

## ***DANB's Disciplinary Policy & Procedures***



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### **DENTAL ASSISTING NATIONAL BOARD, INC. ("DANB") POLICY AND PROCEDURES FOR DISCIPLINARY REVIEW AND APPEAL**

*Revised: February 2011*

#### **I. DANB'S DISCIPLINARY POLICY**

DANB Certificants, holders of a DANB Certificate of Competency, DANB examination applicants and DANB examination candidates (when used collectively, "DANB Individuals") may be subject to disciplinary review for matters stemming from irregular behavior; fraudulent credentials; and legal, regulatory and credentialing actions as described below. Other individuals who misuse DANB trademarks, compromise the security of DANB exams or assist others in any behavior that warrants review under this policy may also be subject to legal action by DANB.

##### **A. Irregular Behavior**

###### **1. Irregular Behavior in Connection with a DANB Examination**

The performance of all candidates taking an examination will be monitored. Test center personnel will notify DANB of any candidate who appears to give or receive assistance, or otherwise engages in dishonest, disruptive or other irregular behavior during the examination.

Any DANB Individual who

- a. engages in, or assists another individual to engage in, cheating or other dishonest or irregular behavior;
- b. copies test questions or answers or permits another to copy test questions or answers;
- d. removes or attempts to remove examination-related materials from the test center;
- e. possesses, reproduces, distributes, displays or otherwise misuses a test question or any part of a test question from an examination;
- f. engages in discussion of specific examination content;
- g. assists another individual to do any of the above; or
- h. otherwise violates the security or composure of an examination

may be subject to disciplinary action, including but not limited to cancellation of examination scores and temporary or permanent denial or revocation of eligibility, certification or recertification. Any individual who engages in such improper behavior also may be subject to legal action.

## 2. Failure to Meet Obligations to DANB at Any Time

Any DANB Individual who

- a. if subject to DANB's *Code of Professional Conduct* (the "*Code of Conduct*"), violates a provision of the *Code of Conduct*;
- b. obtains, attempts to obtain, or assists another person to obtain or attempt to obtain, eligibility, admission to a DANB examination, certification, recertification, or a Certificate of Competency, or attempts to circumvent any DANB requirement, procedure, or fee, by deceptive means, including but not limited to submitting or assisting another person to submit to DANB any document which is falsified or fraudulent or which contains a material misstatement of fact or omits to state a material fact;
- c. commits any act that infringes on DANB's intellectual property rights, including but not limited to trademark and copyright violations;
- d. answers "yes" to a Background Information question on a DANB exam application, renewal notice, or other DANB form and fails to resolve the matter to the satisfaction of DANB;
- e. if an examination applicant, fails to provide proof of meeting examination eligibility requirements within sixty (60) days of notification of this requirement by DANB;
- f. fails to replace a check that was returned to DANB for nonsufficient funds within ninety (90) days of notification by DANB;
- g. reverses a credit card charge, stops payment on a check or otherwise revokes payment for services provided by DANB after such services have been rendered;
- h. fails to cooperate reasonably with a DANB disciplinary investigation; or
- i. otherwise fails to meet an obligation to DANB

may be subject to disciplinary action, including but not limited to cancellation of examination scores or denial or revocation of eligibility, certification or recertification. Any individual who engages in such improper behavior also may be subject to legal action.

### **B. Fraudulent Credentials**

Any DANB Individual or any other individual who

- a. manufactures, modifies, reproduces, distributes or uses a fraudulent or otherwise unauthorized DANB certificate, DANB designation, or any other document or designation conferred by DANB by virtue of a contract with a state or other third-party agency or organization;
- b. otherwise falsely claims to be certified by DANB or to possess credentials or certificates conferred by DANB; or
- c. assists another individual to do any of the above

may be subject to disciplinary action, including but not limited to denial or revocation of eligibility, certification or recertification. Any individual who engages in such irregular behavior also may be subject to legal action.

