



# TABLE OF CONTENTS

<b>PREAMBLE .....</b>	<b>1</b>
<b>DEFINITIONS .....</b>	<b>2</b>
<b>PRINCIPLES .....</b>	<b>3</b>
<b>RULES OF PROFESSIONAL CONDUCT .....</b>	<b>4</b>
Section 1 – Relationship with All Parties .....	4
Section 2 – Provision of Services to Individual Clients.....	8
Section 3 – Provision of Services to Organizational Clients .....	10
<b>PROCEDURES FOR PROCESSING COMPLAINTS .....</b>	<b>11</b>
Release of Information .....	11
Statement of Purpose .....	11
Section A – Definitions.....	11
Section B – Professional Conduct Committee Members.....	12
Section C – Professional Conduct Complaints .....	12
Section D – Professional Conduct Hearings .....	14
Section E – Committee Actions and Sanctions .....	17
Section F – Appeals .....	18
Section G – New Evidence .....	19
Section H – Legal Actions Relating to Professional Conduct Complaints .....	19
Section I – Records .....	20
<b>ACKNOWLEDGMENT.....</b>	<b>21</b>



## PREAMBLE

Certified Disability Management Specialists (certificants) recognize that their actions or inactions can either aid or hinder clients in achieving their objectives, and they accept this responsibility as part of their professional obligation. Certificants may be called upon to provide a variety of services and they are obligated to do so in a manner that is consistent with their education, formal training, and work experience. In providing services, certificants must demonstrate their adherence to certain standards. The CDMS Code of Professional Conduct (Code) has been designed to achieve these goals.

The basic objective of the Code is to protect the public interest. Accordingly, the Code consists of two kinds of standards: Principles and Rules of Professional Conduct.

The Principles are fundamental assumptions to guide professional conduct. They are aspirational in nature and their intent is to guide and inspire disability management specialists toward the very highest ethical ideals of the profession. They are not intended to relieve certificants of their obligation to be aware of and follow the applicable laws and regulations that govern their practice.

The Rules of Professional Conduct (RPCs) are divided into three sections:

Section I – Relationship with All Parties

Section II – Provision of Services to Individual Clients

Section III – Provision of Services to Organizational Clients

The fundamental spirit of caring and respect with which the Code is written is based upon five principles of ethical behavior. These include autonomy, beneficence, nonmaleficence, justice, and fidelity, as defined below:

Autonomy: To honor the right to make individual decision.

Beneficence: To do good to others.

Nonmaleficence: To do no harm to others.

Justice: To act or treat justly or fairly.

Fidelity: To adhere to fact or detail.

Special consideration to these principles of ethical behavior must be given because of the unique service provider/individual client relationship, and because the certificant is in a position to potentially impact decisions made in favor or against the individual client.

The primary obligation of the certificant is to exercise independent judgment in offering appropriate recommendations that consider the client's needs and the parameters of the applicable disability management system. Regardless of whether direct client contact occurs or whether indirect services are provided, certificants are obligated to adhere to the Code. The RPCs prescribe the level of professional conduct required of every certificant. These rules shall apply to all modes of communication including, but not limited to, written, oral, electronic, telephonic, and Internet communications. Compliance with this level of conduct is mandatory and will be enforced through the Procedures for Processing Complaints.

A code of professional conduct cannot guarantee ethical behavior. Moreover, a code of professional conduct cannot resolve all ethical issues or disputes or capture the richness of complexity involved in providing professional input within a moral community. Rather, a code of conduct sets forth values, ethical principles, and ethical standards to which professionals aspire and by which their actions can be judged. Disability management specialists' ethical behavior should result from their personal commitment to engage in ethical practice. The Code reflects the commitment of all disability managers to uphold the



profession's values and to act ethically. Principles and rules of conduct must be applied by individuals of integrity who discern moral questions and, in good faith, seek to make reliable ethical judgments.

The CDMS Commission (the Commission) recognizes that many certificants may hold more than one professional license or certification. It is the intent of the Commission that the CDMS Code of Professional Conduct (ethics) which offers the greatest amount of protection for all parties, be in effect at any given time. At the same time, the Commission recognizes that it would not be appropriate to presume to enforce the codes of professional conduct or the code of ethics of any other certifying agency or any legal jurisdiction affecting a certificant. For that reason, the Commission will not review any allegations or violations of codes of ethics or professional conduct of any other certifying agency or legal jurisdiction.

