

Policy: Processing Complaints & Reports of Irregular Behavior

Initial certification as an ATP, SMS and/or RET attests that the individual has met prescribed standards of training and experience, has demonstrated through examination that s/he possesses the minimum knowledge and cognitive skills deemed necessary to serve clients' assistive technology needs with skill and safety, and has agreed to abide by RESNA's *Standards of Practice* and *Code of Ethics*.

Recertification, or renewal of previously-achieved certification as an ATP, SMS and/or RET, attests that the individual has met, during the just-ending certification interval, prescribed standards of continuing professional development and experience in assistive technology, and that the individual agrees to continue to abide by RESNA's *Standards of Practice* and *Code of Ethics*. If the Professional Standards Board (PSB) determines a certificant has not met or has breached one of the prescribed standards for initial certification or recertification, the PSB may take action(s) to protect the integrity of the certification process and the resulting credential(s), up to and including permanent revocation of the credential(s). Actions taken by the PSB against a certificant's credential may be reported to legitimately-interested entities, including but not limited to state licensing authorities; accrediting bodies; federal and state Medicare/Medicaid reimbursement authorities and other payors; and employers.

The PSB may investigate and subsequently take action, as further outlined in the *Procedures* below, when the PSB receives evidence that a certificant has engaged in conduct that undermines the integrity of the certification process and/or the credential. Such conduct includes, but is not limited to, the following:

1. Providing false information on, or in connection with, application for initial RESNA certification or recertification;
2. Submitting documentation in support of application for initial RESNA certification or recertification that is altered, forged, or otherwise not an accurate representation of the original;
3. Receiving or providing to others copies or other reproductions of test items maintained in the test item bank for use in RESNA certification exams, in violation of RESNA's copyright;
4. Altering, forged or otherwise misrepresenting an ATP, SMS or RET certificate;
5. Misrepresenting current status of ATP, SMS or RET certification;
6. Committing acts or engaging in behavior that is in violation of RESNA's *Standards of Practice* or *Code of Ethics* or applicable laws or regulations;
7. Having a state regulatory body take action against a professional license or registration for acts that also violate RESNA's *Standards of Practice* or *Code of Ethics*;
8. Having an employer terminate the certificant's employment for acts that violate RESNA's *Standards of Practice* or *Code of Ethics*;
9. Having a professional association, society or certifying body take action against their membership, fellowship, registration or certification for acts that violate RESNA's *Standards of Practice* or *Code of Ethics*;
10. Having Medicare/Medicaid authorities or other payors de-authorize or otherwise sanction the certificant for acts that violate RESNA's *Standards of Practice* or *Code of Ethics*.

Applicants for certification and recertification will be informed about these *Policies and Procedures*, and provided with examples of the types of conduct that may lead to actions consistent with them.

Procedures: Complaints Processing and Disciplinary Action

Complaints Review Committee

Responsibility for administration of the *Complaints Processing & Disciplinary Action Policy and Procedures* is assigned to the Complaints Review Committee (CRC) working with designated RESNA staff. These responsibilities include:

- initially evaluating and accepting or rejecting complaints;
- investigating issues underlying complaints;
- determining whether the available evidence supports the complaint; and
- decision-making on complaints and implementing appropriate sanctions, if any, in accordance with the *Complaints Processing & Disciplinary Action Policy*.

The CRC is comprised of five members, only two of which, including the CRC Chair, are also members of the PSB. The CRC Chair must be a member of the PSB. CRC members are appointed by the PSB Chair for one year renewable terms. At least three of the five members must hold currently-valid RESNA certification. The CRC must also have at least one public member. In August each year, the incoming PSB Chair will renew existing or make new appointments, including designation of the CRC Chair who must be a member of the PSB. The CRC Chair will select one of the remaining four members to be Vice Chair of the CRC to preside over complaints proceedings if the CRC Chair is unavailable to do so.

Qualifying Complaints

The complaints procedure may be initiated upon receipt of a complaint from:

- A consumer seeking or using services provided by a RESNA-certified service provider; or
- A professional, whether RESNA-certified or not, having had first-hand interaction with a RESNA-certified service provider about whom the complaint is submitted; or
- A member of RESNA boards, committees, staff, proctors or agents with reasonable evidence of a certificant's having committed acts or engaged in behaviors described in RESNA's *Policy on Complaints Processing and Disciplinary Action*.