### **C. Legal, Regulatory, or Credentialing Action**

Any DANB Individual may be subject to disciplinary action if DANB determines that the he or she is the subject of any of the following:

- Adjudication by a court that the individual is mentally incompetent
- Adjudication by a court or governmental regulatory body that the individual has violated a federal or state law, rule or regulation
- Conviction of or pleading no contest to a felony
- Loss, suspension or voluntary surrender of the individual's state dental assisting or other professional registration, license, or other state-recognized credential or authorization to practice as an employee of the federal government or in a state or jurisdiction not requiring registration, licensure, or other recognized dental assisting or other professional employment credential
- Documented evidence of professional misconduct, including but not limited to unauthorized disclosure of patient information; improper alteration of a patient record; inappropriate or unlawful use of drugs or alcohol; assault, battery, or abuse of a patient; sexual contact with a patient; gross or repeated malpractice or negligence; improper professional financial dealings; or engaging in practice involving contact with a patient or the public while knowingly suffering from a contagious or infectious disease involving serious risk to the public health
- Documented evidence of professional incompetence, unethical conduct, or moral turpitude, related to the practice of dental assisting
- Failure to report to DANB in a timely manner adverse legal, regulatory or credentialing action(s)

The sanctions that DANB may impose against any DANB Individual who is the subject of the foregoing include but are not limited to denial or revocation of eligibility, certification or recertification.

## **II. DANB'S DISCIPLINARY PROCEDURES**

Disciplinary review of DANB Individuals or other individuals who have violated or are accused of violating a provision of DANB's Discipline Policy (Section I) shall be conducted according to the procedures described below.

### **A. Notification and Investigation of Possible Disciplinary Matter**

If it comes to the attention of DANB that a DANB Individual or other individual subject to review under this policy (the "Respondent") may have engaged in any of the behaviors described in Section I of this policy, DANB shall make a reasonable effort to determine the facts of the matter. If DANB determines that no action should be taken, the matter shall be closed. If DANB determines that there is a reasonable basis to believe that the allegations are true, DANB shall take such actions as are described below in Section B through H.

**B. Notice of Investigation**

DANB shall issue a written Notice of Investigation to the Respondent. The Notice shall include the following information:

- a. a statement of the allegations and the reasons for the proposed disciplinary action;
- b. a statement that the Respondent's behavior leading to the proposed disciplinary action will be reviewed to determine if grounds for disciplinary action exist and what sanctions, if any, should be imposed;
- c. a statement that the Respondent must submit in writing, by Registered Mail or overnight courier, any information that the Respondent wishes to have considered during the review, so that it is received by DANB's Executive Director within thirty (30) calendar days of the date of the Notice of Investigation;
- d. a statement that, should the Respondent not submit information for consideration in a timely manner, (i) the matter will be reviewed, a determination will be made as to whether the facts warrant the imposition of disciplinary action and, if so, what disciplinary action should be taken, and (ii) the decision shall constitute the final action by DANB on the matter; and
- e. for cases reviewed by the Review Panel, a statement notifying that Respondent of his or her right to request a telephonic appearance before the Review Panel.

A copy of this *DANB's Policy and Procedures for Disciplinary Review and Appeal* shall be enclosed along with the Notice.

**C. Disciplinary Review Process and Action Based on Fraudulent Credentials**

1. Based on the available facts, including a statement from the Respondent, if provided, DANB's Review Panel Staff members shall determine what, if any, disciplinary action is warranted, relying on disciplinary guidelines established by DANB's Board of Directors.
2. If DANB's Review Panel Staff members determine that no action should be taken, the matter shall be closed.
3. If DANB's Review Panel Staff members determine that disciplinary action should be taken, a written notice shall be issued to the Respondent describing (a) the basis for disciplinary review, (b) the applicable section of *DANB's Policy and Procedures for Disciplinary Review and Appeal*, (c) the disciplinary action taken in the matter, and (d) the right to appeal reportable disciplinary actions. The notice also shall inform the Respondent that he or she may accept the disciplinary action or, within 30 days, may submit a written Request for Review in accordance with Section D below.
4. Notwithstanding the foregoing, the Review Panel Staff members may, at their discretion, refer the matter to the Review Panel for a decision in accordance with the procedures set forth in Sections D and E below.
5. If the Respondent does not submit a timely request for further review, the decision of the Review Panel Staff will be the final decision of DANB on the matter.