## DEFINITIONS

Throughout this document, and for the purposes of this document, the following words are defined as:

**Certificant:** One who holds an active Certified Disability Management Specialist (CDMS) credential.

**Consultative or indirect services:** Provision of expert or professional information, advice, and/or testimony related to disability management.

**Direct contact:** Any written, oral or electronic communication.

**Direct services:** Provision of disability management services for an individual client or organizational client, not purely consultative in nature.

**Disability management services:** The prevention and minimization of the human and economic impact of illness and disability for the employee/employer to optimize the quality of care, productivity, organizational health, and regulatory compliance. The goal of disability management is to provide necessary services, using appropriate resources in order to promote the ill or injured individual's maximum recovery and function. Disability management services include the following activities: case management; disability assessment and evaluation; return-to-work intervention; labor market analysis; career exploration and counseling; and reporting (plan development and report preparation).

**Electronic technology:** The following kinds of devices and tools about which there is growing concern because of their vulnerability, including but not limited to: laptops; home-based personal computers; PDAs and smartphones; hotel, library or other public workstations and Wireless Access Points (WAPs); USB flash drives and memory cards; CDs; DVDs; backup media; email; smart cards; and remote access devices (including security hardware).

**Expert witness:** A person qualified by education, experience, occupation, present position, degrees held, publications, and professional organization membership that establishes his/her credibility as an expert to give opinions.

**Forensic evaluation:** Acting as an expert on matters to assist the courts, parties to legal matters, attorneys, or agencies, on matters proceeding to adjudication.

**Harm:** A negative consequence to a client as a result of a certificant's failure to adhere to the Principles and RCPs.



**Indirect contact:** Providing disability management services without contact with the client.

**Indirect or consultative services:** Provision of expert or professional advice and/or testimony related to disability management.

**Individual client:** The person for whom a certificant provides direct disability management services.

**Organizational client:** An entity for which a certificant provides disability management services.

**Payor:** The individual who or organization that has the financial obligation to pay for the services provided by the certificant, which may or may not be a third party.

**Records:** Any communication regarding a client, whether written, taped, computerized, or stored in any other medium.

## PRINCIPLES

**Principle 1:** Certificants shall endeavor to place the public interest above their own at all times.

**Principle 2:** Certificants shall respect the integrity and protect the welfare of those persons or groups with whom they are working.

**Principle 3:** Certificants shall always maintain objectivity in their relationships with clients.

**Principle 4:** Certificants shall act with integrity in dealing with other professionals.

**Principle 5:** Certificants shall keep their technical competency at a level that ensures their clients will receive the benefit of the highest quality of service the profession can offer.

**Principle 6:** Certificants shall honor the integrity and respect the limitations placed on the use of the CDMS credential.

**Principle 7:** Certificants shall obey all laws and regulations, avoiding any conduct or activity that could harm others.

**Principle 8:** Certificants shall help maintain the integrity of the CDMS Code of Professional Conduct.



# **RULES OF PROFESSIONAL CONDUCT**

## **SECTION 1 – Relationship with All Parties**

### **RPC 1.01 – Representation of Practice**

Certificants shall practice only within the boundaries of their competence, based on their education, training, appropriate professional experience, and other professional credentials. They shall not misrepresent their role or competence. They shall not attribute the possession of the certification to a depth of knowledge, skills, and professional capabilities greater than those demonstrated by achievement of certification.

### **RPC 1.02 – Representation of Qualifications**

Certificants shall neither claim nor imply professional qualifications that exceed those possessed and shall take all necessary steps to correct any misrepresentation of these qualifications. A certificant who becomes aware of a misstatement of credentials by another certificant shall inform the Commission.

### **RPC 1.03 – Competence**

#### **a. Negligence**

Certificants shall not:

1. handle or neglect a case in such a manner that the certificant's conduct constitutes gross negligence (which for the purpose of this rule shall mean willful, wanton, or reckless disregard of the certificant's obligations and responsibilities).
2. exhibit a pattern of negligence in the handling of the certificant's obligations or responsibilities.

#### **b. Impairment**

Certificants shall refrain from accepting cases and/or providing professional services when their own physical, mental, or emotional impairments are likely to cause harm to a client or others. Certificants are to be alert to the signs of impairment, to seek assistance for problems, and, if necessary, limit, suspend, or terminate their professional responsibilities.

### **RPC 1.04 – Description of Services**

Certificants shall explain services to be provided to the extent necessary to assist the client to make informed decisions, understand the purpose, techniques, rules, procedures, expected outcomes, billing arrangements, and limitations of the services rendered and identify to whom and for what purpose the results of the services will be communicated.