To be considered for further evaluation, investigation or action, complaints must:

- Not be the subject of legal proceedings -- whether civil, criminal or administrative -- already initiated or reasonably expected to be initiated within three months following the submission of the complaint, with respect to the same issues, acts or behaviors that are the subject of the complaint. The CRC may stay in-progress complaint proceedings if it becomes aware of legal proceedings initiated on issues, acts or behaviors similar to those that are the subject of the complaint. Notwithstanding the foregoing, the CRC may, upon 30 days' written notice to the certificant, initiate complaint proceedings and review of the complaint according to the procedures outlined herein if, in the reasonable determination of the CRC, there is sufficient concern as to public policy and the interests of consumers to necessitate CRC review prior to the final outcome of related legal proceedings.
- Be submitted in writing and be signed by the complainant(s). Anonymous complaints are not considered.
- Include the following two statements:

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- *I(we) hereby grant permission to the Complaints Review Committee and the Professional Standards Board to share with the respondent(s) both my identity and all information I have provided and may subsequently provide in support of this complaint.*
- *I(we) have not initiated civil, criminal or administrative legal proceedings against the service provider and will immediately report to the Complaints Review Committee any such action of which I become aware during the course of evaluation of and decision-making on this complaint.*
- Provide sufficient information on which to base a decision on whether to proceed with further evaluation, investigation or action.
- Allege acts or behaviors described in the *Policy on Complaints Processing and Disciplinary Action*.
- Provide evidence that an attempt has been made to resolve the subject of the complaint prior to and independent of PSB involvement unless the alleged acts involve falsification or misrepresentation of credentials or other acts not resolvable without PSB involvement.

Complaints may be lodged at any time, irrespective of the timing of allegations underlying the complaint.

Any person considering making a complaint may have preliminary discussions concerning the proper formulation of the complaint and/or the *Complaints Processing and Disciplinary Action Policy and Procedures* with the CRC Chair through RESNA's Director of Certification.

The Chair of the CRC determines whether a complaint meets the qualifying criteria above and may consult with legal counsel and/or designated staff to make this determination.

- If a complaint does not qualify for further evaluation, investigation and decision-making, the complainant is so notified, and the complaint is dismissed. The complainant may submit a new complaint on the same subject matter if the complainant acquires additional information that would serve to qualify the original complaint. In the event that the complaint is dismissed, the CRC Chair reserves the right to send the respondent a letter of advice regarding the content of the complaint.
- If a complaint qualifies for further evaluation, investigation, and decision-making, the CRC Chair initiates complaint proceedings.

Documentation of dismissed complaints and complaint proceedings is maintained by designated RESNA staff for seven years from final action on the subject complaint.

RESNA is not responsible for travel or any other expenses incurred either by the complainant or the respondent in connection with any stage of the complaint.

Initiating Complaint Proceedings

Complaint proceedings are initiated by written notifications to both the complainant(s) and the respondent(s).

- The complainant is notified in writing of the accepted complaint. The notification outlines the process and timeframe for the complaint proceedings.
- The respondent is notified in writing of the accepted complaint. The notification outlines the allegations in the complaint that are of principal concern to the CRC and cites the element(s) of the *Code of Ethics* and/or *Standards of Practice* that the complaint alleges were violated. A copy of the *Code* and *Standards* are included with the notification. The respondent is invited to respond to the allegation(s). The response must be in writing, signed by the respondent, and must be received by the CRC Chair, or designated RESNA staff, within 30 days of the date of the notification letter.
 - If the written response is not received within 30 days, the complaint may continue through evaluation and decision-making, and sanctions may be imposed.
 - If the written response is received within 30 days, a copy of the response is forwarded to the complainant. If the complainant wishes to address any factual assertions made by the respondent, s/he must do so in writing and must be received by the CRC Chair, or designated RESNA staff, within 14 days of the date of the communication forwarding the written response. Any such communication received by the CRC Chair will be shared with the respondent.

Evaluation and Adjudication of the Complaint

When both the initial response and comments deadlines have passed, the CRC Chair forms a Complaint Panel of three additional members of the CRC. Evidence thus far received from both the complainant and the respondent is provided by designated RESNA staff to panel members for review. Prior to distribution, RESNA staff redacts identifying information (*e.g.*, names, employer, location, organizational affiliations, etc). All evidence provided to RESNA may be subpoenaed by a Court of Law.