**D. Disciplinary Review Process and Action Based on Irregular Behavior; Failure to Meet Obligations to DANB; or Legal, Regulatory and Credentialing Actions**

1. The Notice of Investigation, the Respondent's response to the Notice and/or any other information to be submitted to the Review Panel shall constitute the Review Record. A copy of the Review Record shall be forwarded to the Respondent and the Review Panel at least ten (10) calendar days before the meeting of the Review Panel.
2. If the Respondent requests a telephonic appearance before the Review Panel, the Respondent shall be given thirty (30) days written notice of the place, date and time of the interview, unless such notice is waived in writing by the Respondent. The notice shall advise the Respondent of the following:
  - a. The Respondent has the right to be present by telephone (or by video conference, Internet conference or other remote conferencing technology, provided that the total expense for such participation is borne by the Respondent) and to be represented by legal counsel;
  - b. The Respondent has the right to present written and oral testimony;
  - c. Any written testimony must be received by DANB no later than ten (10) calendar days before the scheduled date of the interview;
  - d. All expenses incurred by the Respondent and his or her legal counsel in connection with the telephonic appearance shall be borne by the Respondent.
3. If the Respondent requests a telephonic appearance before the Review Panel, the proceedings shall be subject to the following rules:
  - a. The Respondent shall be given the opportunity to make a statement summarizing his or her position. At the discretion of the Review Panel, the Respondent's legal counsel may make an opening or closing statement.
  - b. At the conclusion of the Respondent's statement, members of the Review Panel and DANB's legal counsel may ask the Respondent to respond to questions.
  - c. The Review Panel shall not be bound by technical rules of evidence usually employed in legal proceedings, but may consider any evidence it deems appropriate.
4. If the Respondent requests a telephonic appearance and, without good cause, fails to appear or fails to advise DANB in writing by Registered Mail/overnight courier more than seven (7) calendar days before the scheduled date of the telephonic appearance before the Review Panel that he or she will not appear, the Review Panel may, at its discretion, notify the Respondent that no further opportunity for an appearance shall be provided and that the Review Panel will make its determination based upon the written materials before it.
5. Following the telephonic appearance or, if none was requested, at a meeting or telephone conference call convened in a timely manner by the Chair of the Review Panel, the Review Panel shall review the Review Record and the Respondent's statement(s) during the telephonic appearance, if any. Based upon this review, and after due and thorough deliberation and upon the affirmative vote of two-thirds of the Review Panel, the Review Panel shall determine whether grounds for disciplinary action exist and, if so, what disciplinary action should be taken.

**E. Composition and Role of the Review Panel**

The Review Panel is a standing committee of DANB's Board of Directors appointed each year by the Chair of the Board. The Review Panel shall be composed of four members, and three members shall constitute a quorum. No officer of DANB shall serve as a member of the Review Panel.

**F. Possible Disciplinary Actions**

One or more of the following disciplinary actions may be taken:

- a. issue a nonreportable Advisory Letter;
- b. issue a reportable Letter of Censure;
- c. order the Respondent to retake an examination at a time and place and in a format to be determined by the Review Panel;
- d. invalidate or refuse to release the examination score(s) of the Respondent;
- e. require the Respondent to wait a specified period of time before reapplying to take any DANB examination;
- f. temporarily or permanently revoke the Respondent's eligibility to sit for future examinations;
- g. deny or revoke the Respondent's eligibility, certification or recertification;
- h. suspend Respondent's certification for a period of time;
- i. require the Respondent to engage in remedial education and/or training, or to perform community service;
- j. require the Respondent, if Certified, to participate in a mandatory audit of continuing education for a period of time;
- k. place Respondent on conditional status and issue a conditional score report and/or certificate until conditions imposed by DANB are met;
- l. publish findings and sanctions in the *Certified Press* or on DANB's Internet website;
- m. recommend that DANB take legal action against the Respondent;
- n. assess a disciplinary fine; or
- o. take a combination of any of the above actions or such other action that may be deemed appropriate in the particular circumstances.

**G. Notification of Review Panel's Determination**

The Respondent shall receive a Notice of Decision containing the Review Panel's action, and the reasons therefor, within thirty (30) calendar days after the Review Panel reaches its decision.

If the Review Panel determines that disciplinary action should be taken, the Notice shall advise the Respondent of the right to request a Discretionary Appeal on the matter by submitting a written Request for Discretionary Appeal by Registered Mail/overnight courier to the Executive Director within thirty (30) days after receipt of the Notice.

