

# Neurocritical Care Society

## DISCIPLINARY POLICY

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### THE FOLLOWING NEEDS TO BE ADDED TO NCS BYLAWS

#### Article II: Members; Section 7: Qualification of Voters

(c): Removal for Cause: Membership may be denied, revoked or restricted for cause only by action of the Board, which may only be taken pursuant to the Society's Disciplinary Policy.

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This policy and membership actions taken pursuant to it are binding upon the Neurocritical Care Society (NCS) ("Society") and its members and applicants pursuant to Society Bylaws, Article II, Section 7(c).

**INTENT OF POLICY:** This disciplinary policy is intended to provide a means of enforcing the standards of professional conduct that are expected of members of the Neurocritical Society. Use of this policy must be done with an extreme amount of caution and generally only when other attempts to help reform the behavior of members of the NCS have failed. Use of this policy for minor infractions will not be tolerated and will be protected against by the multiple stakeholders involved in the process before a final action can be taken.

### I. GROUND FOR DISCIPLINARY ACTION

Members of and applicants to the Society shall be subject to disciplinary action as set forth in this Policy on any of the following grounds:

- A. Violation of the Society Articles of Incorporation or Bylaws;
- B. Willful falsification of information supplied to the Society for election to membership;
- C. Professional or personal misconduct that has the potential for negative impact on the Society as delineated in the Code of Professional Conduct and the Leadership Code of Conduct
- D. Conviction of, or entering a plea of guilty or no contest to, a felony or with respect to any crime involving the practice of medicine, nursing, pharmacy or allied health care

E. Failure to cooperate with this disciplinary process.

## II. INITIATION OF DISCIPLINARY ACTION

**A. Secretary of the Investigation.** Any person may provide information to the Society about the professional or personal conduct, performance or competence of any of its members. While all claims are subject to close scrutiny by the President, anonymous claims will be handled with due prejudice. All matters which may constitute grounds for disciplinary action shall be referred to an ad hoc investigation committee appointed by the President comprised of 5 impartial Society members, including a member identified as the Secretary of the Investigation. Each matter that is preliminarily substantiated through information obtained by the ad hoc investigation committee shall be subject to further full course investigation. If the Vice President is informed of information that may constitute grounds for disciplinary action in regards to the President, then he/she shall create the ad hoc committee.

**B. Investigation.** Promptly upon preliminary substantiation, the ad hoc investigation committee shall conduct an initial investigation. The member against whom a claim has been made shall be formally notified, with proof of receipt of notice, that an investigation is being conducted. The member in question shall be afforded the opportunity to provide any information that they wish to the ad hoc investigation committee in a manner that the committee deems appropriate. The ad hoc investigation committee may, but is not obligated to, conduct interviews with persons involved; however, such investigation shall not constitute a “hearing” as that term is used in this policy, nor shall the procedural rules with respect to hearings or appeals apply. The ad hoc investigation committee may seek outside assistance if they deem it necessary to formulate a recommendation. The investigation and subsequent recommendations must be based on a reasonable amount of evidence and should continue until the members of the investigation committee believe an adequate amount of information has been obtained.

**C. Recommendation Following Investigation.** Expeditiously after the conclusion of the investigation, the committee shall provide the both the Executive Committee and the involved society member with a written position and recommendation for action, which may include, without limitations:

1. Determining that no disciplinary action be taken and, if it determined there was no credible evidence for the initial complaint, removing any reference to the event from the member’s file
2. Deferring action, for a reasonable period of time, when specific circumstances warrant a delay, such as if further follow up information is needed to produce a final recommendation

3. Issuing letter(s) of censure, to which the affected member may make a written response which shall be placed in the members file
4. Recommending the imposition of terms of probation or special limitation upon continued membership including, without limitation, requirements for monitoring
5. Recommending suspension, denial or expulsion of membership
6. Taking other actions deemed appropriate under the circumstances

### III. HEARING ON ADVERSE RECOMMENDATION

**A. Notice of Proposed Action.** If the recommendation of the ad hoc investigation committee is other than no required action on the part of the Society; formal notice of proposed action shall include the following elements:

1. The accusation against the member
2. That membership in the society may be jeopardized as a result of the accusation
3. That the member has the right to request a hearing before a panel to be designated by the President as described below
4. The time limit within which he or she must request a hearing on the accusation, which may not be less than thirty (30) days from the date of the notice of investigation review;
5. A summary of the member's rights in the hearing
6. That action affecting membership, if taken, may be reported to relevant state medical boards and licensing authorities and the National Practitioner Data Bank.