Persons taking part in complaint proceedings are required to act in a manner that preserves confidentiality and avoids prejudicing the outcome or exercising an improper influence upon it. Any breach of these standards of conduct may result in the proceedings being halted or terminated at any stage by the CRC Chair.

Members of the Complaint Panel have a duty to declare any interest that may be considered to compromise their impartiality. The views of the complainant and the respondent are taken into consideration when deciding whether the impartiality of any member of the Complaint Panel might be so compromised as to require that s/he be replaced.

The CRC Chair convenes the Complaint Panel for a decision-making meeting at a time deemed appropriate by the Panel but not later than 30 days after both the initial response and comments deadlines have passed. The CRC Chair, or his/her designee, serves as chair of the Complaint Panel and may discuss issues relative to the complaint but serves without vote in the decision-making. The CRC Chair is responsible for ensuring that the decision-making meeting is conducted in a manner that shows due regard to the gravity of the situation and to considerations of confidentiality.

The Complaint Panel may, at its discretion, ask for more information from either party via letter, email, phone interview or face-to-face interview to be conducted by the Complaint Panel as a whole, by a member of Complaint Panel designated as investigator for the case, or by designated RESNA staff. Any information so provided is shared with all parties to the complaint proceedings. An additional decision-making meeting may be required to gather and/or evaluate additional evidence.

When all requested evidence is provided and available, the Complaint Panel decides whether the evidence establishes that one or more violations has/have occurred.

- When a violation has been determined to have occurred, the Complaint Panel may impose sanctions. Findings and any sanctions imposed will be outlined in a letter sent to the respondent and complainant within 30 days of the decision.
- In the absence of such a determination, the complaint is dismissed and both the complainant and the respondent are so notified within 30 days of the decision.
- If the CRC reasonably determines that there is a substantial ongoing concern as to public policy and the interests of consumers due to the risk that the alleged wrongdoing will continue, the CRC may temporarily suspend the certification of the certificant pending resolution of the complaint proceedings.
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Both the complainant and the respondent have an affirmative obligation to inform the CRC Chair if legal proceedings have been initiated relative to matters that are substantially similar to the subject of the complaint. The Complaint Panel may decide to stay a complaint if it becomes aware that such a legal proceeding has been initiated. The Complaint Panel and the CRC will determine whether there is substantial concern as to public policy and the interests of consumers to continue the complaint proceedings prior to the final outcome of related legal proceedings due to the nature of the accused wrongdoing. If, in the reasonable determination of the Complaint Panel and the CRC, such justification exists, the complaint proceedings will continue. If not, once such legal proceedings are concluded, the CRC Chair may re-initiate complaint proceedings through the original Complaint Panel or a newly-constituted Complaint Panel. The Complaint Panel may take into account the judgments reached through the legal proceedings.

Both the complainant and the respondent have an affirmative obligation to inform the CRC Chair if another organization is involved in a similar process arising out of matters that are substantially similar to the subject of the complaint. The Complaint Panel may decide to stay a complaint if a member of the Complaint Panel or the CRC Chair becomes aware that another organization has initiated a similar process. Once the other organization has made a final determination, the CRC Chair may re-initiate the proceedings through the original Complaint Panel or a newly-constituted Complaint Panel. The Complaint Panel may take into account the other organization's findings.

Failure of a respondent to renew certification during the course of a complaint proceeding shall not terminate the process, and the proceeding will continue to its conclusion.

Sanctions & Reporting

If the Complaint Panel determines a certificant has committed acts and/or engaged in behavior(s) set forth in RESNA's *Policy on Complaints Processing & Disciplinary Action*, the Complaint Panel may impose one or more sanctions, including but not limited to:

- **Private letter of concern** detailing the acts and/or behaviors that, if uncorrected, could lead to suspension or revocation of certification. Private letters of concern will be provided to the subject certificant and maintained in the certificant's file but will not be reported to any external party(ies) unless required by law or the certificant is found to have committed the same acts or engaged in the same behaviors, leading to further investigation and/or action by the CRC and/or PSB.
- **Public letter of concern** detailing the acts and/or behaviors that, if uncorrected, could lead to suspension or revocation of certification. Public letters of concern will be provided to the subject certificant, maintained in the certificant's file, and, if not overturned on a subsequent appeal, will be shared with the certificant's employer and may be shared with legitimately-interested entities, such as licensing and/or reimbursement authorities.
- **Probation** for a specified time period during which the certificant demonstrates that corrective or remedial action(s) have eliminated the violation(s) that were the subject of the complaint. Violations of the conditions of probation may lead to summary suspension or revocation by the CRC. Information on probations is permanently maintained in the certificant's file. If not overturned on a subsequent appeal, probations are reported to the certificant's employer and may be shared with legitimately-interested entities, including licensing and/or reimbursement authorities.
- **Suspension of certification** for a specified time period and/or until specified corrective or remedial action(s) have been taken to eliminate the violation(s) that were the subject of the complaint. Information on suspensions is permanently maintained in the certificant's file. Violation of the conditions of suspension may lead to summary revocation by the CRC. If not overturned on subsequent appeal, suspensions are reported to the certificant's employer and any relevant licensing and/or reimbursement authorities and may be shared with other legitimately-interested entities.
- **Revocation of certification.** Information on revocations is permanently maintained in the former certificant's file. If not overturned on subsequent appeal, revocations are reported to the former certificant's employer and any relevant licensing and/or reimbursement authorities and may be shared with other legitimately-interested entities. Revocations are considered permanent unless the former certificant can subsequently demonstrate to the PSB that the actions or behaviors leading to the revocation have been corrected in a manner that precludes their recurrence. If the PSB accepts such demonstration, the former certificants must re-apply for certification as a new applicant.

Appeals

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The respondent to the original complaint may appeal the decision if s/he demonstrates, to the satisfaction of the Professional Standards Board (PSB), that there was (“grounds for the appeal”):

- a material deviation from the *Complaints Processing & Disciplinary Action Policy* and/or *Procedures*; or
- intimidation of any party involved in the complaints proceedings; or
- a conflict of interest or bias on the part of any person serving in a judicial capacity during the complaint proceedings; or
- failure to disclose a personal or financial relationship between the complainant(s) and members of the Complaints Panel or CRC Chair.

An appeal of a complaint decision must be submitted in writing to the Chair of the PSB through RESNA’s Director of Certification, must be signed by the appealing party, and must be received within 30 days of the letter communicating the Complaint Panel’s decision. The appeal must be accompanied by any documentation supporting the grounds for appeal.

The PSB Chair forms an Appeal Panel of 3 additional members of the PSB who were not involved in the subject complaint proceedings. Information from the appellant is provided to Appeal Panel members for review. All information provided to RESNA may be subpoenaed by a Court of Law.

Persons taking part in appeals proceedings are required to act in a manner that preserves confidentiality and avoids prejudicing the outcome or exercising an improper influence upon it. Members of the Appeal Panel have a duty to declare any interest that may be considered to compromise their impartiality. The views of the Appellant are taken into consideration when deciding whether the impartiality of any member of the Appeal Panel might be so compromised as to require that s/he be replaced.

The PSB Chair convenes the Appeal Panel at a time deemed appropriate by the Panel but not later than 30 days after receipt of the appeal. The PSB Chair, or his/her designee, serves as chair of the Appeal Panel. The PSB Chair is responsible for ensuring that the appeals decision-making meeting is conducted in a manner that shows due regard to the gravity of the situation and to considerations of confidentiality.

The Appeal Panel reviews the evidence on which the Complaint Panel’s decision was made, the decision and the sanctions imposed. The Appeal Panel does not consider information and/or documentation that were not available to the original Complaint Panel. If the Appeal Panel concludes that additional information and/or clarification should be considered, the Appeal Panel may remand the matter to the original Complaint Panel. Otherwise, the Appeal Panel will decide whether the Complaint Panel’s decision is upheld or vacated.

- For appeals resulting in the original decision being overturned, the respondent and the original complainant are notified that the original Complaint Panel decision is vacated.
- For appeals resulting in the original decision being upheld, the appeal is dismissed, the appellant and the original complainant are so notified within 10 days of the appeal decision, and any sanctions to be imposed by the original Complaint Panel decision are implemented immediately.