If a timely Request for Discretionary Appeal is not received, the Review Panel's determination will be deemed final action by DANB.

#### **H. Appeals**

Disciplinary actions are subject to appeal pursuant to Section III of this *DANB's Policy and Procedures for Disciplinary Review and Appeal*.

### **III. DANB's DISCRETIONARY APPEAL PROCESS FOR DISCIPLINARY DECISIONS**

#### **A. Request for a Discretionary Appeal**

A Respondent who has received Notice of Decision of Adverse Action by the Review Panel may request an appeal by submitting a written Request for Discretionary Appeal to DANB, along with a payment of the Appeal Administrative Fee in the form of a check or money order for \$100.00 made payable to DANB. To be valid, the Request for Discretionary Appeal must be received within thirty (30) calendar days after the date of the Notice of Decision.

**If a Request for Discretionary Appeal is not received within thirty (30) calendar days of the date of the notice of the decision, the decision of the Review Panel shall constitute the final decision of DANB on the matter and shall not be subject to appeal absent extraordinary circumstances, as determined solely by DANB.**

#### **B. Acceptable Grounds for Discretionary Appeal**

The following will be the only grounds considered for granting a Discretionary Appeal:

- (1) The Respondent provides evidence that the Review Panel committed a procedural error that materially affected the outcome of the disciplinary review process.
- (2) The Respondent provides evidence that the sanctions imposed by the Review Panel are arbitrary and capricious.

#### **C. Appeal Committee Composition**

The Appeal Committee shall consist of DANB's Chair, Vice Chair and Secretary. If any of these individuals participated in a prior review of the matter under appeal, then that individual shall not participate in consideration of the appeal, and DANB's Board Chair may appoint any DANB Director who did not participate in a prior review of the matter to replace that individual. If the Board Chair participated in prior consideration of the matter under appeal, DANB's Vice Chair will chair the Appeal Committee.

## **D. Discretionary Appeal Procedures**

### **1. Granting or Denial of Discretionary Appeal Request**

- a. A timely Request for Discretionary Appeal shall be considered by the Chair of the Appeal Committee. If the Chair, in his or her discretion, determines that an Appeal should be granted, the Appeal will be heard by the Appeal Committee at a meeting occurring at the next regularly scheduled meeting of DANB's Board of Directors or, at DANB's discretion, at a special meeting of the Appeal Committee convened for such purpose. If the Chair of the Appeal Committee denies the Respondent's Request for Discretionary Appeal, the Appeal Administrative Fee shall be refunded to the Respondent in its entirety within thirty (30) calendar days of receipt.

### **2. Appeal Process**

- a. The Appeal Committee shall consider the Review Record, the Notice of Decision and the Respondent's written Request for Discretionary Appeal. The Appeal Committee also shall receive and review a statement from the Chair of the Review Panel that took the adverse disciplinary action, which will include the grounds for disciplinary action, the sanction(s) imposed and the rationale for these sanctions. The foregoing shall constitute the Appeal Record. There shall be no telephonic or in-person appearance before the Appeal Committee.
- b. The Respondent may request consideration of evidence, documentation or written testimony not previously submitted to the Review Panel only if he or she can demonstrate that such evidence, documentation or written testimony was not available at the time that the Review Panel considered the matter. If the Appeal Committee grants the Respondent's request to submit new evidence, the matter will be referred back to the Review Panel for reconsideration.
- c. If the Appeal is being considered due to an alleged procedural error made by the Review Panel, the matter will be referred back to the Review Panel for reconsideration.
- d. If the Appeal is being requested due both to an alleged procedural error and to an allegation that the original decision was arbitrary and capricious, the matter will first be referred back to the Review Panel for reconsideration and correction of the procedural error and the Respondent will be notified of the Review Panel's determination. If the Respondent continues to believe that the Review Panel's determination is arbitrary and capricious, the Respondent may, within 30 days following receipt of notice of the Review Panel's determination, submit a written request that the Appeal Committee review the Review Panel's decision on these grounds.
- e. A record of the Appeal Committee meeting shall be kept. A copy of the Appeal Committee meeting record shall be made available to the Respondent upon payment of the cost of reproduction.
- f. The Appeal Committee shall carefully consider all of the information presented in the Appeal Record. After due and thorough deliberation and upon the affirmative vote of a majority of the Appeal Committee, the Appeal Committee shall determine whether to ratify, reverse or modify the Review Panel's decision or whether to refer the matter back to the Review Panel for reconsideration.
- g. If the Appeal Committee reverses the decision of the Review Panel, the Appeal Committee shall determine whether to refund the Appeal Administrative Fee to the Respondent.

