

## **Section Five: Complaints and Disciplinary Actions**

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### **Introduction**

Information regarding the complaint process will be available to the public via the AASP web site or other published documents. A complete copy of this policy will be made available to any individual upon request.

In order to maintain and enhance the credibility of the CMPC certification program, the Council has adopted the following procedures to allow individuals to bring complaints concerning the conduct of CMPC certificants to the Council.

In the event a certificant violates the AASP Ethics Code, Council certification rules, requirements, and/or policies the Council may reprimand or suspend the individual or may revoke certification.

### **Grounds for Sanctions**

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The grounds for sanctions under these procedures may include, but are not necessarily limited to:

- Any restrictions such as revocation, suspension, probation or other sanctions of the professional's license, where applicable.
- Violation of the established AASP Ethics Code, Council rules, requirements, and/or policies.
- Conviction of a felony or other crime of moral turpitude under federal or state law in a matter related to the practice of, or qualifications for, services provided by a CMPC.
- Gross negligence, willful misconduct, or other unethical conduct in the performance of services for which the individual has achieved CMPC certification.
- Fraud, falsification, or misrepresentation in an initial application or renewal application for certification.
- Falsification of any material information requested by the Council.
- Misrepresentation of CMPC status, including abuse of logo.
- Cheating on any certification examination.

Actions taken under this policy do not constitute enforcement of the law, although referral to appropriate federal, state, or local government agencies may be made about the conduct of the certificant in appropriate situations. Individuals initially bringing complaints are not entitled to any relief or damages by virtue of this process, although they will receive notice of the actions taken.

### **Complaints**

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#### **Complaint Submission**

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Complaints may be submitted by any individual or entity. Complaints should be reported to the Council in writing and should include the name of the person submitting the complaint, the name of the person the complaint is regarding along with other relevant identifying information, a detailed

description of factual allegations supporting the charges, and any relevant supporting documentation. Information submitted during the complaint and investigation process is considered confidential and will be handled in accordance with Council's Confidentiality policy. Inquiries or submissions other than complaints may be reviewed and handled by the Council or its staff members at its discretion.

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### **Preliminary Review**

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Upon receipt and preliminary review of a complaint involving the certification program the certification program staff member in consultation with the Council Chair may conclude, in their sole discretion, that the submission:

- contains unreliable or insufficient information, or
- is patently frivolous or inconsequential.

In such cases, the certification program staff member and Council Chair may determine that the submission does not constitute a valid and actionable complaint that would justify bringing it before the Council for investigation and a determination of whether there has been a violation of substantive requirements of the certification process. If so, the submission is disposed of by notice from the certification program staff member and Council Chair to its submitter, if the submitter is identified. All such preliminary dispositions by the Council Chair are reported to the Council at its next meeting.

Preliminary review will be conducted within 15 business days of receipt of the complaint.

If a submission is deemed by the certification program staff member and Council Chair to be a valid and actionable complaint, the Council Chair will see that written notice is provided to the certificant whose conduct has been called into question. The certificant whose conduct is at issue also will be given the opportunity to respond to the complaint. The Chair also will ensure that the individual submitting the complaint receives notice that the complaint is being reviewed by the Council.

### **Complaint Review**

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For each complaint that the Chair concludes is a valid and actionable complaint, the Council authorizes an investigation into its specific facts or circumstances to whatever extent is necessary in order to clarify, expand, or corroborate the information provided by the submitter.

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### **Review Committee Appointment and Responsibilities**

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The AASP Ethics Committee will investigate and make an appropriate determination with respect to each such valid and actionable complaint; the Ethics Committee may review one or more such complaints as determined by the Chair. The Ethics Committee initially determines whether it is appropriate to review the complaint under these Procedures or whether the matter should be referred to another entity engaged in the administration of law. The timeline for responses and for providing any additional information will be established by the Ethics Committee. The Ethics Committee may be assisted in the conduct of its investigation by other members of the Council or by Council and/or AASP staff or legal counsel. The Chair exercises general supervision over all investigations.

Both the individual submitting the complaint and the certificant who is the subject of the investigation (or his or her employer) may be contacted for additional information with respect to the complaint. The Ethics Committee, or the Council on its behalf, may at its discretion contact such other individuals who may have knowledge of the facts and circumstances surrounding the complaint.

All investigations and deliberations of the Ethics Committee and the Council are conducted in confidence, with all written communications sealed and marked "Personal and Confidential," and they are conducted objectively, without any indication of prejudice. An investigation may be directed toward any aspect of a complaint which is relevant or potentially relevant. Formal hearings are not held and the parties are not expected to be represented by counsel, although the Ethics Committee and Council may consult their own counsel.

Certificants who are found to bring frivolous complaints against other certificants or AASP may be subject to disciplinary action by the Council, up to and including revocation of certification.

Members of the Ethics Committee will be reimbursed for reasonable expenses incurred in connection with the activities of the Committee.

## **Determination of Violation**

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### **Ethics Committee Recommendation**

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Upon completion of an investigation, the Ethics Committee recommends whether the Council should make a determination that there has been a violation of Council policies and rules. When the Ethics Committee recommends that the Council find a violation, the Ethics Committee also recommends imposition of an appropriate sanction. If the Ethics Committee so recommends, a proposed determination with a proposed sanction is prepared under the supervision of the Chair and is presented by a representative of the Ethics Committee to the Council along with the record of the Ethics Committee's investigation.

