as practical, the Board Appeals Committee will conduct a hearing to determine the outcome and final resolution of the appeal. During the course of appeal hearings, the Board Appeals Committee members will review: the hearing record; any appeal submissions presented by the parties; and/or any other information determined to be relevant. Thereafter, the Board Appeals Committee will determine the outcome of the appeal by majority vote in closed session.

**11. Board Appeals Committee Decisions and Orders.** Within thirty (30) days of conclusion of an appeal hearing, or as soon after as practical, the Board Appeals Committee, by the Committee Chair, will issue an Appeal Decision and Order stating and explaining the outcome of the appeal. With respect to each appeal, the Board Appeals Committee Decision and Order shall include the following: **(a)** A summary of any relevant portions of the Ethics Review Committee Decision and Order; **(b)** A summary of any relevant procedural or factual findings made by the Board Appeals Committee; **(c)** The ruling(s) and decisions with respect to each matter under appeal; and, **(d)** The Board Appeals Committee final Order affirming, reversing, amending or otherwise modifying any portion of the Ethics Review Committee Decision and Order, including any disciplinary or remedial action or sanction.

Copies of the Board Appeals Committee Decision and Order shall be sent to the parties, via U.S. mail, return receipt requested, or other appropriate delivery method.

## **L. FINALIZING AND CLOSING ETHICS CASES**

**1. Events Which Will Cause Closure of an Ethics Case.** An ethics case will be closed and all proceedings ended when any of the following occur: **(a)** Following the lapse of any appeal rights, the ethics case has not been accepted and the charges have been rejected as the basis for an Ethics Complaint and Investigation pursuant to these rules; **(b)** Following the lapse of any appeal rights, a final Decision has been issued by the Ethics Review Committee, or the Board Appeals Committee pursuant to these Procedures; or, **(c)** An Ethics Complaint has been terminated or withdrawn by the complainant(s).

**2. Events Which Will Cause an ABIH Ethics Case Decision and Order to Become Final.** An Ethics Case Decision and Order that is not appealed will be final. The Decision of the Board Appeals Committee will be final, and no further appeals are available to any party.

## **M. REAPPLICATION AND REINSTATEMENT PROCEDURES FOLLOWING REVOCATION, SUSPENSION, AND PROBATION ORDERS**

**1. Revocation Orders/Reapplication Petition.** Five (5) years after the issuance of a final revocation order issued under these rules, a respondent may submit to the Board of Directors a Petition For

Permission To Reapply For Certification (Reapplication Petition), as set forth in Section 4, below.

**2. Suspension Orders/Reinstatement Requests.** After the expiration of a final suspension order issued under these rules, a respondent may submit to the Board of Directors a Request For Certification Reinstatement (Reinstatement Request), as set forth in Section 4, below.

**3. Probation Orders/Reinstatement or Referral.** Following the expiration of a final probation order included with a Final Decision of the Ethics Review Committee, or the Board Appeals Committee, the Board of Directors will determine whether the respondent has or has not satisfied the terms of the probation order, and will do the following: **(a)** If the respondent has satisfied the terms of probation in full, the Board of Directors will verify that the probation has been completed and reinstate the practitioner to full certification status; or, **(b)** If the respondent has not satisfied the terms of probation in full, the Board of Directors will determine an appropriate course of action consistent with these rules, including, but not limited to, continuation of the probation order and issuance of additional disciplinary or remedial actions concerning the probation terms.

**4. Contents of Reapplication Petitions and Reinstatement Requests.** Subject to the time requirements above, the Board of Directors will consider Reapplication Petitions and Reinstatement Requests from those who have been the subject of a final revocation or suspension orders, respectively. Reapplication Petitions and Reinstatement Requests must include the following information: **(a)** A statement of the relevant ethics case name, docket number, and the date that the final ABIH Ethics Decision was issued; **(b)** A statement of the reasons that the respondent believes support or justify the acceptance of the Reapplication Petition or the Reinstatement Request, including a statement explaining why the respondent should now receive ABIH certification; and, **(c)** Copies of any relevant documentary or other material upon which the respondent relies in support of the Petition or Request.

**5. Board of Directors Reapplication Petition and Reinstatement Request Review.** Within ninety (90) days after the submission of a complete Reapplication Petition or Reinstatement Request, or as soon after as practical, the Board of Directors will review and rule on the Petition or Request. Each Petition or Request will be considered by a quorum of the Board. During these deliberations, the Board will review the information presented by the respondent and any other relevant information. Requests to participate in the review will be granted at the sole discretion of the Board of Directors. The Board will then determine the final outcome of the appeal by majority vote in closed session.

**6. Board of Directors Reapplication Petition and Reinstatement Decisions and Orders.** Within thirty (30) days of conclusion of the Board of Directors' review of a Reapplication Petition or Reinstatement Request, or as soon as practical, the Board will prepare and issue a Decision and Order explaining the decision with respect to the Petition or Request. The final Board Decision and Order will indicate whether the Petition or Request is granted, denied, or continued to a later date. If appropriate, the Decision and Order will indicate any conditions of certification or recertification. Copies of the Board of Directors Decision and Order will be sent to the parties, via U.S. mail, return receipt requested, or other appropriate delivery method. While no appeal of the Board Decision and Order is permitted by ABIH, the respondent may submit a new Petition or Request pursuant to this Section, two (2) years or more after the issuance of the Board Decision and Order.