### **3. Notification of Appeal Committee's Determination**

The Respondent shall be notified in writing of the Appeal Committee's Determination, including the reasons therefor, within thirty (30) calendar days after the Appeal Committee reaches its decision.

**A DECISION BY THE APPEAL COMMITTEE TO RATIFY, REVERSE OR MODIFY AN ADVERSE DECISION SHALL CONSTITUTE THE FINAL DECISION OF DANB ON THE MATTER AND SHALL NOT BE SUBJECT TO FURTHER APPEAL.**

## **IV. ACTION ON FINAL DECISIONS**

### **A. Public Notice of Final Decisions**

After a final adverse disciplinary decision has been reached, DANB will publish the findings and disciplinary action taken in DANB's *Certified Press* and/or on DANB's Internet website. In addition, DANB may notify interested parties of the adverse disciplinary decision and the underlying facts thereof as deemed appropriate by DANB. Such notification may be given to dental regulatory boards, dental associations, dental assisting associations, the Respondent's employer, the federal government and other interested parties, as determined by DANB.

### **B. Application for Restoration of Non-Conditional Status, Eligibility, Certification or Recertification Following Disciplinary Action**

1. A Respondent whose status is conditional, or whose eligibility, certification or recertification has been non-permanently denied or revoked by DANB based on a legal, regulatory or credentialing action, as described in Section I.C. of this policy, may reapply to DANB when the situation underlying DANB's decision has been remedied. Unless the Review Panel grants an exception, if the decision was based on conviction of or pleading no contest to a felony, the individual may not apply for examination or certification until all sentences have been served and unless all judgments have been satisfied. If the decision was based on revocation of licensure or authorization to practice, the individual may not apply for examination or certification until the situation *underlying* the licensure or authorization revocation has been remedied to DANB's satisfaction and the license or authorization is eligible for restoration, unless this requirement is waived by the Review Panel.
2. A Respondent whose eligibility, certification or recertification has been denied or revoked by DANB for a specified time period for reasons other than legal, regulatory or credentialing action, as described in Section I.C. of this policy, may reapply to DANB following expiration of such time period. At the time of reapplication, the Respondent will be required to demonstrate that the terms of all sanctions imposed by DANB have been fulfilled, including but not limited to payment of any fines and completion of any remedial education course imposed or required by the Review Panel.
3. Applications following denial or revocation of eligibility, certification or recertification shall be considered and acted upon at the sole discretion of DANB.

**C. Responsibility for Notification of Address Change**

DANB Individuals are solely responsible for providing timely notification to DANB of changes of address. If a Respondent does not receive notice(s) from DANB related to disciplinary review or action due to his or her failure to timely notify DANB of a change of address, that lack of notification may not be considered as the basis for an appeal or reconsideration of any decision in the matter.

**V. SUBMISSIONS TO DANB**

Whenever there is a requirement for a written notice, request or other writing to be submitted to DANB, such writing shall be addressed to the following:

Cynthia C. Durley, M.Ed., MBA  
Executive Director  
Dental Assisting National Board, Inc.  
444 N. Michigan Ave., Suite 900  
Chicago, IL 60611  
Tel: 866-357-3262  
Fax: 312-642-8507

All such written notices must be sent by a traceable delivery method, such as FedEx Express delivery or Registered Mail with Return Receipt. Failure of delivery of written communications caused by improper addressing or delivery method may not be considered as the basis for appeal or reconsideration of any decision or the extension of any time period provided for Respondent's reply to a notice from DANB in connection with any disciplinary proceeding.

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The procedures set forth above for the review and appeal of disciplinary matters may be subject to an expedited schedule when deemed necessary by DANB.

Last revised: February 2011