**B. Notice of Hearing.** If a member requests a hearing in a timely fashion, the Society shall give the member notice of the hearing stating:

1. The place (including via conference telephone or similar means), time and date of the hearing which date shall not be fewer than thirty (30) days or more than sixty (60) days after the notice of the hearing
2. The names of any witnesses expected to testify against the member
3. A request that the member provide a list of witnesses testifying on their behalf at least ten (10) days prior to the hearing

4. That the member's failure to appear for the hearing shall constitute waiver of hearing rights, but not an admission of wrongdoing, if the member's failure to appear was without good cause

**C. Conduct of the Hearing.**

1. The hearing shall be conducted before a panel of no less than 5 members to be designated by the President, and shall be comprised of Society members who have not participated in any process involving the allegations and who have no relevant conflict of interest with the process or involved parties. The determination of relevant conflict of interest will be made by the President. The hearing will be closed to media, press and the general public. Members of the board, the Chairs of the Neurocritical Care Society Ethics committee and parties relevant to the process may be present. The President may elect to appoint an independent attorney, who shall be neither the member's nor the Society's counsel, to serve as hearing officer without vote, or may appoint a hearing officer with vote from Society membership. The allegations against the member shall be brought forward by a representative of the ad hoc investigation committee. The member shall respond to the allegations. In the case that the President is the member undergoing the Hearing, the Vice President shall perform the functions described herein that are otherwise of the President.
2. At the hearing, the member has the following rights:
  - a. To representation by an attorney or other person of his/her choosing
  - b. To have a record made of the hearing and to have copies of the record available upon payment of reasonable charges
  - c. To call, examine and cross-examine witnesses<sup>1</sup>
  - d. To present evidence determined by the hearing officer to be relevant even if such evidence would not be admissible in a court of law; and
  - e. To submit a written statement to the hearing panel at the close of the hearing

The standard of proof to sustain a charge shall be a preponderance of the evidence.

**D. Hearing Panel Decision.** After the hearing is concluded, the member has the right to receive the hearing panel's written report and recommendation(s) of action to the Executive Committee, including the hearing panel's basis for its recommendation(s), within twenty (20) days of the decision.

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<sup>1</sup> NCS cannot mandate the presence or participation of any particular witness, and the failure of a witness to appear for examination or cross examination shall not be deemed a violation of rights of the member or a basis to challenge the outcome of the process.

In the case of a member physician who has been found to have carried out an action of concern with relevance to a medical or licensing board, or the ethical and/or legal practice of medicine, the text of the report to the National Practitioner Data Bank and to the relevant state medical board or licensing entity, if any, shall accompany each copy of the decision. The member shall simultaneously be notified of the opportunity to appeal the hearing panel decision to the Council within thirty (30) days of the date of the hearing panel.

**E. Final Action in the Absence of Appeal.**

1. The hearing panel decision is not the final action of the Society. The Executive Committee may adopt or reject the hearing panel recommendations, but only after all rights to appeal are exhausted or waived.
2. Upon notice to the Secretary that the member waives the right to appeal to the Executive Committee or upon the thirty-first day following the date of the hearing panel's decision, the decision of the hearing panel shall be forwarded to the Executive Committee for final action at its next scheduled meeting.
3. The Executive Committee's decision shall be in writing, shall state the basis therefore, and shall be the final action of the Society. The written decision shall be immediately sent to the member by certified mail. The text of the Society's proposed reports to the National Practitioner Data Bank and to the relevant state medical boards, if any, shall accompany each copy of the decision.

IV. APPEAL

**A. Appeal of Hearing Panel Decision.** The member may appeal a decision of the hearing panel by filing an appeal with the Secretary of the Society within thirty (30) days of the hearing panel decision.