### **RPC 1.05 – Legal Compliance**

Certificants shall be knowledgeable about and act in accordance with federal, state, and local laws and regulations, including procedures related to the scope of their practices regarding client consent, confidentiality, and the release of information.

### **RPC 1.06 – Benefit System Requirements**

Certificants shall work in accordance with the unique requirements of the various reimbursement systems involved.



### **RPC 1.07 – Testimony**

When providing testimony in a judicial or non-judicial forum, certificants shall be impartial and limit testimony to their specific fields of expertise.

### **RPC 1.08 – Objectivity**

Certificants shall maintain objectivity in their professional relationships and shall not impose their values on their clients.

### **RPC 1.09 – Reports**

Certificants shall be accurate, honest, unbiased, and timely in reporting the results of their professional activities to appropriate third parties.

### **RPC 1.10 – Records**

This rule applies only to those records for which certificants have responsibility during the course of their employment or practice.

- a. **Maintenance**  
Certificants shall maintain records necessary for rendering professional services to their clients and as required by applicable laws and/or regulations.
- b. **Storage and Disposal**  
Certificants shall maintain records after the file has been closed for the number of years consistent with jurisdictional requirements or for a longer period during which maintenance of such records is necessary or helpful to provide reasonably anticipated future services to the client. After that time, records shall be destroyed in a manner assuring preservation of confidentiality and as required by applicable laws and/or regulations.
- c. **Confidentiality**  
Certificants shall maintain any and all client records, whether written or recorded using electronic technology or audio/video devices, in a manner designed to ensure confidentiality, taking additional effort to maintain confidentiality as required by applicable laws and/or regulations.
- d. **Security**  
Certificants will use comprehensive and effective security to safeguard confidential information as required by applicable laws and/or regulations.

### **RPC 1.11 – Research**

- a. **Legal Compliance**  
Certificants shall plan, design, conduct, and report research in a manner consistent with the ethical principles of autonomy, beneficence, nonmaleficence, justice, and fidelity, and federal and state laws and regulations, including those governing research with human subjects.
- b. **Subject Confidentiality**  
Certificants who make original data available, report research results, or contribute to research in any other way shall omit the identity of the subjects unless an appropriate authorization has been obtained.



### **RPC 1.12 – Misconduct**

Certificants shall not engage in professional misconduct. It is professional misconduct if the certificant:

- a. knowingly assists or induces another to violate or attempt to violate the Code, or does so through the acts of another;
- b. commits a criminal act that reflects adversely on the certificant's honesty or trustworthiness;
- c. engages in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- d. engages in sexually intimate behavior with an individual client; or
- e. accepts as a client an individual with whom the certificant has been sexually intimate.

### **RPC 1.13 – Human Relations**

#### **a. Discrimination**

Certificants shall:

1. demonstrate respect for clients with diverse populations regardless of age, color, culture, disability, ethnicity, gender, gender identity, race, national origin, religion/spirituality, sexual orientation, marital status/partnership, language preference, or socioeconomic status.
2. develop and adapt interventions and services to incorporate consideration of individual clients' cultural perspectives and recognition of barriers external to clients that may interfere with achieving effective outcomes.
3. not condone or engage in discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

#### **b. Harassment**

Certificants shall not engage in sexual harassment. Sexual harassment is sexual solicitation, physical advance, or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with the certificant's activities or roles as a disability management specialist, and that either (1) is unwelcome, is objectively or subjectively offensive, or creates a hostile environment or (2) is sufficiently severe, persistent or pervasive, or intends to be abusive to a reasonable person in the context. Sexual harassment can consist of a single intense or severe act or multiple persistent or pervasive acts.

Certificants shall not knowingly engage in harassment based on behavior that is harassing or demeaning to persons with whom they interact in their work based on factors such as those persons' age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

### **RPC 1.14 – Conflict of Interest**

Certificants shall fully disclose an actual or potential conflict of interest to all affected parties. If, after full disclosure, an objection is made by any affected party, the certificant shall withdraw from further participation in the case. Certificants shall refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to (1) impair their objectivity, competence, or



effectiveness in performing their functions as disability managers or (2) expose the person or organization with whom the professional relationship exists to harm or exploitation.

#### **RPC 1.15 – Advertising**

Certificants who describe/advertise services shall do so in a manner that accurately informs the public of the services, expertise, and techniques being offered. Descriptions/advertisements by a certificant shall not contain false, inaccurate, misleading, out-of-context, or otherwise deceptive material or statements. If statements from former clients are to be used, the certificant shall have a written, signed, and dated release from the former clients. All advertising shall be factually accurate and shall not contain exaggerated claims as to costs and/or results.