### **Certification Council Determination**

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#### *Complaint Dismissal*

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If the Ethics Committee recommends against a determination that a violation has occurred, the complaint is dismissed with notice to the certificant, the certificant's employer (if involved in the investigation), and the individual or entity who submitted the complaint; a summary report is also made to the Council.

#### *Determination of Violation*

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The Council reviews the recommendation of the Ethics Committee based upon the record of the investigation. The Council may accept, reject, or modify the Ethics Committee's recommendation, either with respect to the determination of a violation or the recommended sanction to be imposed. If the Council makes a determination that a violation has occurred, this determination and the imposition of a sanction are promulgated by written notice to the certificant, and to the individual submitting the complaint, if the submitter agrees in advance and in writing to maintain in confidence whatever

portion of the information is not made public by the Council. All determinations by the Council that violations have occurred will be reported to the AASP Executive Board by the Chair of the Council.

In certain circumstances, the Council may consider a recommendation from the Ethics Committee that the certificant who has violated the certification program policies or rules should be offered an opportunity to submit a written assurance that the conduct in question has been terminated and will not recur. The decision of the Ethics Committee to make such a recommendation and of the Council to accept it are within their respective discretionary powers. If such an offer is extended, the certificant at issue must submit the required written assurance within thirty days of receipt of the offer, and the assurance must be submitted in terms that are acceptable to the Council. If the Council accepts the assurance, notice is given to the certificant's employer and to the submitter of the complaint, so long as the submitter agrees in advance and in writing to maintain the information in confidence.

## **Sanctions**

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Any of the following sanctions may be imposed by the Council upon a certificant whom the Council has determined to have violated the policies and rules of its certification program(s), although the sanction applied must reasonably relate to the nature and severity of the violation, focusing on reformation of the conduct of the member and deterrence of similar conduct by others:

- written reprimand to the certificant;
- suspension of the certificant for a designated period; or
- termination of the certificant's certification.

For sanctions that include suspension or termination, a summary of the final determination and the sanction with the certificant's name and date is published by the Council. This information will be published only after any appeal has either been considered or the appeal period has passed.

Reprimand in the form of a written notice from the Chair normally is sent to a certificant who has received his or her first substantiated complaint. Suspension normally is imposed on a certificant who has received two substantiated complaints. Termination normally is imposed on a certificant who has received two substantiated complaints within a two year period, or three or more substantiated complaints. The Council may at its discretion, however, impose any of the sanctions, if warranted, in specific cases.

Certificants who have been terminated will have their certification revoked and may not be considered for Council certification in the future. If certification is revoked, any and all certificates or other materials requested by the Council must be returned promptly to the Council.

## Appeal

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### Request for Appeal

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Within thirty (30) days from receipt of notice of a determination by the Council that a certificant violated the certification program policies and/or rules, the affected certificant may submit to the Council in writing a request for an appeal.

### Appeal Committee

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Upon receipt of a request for appeal, the Chair of the Council establishes an appellate body consisting of at least three, but not more than five, individuals. This Appeal Committee may review one or more appeals, upon request by the Chair. No current members of the Ethics Committee or the Council may serve on the Appeal Committee; further, no one with any personal involvement or conflict of interest may serve on the Appeal Committee. Members of the Appeal Committee may be reimbursed for reasonable expenses incurred in connection with the activities of the Committee.

### Basis for Appeal

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The Appeal Committee may only review whether the determination by the Council of a violation of the certification program policies and/or rules was inappropriate because of:

- material errors of fact, or
- failure of the Ethics Committee or the Council to conform to published criteria, policies, or procedures.

### Appeal Procedure

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Only facts and conditions up to and including the time of the Council's determination as represented by facts known to the Council are considered during an appeal. The appeal will not include a hearing or any similar trial-type proceeding. Legal counsel is not expected to participate in the appeal process, unless requested by the appellant and approved by the Council and the Appeal Committee. The Council and Appeal Committee may consult legal counsel.

The Appeal Committee conducts and completes the appeal within ninety days after receipt of the request for an appeal. Written appellate submissions and any reply submissions may be made by authorized representatives of the member and of the Council. Submissions are made according to whatever schedule is reasonably established by the Appeal Committee. The decision of the Appeal Committee either affirms or overrules the determination of the Council, but does not address a sanction imposed by the Council. The decision of the Appeal Committee, including a statement of the reasons for the decision, is reported to the Council and the AASP Executive Board.

The Appeal Committee decision is binding upon the Council, the certificant who is subject to the termination, and all other persons.

## **Resignation**

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If a certificant who is the subject of a complaint voluntarily surrenders his or her certification(s) at any time during the pendency of a complaint under these Procedures, the complaint is dismissed without any further action by the Ethics Committee, the Council, or an Appeal Committee established after an appeal. The entire record is sealed and the individual may not reapply for certification. However, the Council may authorize the Chair to communicate the fact and date of resignation, and the fact and general nature of the complaint which was pending at the time of the resignation, to or at the request of a government entity engaged in the administration of law. Similarly, in the event of such resignation, the person or entity who submitted the complaint are notified of the fact and date of resignation and that Council has dismissed the complaint as a result.