

Transportation Professional Certification Board

Procedure for Disciplinary Cases

DISCIPLINARY CASES

- A. Disciplinary cases shall be referred to only by a number during their processing and the name of the Certificant accused will not be revealed until the Transportation Professional Certification Board (TPCB) Directors vote to so reveal the name of the Certificant accused.
- B. Disciplinary hearings will be conducted in accordance with the following procedure:

- 1. Initiation of Proceedings

A disciplinary case against a TPCB Certificant may originate by information or evidence of misconduct coming in writing from a recognized source to the TPCB Board or from information received by the TPCB Board from one of its Board members or staff based on documented evidence obtained from due diligence of the monitoring of certificants. The TPCB Board shall review the initial communication of alleged misconduct and shall determine if the complaint on its face provides sufficient information to warrant investigation. If the complaint is deemed sufficient, the chair of the TPCB Board shall appoint a Committee on Disciplinary Review to proceed with the investigation of the charges.

Concurrent with the appointment of such a committee, the TPCB Board shall direct the TPCB Executive Director to proceed with the following:

- a. Notify the accused Certificant(s) formally in writing that a complaint has been filed against him/her. This notification shall contain the specific charges filed, a detailed listing of the procedures to be followed during the course of the investigation, and the names of the members of the Committee on Disciplinary Review. Additionally, the accused Certificants shall be informed of their right to receive copies of all pertinent documents connected with the inquiry and of their right to have their attorneys represent them during the course of the investigation. The accused Certificants also shall be informed that any charge brought against them as a result of the investigation shall be brought by the TPCB and not by the original complainant.
- b. Notify the complainant formally in writing that the TPCB Board has found that the complaint is sufficient to warrant further investigation and that the Committee on Disciplinary Review has been appointed to proceed with such investigation.

- 2. Reference to Committee on Disciplinary Review

- a. Any complaint or written request alleging misconduct or any information indicating possible misconduct, shall, after the TPCB Board has determined that the allegations as stated warrant further inquiry, be referred to a Committee on Disciplinary Review (CDR), appointed by the Chair of the TPCB for the case.

The CDR shall consist of no less than 3 TPCB certificants whose professional qualifications and reputation indicate sufficient familiarity with the area of inquiry to enable them to expeditiously and fairly proceed with the investigation of the case. At least one of the CDR committee members shall be a TPCB Board member. The committee may be comprised of all TPCB Board members or a combination of TPCB Board members and Certificants of the same Certification program. The members of the CDR shall be impartial with regard to the member under investigation.

3. Investigation

When, in the opinion of the CDR, the charges or evidence of misconduct merit such attention, the CDR shall conduct such investigation as may be necessary to ascertain the facts. One or more of the following means of investigation may be employed, but in any event, discretion shall be practiced to the end that publicity or unnecessary discussion of the case shall be avoided. Investigation may be made by:

- a. Any members or subcommittee of the CDR, designated by the Chairperson.
- b. The Executive Director.
- d. TPCB legal counsel through the office of the Executive Director.

When considered by the CDR to be advisable, the CDR may interview the principals (plaintiffs or defendants) for discussion of the facts of the case. In lieu of personal interview, written statements may be requested. The CDR shall pursue its investigation until it can reach a firm recommendation for transmittal to the TPCB Board:

- a. When the facts do not support the charges or where the evidence is inconclusive, the CDR may table the matter and recommend to the TPCB Board that the case be dropped. The principals shall be duly notified by the Chair of the TPCB when a case is dropped.
- b. Where the evidence is found to justify disciplinary action, the recommendation to the TPCB Board shall be in the general form: "Charges have been filed (evidence having been submitted to indicate) that ____ has violated the Code of Conduct for certificants of the TPCB. This Committee on Disciplinary Review finds, upon investigation, that Section(s) . . . of the Code of Conduct have been violated.

Based on the facts set forth in the accompanying report, the Committee recommends that the individual be notified of the charges against him/her, and that he/she be invited to present his/her defense either in person or in writing at a forthcoming meeting of the TPCB Board."

The TPCB Board shall order a hearing only after it has considered the facts in the case as ascertained by the CDR. This will ensure that no member will be brought to hearing unless the TPCB Board concurs in the finding of the CDR that the Code of Conduct may have been violated and that disciplinary action may be warranted. In any case, the TPCB Board may direct the CDR to make further investigation.