**B. Notice of Hearing on Appeal.** The Secretary shall notify the member of the time, place and date of the hearing on appeal, which date shall not be fewer than thirty (30) days nor more than sixty (60) days after the date of the notice of hearing on appeal.

**C. Conduct of Hearing on Appeal.**

1. The appeal shall be heard by the full Council; however, any member of the Council who has a relevant conflict of interest, perceived or real, with the member or has participated in any process involving the allegations against the member shall not be entitled to participate in the appeal hearing, deliberations or decisions. Further, the fact that one or more members of the Council are unable to attend the hearing shall not invalidate, or be a basis to challenge, the decision of the Council.

2. Both the member and the ad hoc investigation committee shall have the right to be represented by counsel, to present arguments, and to submit written statements at the close of the hearing on appeal. No new evidence may be presented by either party unless the evidence could not have been presented at the original hearing, as determined by the hearing officer. A hearing may be held in-person, by conference telephone, or other means as determined by the Council.

**D. Council Decision On Appeal.** Within thirty (30) days of the conclusion of the appeal hearing, the Council shall issue a written decision, stating the basis therefore, which shall be immediately sent to the member by certified mail or other means deemed effective by the Society. In these cases where the action concerned by a physician, would be of interest to a medical board, the Society's proposed reports to the Nation Practitioner Data Bank and to the relevant state medical and licensing boards, if any, shall accompany each copy of the decision.

#### V. REPORTING FINAL ACTIONS

A. The Society's action shall not be considered to be final until all appeal rights have been either exhausted or waived.

B. The applicant or member shall receive notice of an opportunity to meet with the Society President, or his or her designee, and the Legal Counsel of the Society at the discretion of the Society's President to review and discuss the text of the reports (from section IV D above) before the reports are filed. The applicant or member shall be informed, where applicable, that the National Practitioner Data Bank report shall be sent to the Minnesota Board of Medical Practice and any state report required shall be sent to the relevant state board no later than fifteen (15) days after the date the report became final.

#### VI. SUSPENSION OF INVESTIGATIVE OR APPEAL PROCESS

The Society may decline to initiate the process described in this Policy, or the process described in this Policy may be suspended at any time by the Society if the matter at issue in this process is pending in another forum, or if the Society believes the matter should instead be pursued in another forum, including, but not limited to, any court, state licensing board or other governmental agency, until the matter is resolved in the other forum.

#### VII. CONFIDENTIALITY AND INDEMNITY

Absent exigent circumstances as determined by the Society, investigations and proceedings prior to final disposition, as well as information made available to the Society during the course of an investigation review or hearing shall be confidential and shall not be disclosed except as necessary to conduct of an effective investigation, hearing, and appeal. All Society members serving on an ad hoc investigating committee, Hearing Panel, Council, and Executive Committee shall act in good faith, and, to the extent that their obligations are carried out in good faith, shall be fully indemnified, held harmless by the Society, and supported legally by

the Society should the member decide to pursue legal action against an individual member of the ad hoc committee, the Hearing Panel, the Executive Committee, or the Council.

#### VIII. AMENDMENT TO THE INVESTIGATIVE REVIEW POLICY

This policy shall be subject to amendment by action of the Council.

#### IX: Definition of Terms

The following terms appear in this Disciplinary Policy:

- Society: The Neurocritical Care Society
- Ad hoc investigation committee: an ad hoc committee of 5 members of the Society appointed by the President of NCS to investigate and substantiate and claim brought against a member.
- Secretary of the Investigation: appointed by the President of the Society to lead the ad hoc investigation committee
- President: the President of the Neurocritical Care Society
- Member: the member against whom a claim is being brought
- Hearing Officer: Legal counsel, appointed by the President, to serve on the hearing committee and ensure compliance with relevant procedures and the conduct of the hearing

#### IX. MISCELLANEOUS

A. All time periods and time limits set forth in this Policy are aspirational and may adjusted by the Society in the interests of due process.

B. All notices to be provided by the Society may be provided in any reasonable manner that the Society determines, including email.

C. Any matters that arise that are not addressed in this Policy shall be within the discretion of the Society.

Adopted by the NCS Board of Directors: June 2, 2015