4. Hearing

The following is the general form of a notice that shall be issued by registered mail at least 30 days before the date of the hearing inviting a TPCB Certificant to answer charges of misconduct:

"A Complaint has been made (information has been received which indicates) that you have violated Section ___ of the Code of Conduct for certificants of the TPCB in your relationship with _____. Investigation discloses that there is factual support of such a charge."

"You are accordingly invited to present a defense, in person or in writing, at the meeting of the TPCB Board at (*place*) on (*date*), and to show why disciplinary action should not be taken. Please advise if you plan to appear in person so that a definite time for your hearing may be scheduled."

The following rules shall govern the conduct of hearings:

- a. Attendance at the hearings shall be limited to members of the TPCB Board, members of the CDR, TPCB Counsel, if invited, the complainants and defendants, and the Executive Director. The defendant may be accompanied by counsel and may present witnesses in the defendant's behalf. Any costs associated with retention of legal counsel by the defendant, participation in the hearings by the defendant, or presentation of witnesses by the defendant shall be the responsibility of the defendant and not the TPCB.
- b. The Executive Director shall keep a complete record of proceedings. If requested, a court reporter will be made available to the defendant at his/her expense.
- c. The hearing may be conducted by the Chair, or at the discretion of the Chair, an unbiased member of the TPCB Board appointed by the Chair.
- d. At least ten days prior to a hearing each member of the TPCB Board and the defendant shall be furnished with copies of the report and recommendation of the CDR together with copies of all pertinent documents or other written evidence in support thereof.
- e. Upon admission to the hearing room by the defendant and his or her counsel (if present), the Chair will make an appropriate statement to open the hearing. Such statement should include assurance to the defendant that the calling of the hearing is in no way a presumption of the defendant's guilt, and also an explanation of the manner in which the hearing will be conducted. Any defendant's witnesses, at the discretion of the Chair, may be asked to wait outside the meeting room until called for testimony to assure impartiality of the testimony.
- f. The hearing agenda should proceed as follows:
 1. The Executive Director will read the charge, as set forth in the notice of the hearing, including the sections of the Code of Conduct that are alleged to have been violated.
 2. The Chairperson of the CDR or the Chairperson's designate if the Chairperson is unable to attend, shall read the case against the defendant. The Chairperson may request the Executive Director to read any written material pertinent thereto. The defendant or the defendant's counsel may question the Chairperson and members of the CDR and any complainants present.
 3. The defendant will be invited to present a defense including witnesses if desired.
 4. The defendant will stand for questions, with all questions to be put by the presiding officer. Questions by members of the TPCB Board or the CDR or the complainants shall be transmitted to the presiding officer in writing.
 5. The presiding officer will receive questions or comments from the defendant or the defendant's counsel. Such questions may be answered by the presiding officer, or answers may be deferred subject to consideration by the TPCB Board in closed session.
- g. All questions or evidence shall be decided by the TPCB Board.
- h. In the event that no defense is presented in person or in writing by the defendant, the TPCB Board may proceed with the hearing of the case upon the basis of the recommendation and report of the CDR and the evidence in support thereof. No disciplinary action shall be taken unless the TPCB Board finds the charges to have been proven. The TPCB Board may take action if the evidence warrants.
- i. So that the defendant is protected from undesirable publicity, all proceedings, except the action taken by the TPCB Board, shall be secret.

5. Disciplinary Action

Disciplinary action against a member shall be taken only after the defendant has been advised of charges and given an opportunity to present a defense in person or in writing. These conditions having been satisfied, the TPCB Board may take action in a duly constituted meeting. All voting shall be by secret ballot.

The following rules shall be observed in such meeting:

- a. Attendance at a meeting in which disciplinary action is considered shall be limited to members of the TPCB Board, the Executive Director and TPCB counsel if invited.
- b. The first ballot shall determine the question of the guilt of the defendant of the charges. Separate ballots shall be voted on each Section of the Code of Conduct, which is alleged to have been violated. A two-thirds vote of the TPCB Board present at the hearing shall prevail.
- c. If a violation of one or more Sections of the Code is not established by a two-thirds vote of the TPCB Board members present at the hearing, the defendant shall be declared "cleared of all charges" and shall be so notified.
- d. If a defendant is found by a two-thirds vote to have acted in violation of one or more sections of the Code, then a ballot shall be taken on the question: "Shall the defendant have his/her certification(s) rescinded in the TPCB?" Affirmative votes of two-thirds members of the TPCB Board members present are required to rescind the certification(s) that the accused has been issued by the TPCB.
- e. If a vote upon expulsion receives fewer affirmative votes than required in Section (d), a ballot shall be taken on the question: "Shall the defendant have the certification that he/she holds suspended by the TPCB?" Affirmative votes of two-thirds of the voting members of the TPCB Board members present are required for suspension.
- f. The vote upon suspension being carried, a ballot shall be taken on the question: "Shall the defendant have the certifications suspended for a period of five years?" An affirmative vote by a simple majority of the TPCB Board members present shall prevail, and successive ballots on suspension terms of four, three, two and one year shall be taken in that order until the required vote is obtained.
- g. If the ballot upon suspension (paragraph "f" above), fails to carry, a vote shall be taken on the question: "Shall the defendant be sent a letter of admonition against future violation of the Code of Conduct?" Affirmative votes by a simple majority of the TPCB Board members present are required to send a letter of admonition.
- h. In the event that, rescission, suspension or admonition of a TPCB Certificant is voted under paragraph "e," "f," or "g," the TPCB Board members present shall ballot on the question: "Shall the certificants of the TPCB be notified of the expulsion, suspension or admonition of the defendant?" A simple majority vote shall prevail.

6. Execution of Disciplinary Action

a. Rescission. The following registered mail notice shall be issued by the Executive Director for the TPCB Board to one who has had the certification rescinded: "As the result of proceedings conducted in accordance with these procedures, this Board finds that you have acted in violation of Section(s) _____ of the Code of Conduct. Your certification(s) issued by the TPCB as a (*name of certificate program*) is/are accordingly rescinded and your name has been dropped from its rolls effective (*date*). It is required that you return your TPCB issued certificate(s) and cease to use any of the TPCB certificate designations."

For the TPCB Board

By: _____
Executive Director

In the event of a rescission and an affirmative vote under Section 5.h., all certificate holders of the TPCB shall be notified by first class mail with distribution limited to individuals in good standing. It shall read as follows:

"Under provisions of Article II, Section 18 of the Constitution, you are hereby notified that he (*name of the certificate program*) certificate issued to (*name of convicted*), has been rescinded by the TPCB for violation of Section(s) _____ of the Code of Conduct for Transportation Engineers. This rescission became effective on (*date*).

For the TPCB Board

By: _____
Executive Director

The name of the individual shall be dropped forthwith from the rolls of the TPCB as directed by the TPCB Board. An expelled Certificant can never be reinstated.

- b. Suspension. A member who has been suspended under these proceedings shall be given notice by registered mail as follows:

"As a result of proceedings conducted in accordance with Article II, Section 18 of the Constitution, the TPCB Board finds that you have acted in violation of Section(s) _____ of the Canons of Ethics. Accordingly, your certificate as a (*name of certificate program*) in the TPCB has been suspended for a period of _____ year(s) effective (*date*)." During the suspension period, you are restricted from displaying or showing your credentials as including the above named certificate(s)."

For the TPCB Board

By: _____
Executive Director

In the event of suspension and an affirmative vote under Section 5.h., all certificate holders of the TPCB shall be notified by first class mail with distribution limited to individuals in good standing. It shall read as follows:

"Under the provisions of Article II, Section 18 of the Constitution, you are hereby notified that the (*name of certificate program*) certificate issued by the TPCB to (*name of suspended*), has been suspended for a period of _____ year(s) for violation of Section(s) _____ of the Canons of Ethics. This suspension became effective on (*date*)."

For the TPCB Board

By: _____
Executive Director

- c. Admonition. An individual who is to be admonished shall be sent by registered mail a letter appropriate to the circumstances of the case. Such letter shall be drafted by the Executive Director for approval by legal counsel. It shall be transmitted for the TPCB Board by the Executive Director. In the event of an admonition and an affirmative vote under Section 5.h., all certificate holders of the TPCB shall be notified by first class mail with distribution limited to individuals in good standing. It shall read as follows:

"Under the provisions of TPCB Code of Conduct, you are hereby notified that (*name of admonished*), has been admonished for violation of Section(s) _____ of the TPCB Code of Conduct. This admonition was voted by the TPCB Board on (*date*)."

For the TPCB Board

By: _____
Executive Director

NOTE: Although the foregoing "Outline of Procedure" is addressed particularly to disciplinary proceedings based upon violations of the Code of Conduct, the rules set forth therein shall, so far as applicable, be followed also in cases involving violations of the TPCB's Procedures.