#### **RPC 1.16 – Solicitation**

Certificants shall neither solicit nor accept commissions, rebates, or any form of remuneration for the referral of clients for professional services or goods.

#### **RPC 1.17 – Relationships with Certificants' Employers**

Certificants shall alert their employers to conditions that may be potentially disruptive or damaging to the certificant's professional responsibilities or that may limit their effectiveness. In those instances where certificants believe their employers' policies are in violation of the Code, they shall attempt to affect change through constructive action within the organization. Where such change cannot be affected, certificants shall take appropriate further action, which may include referral to appropriate certification, accreditation, or state licensure organizations for an advisory opinion. Once an opinion has been rendered, however, the certificant's obligation to adhere to the Code continues.

#### **RPC 1.18 – Fees**

Certificants shall advise the payor of their fee structure in advance of rendering any services and shall also furnish, upon request, detailed, accurate records of professional activities.

#### **RPC 1.19 – Complaint Proceedings**

- a. Reporting Misconduct  
Certificants possessing personal knowledge concerning a violation or any perceived violation of the Code by a certificant shall report such information to the Commission.
- b. Compliance with Proceedings  
Certificants shall assist in the process of enforcing the Code by cooperating with investigations, participating in proceedings, and complying with the directives of the Professional Conduct Committee.
- c. Frivolous Complaints  
Certificants shall not initiate, participate in, or encourage the filing of complaints that are malicious, unwarranted, or without a basis in fact.

#### **RPC 1.20 – Use of CDMS Credential**

The Certified Disability Management Specialist (CDMS) is a professional credential, and the initials "CDMS" are personal in nature and may be used only by a current certified individual. The certificant shall not utilize the credential or initials as part of a company, partnership, corporate name, trademark, or logo.



## **RPC 1.21 – Supervision and Consultation**

- a. **Limitations**

A certificants, through ongoing evaluation and appraisal, must be aware of the academic and personal limitation of supervisees that may impede performance. The certificant will assist supervisees to secure remedial assistance when needed and will discontinue supervision of individuals unable to provide competent DM services due to professional, academic, or personal limitations. The certificant will seek professional consultation and supervision themselves and document their decisions to dismiss or refer supervisees for assistance.
- b. **Professional Growth and Development**

As a certificant, professional development and growth is necessary for maintenance and building of professional skills and competencies. A certificant who employs or supervisees other certificants and applicants will encourage and support professional development activities and opportunities as well as conduct timely performance evaluations and consultations as necessary. Certificants will also be aware of their own professional growth and development needs and seek continuing education, training, supervision, and consultation for themselves.
- c. **Supervision of Applicants and Supervisees**

A certificant who is responsible for the supervision of an applicant or another certificant will conduct themselves in a professional manner.
- d. **Supervision Preparation**

A certificant will supervise others only within the boundaries of their competence, based on their education, training, professional experience, and credentials.
- e. **Ethical Practice**

When a certificant has reason to believe that he/she is faced with an ethical dilemma, they are required to seek out peer-to-peer consultation.
- f. **Endorsement**

A certificant will not endorse an applicant or supervisee for certification, licensure, or employment if they believe that the applicant or supervisee is not qualified for the endorsement. A certificant will take appropriate steps to assist applicants and supervisees who are not qualified for endorsement to become qualified.

## **SECTION 2 – Provision of Services to Individual Clients**

### **RPC 2.01 – Dual Relationships**

All dual relationships must be disclosed. Certificants who provide services to an individual client at the request of a third-party payor shall disclose the nature of their dual relationship by describing their role and responsibilities to each party involved in the dual relationship. Dual relationships, other than payor/client, include but are not limited to familial, social, financial, business, close personal relationships with individual clients, or volunteer or paid work within an office in which the client is actively receiving services.

### **RPC 2.02 – Business Relationships with Clients**

Certificants shall not enter into a commercial enterprise with any individual client.



### **RPC 2.03 – Confidentiality**

- a. Disclosure  
Certificants shall inform the individual client at the outset of the certificant-client relationship that any information obtained through the relationship may be disclosed to third parties. Disclosure of information shall be limited to what is necessary and relevant, expect that the certificant must reveal information to appropriate authorities, as soon as and to the extent that the certificant reasonably believes necessary, to prevent the individual client from (1) committing acts likely to result in bodily harm or imminent danger to the individual client or others or (2) committing criminal, illegal, or fraudulent acts.
- b. Recording  
Certificants shall obtain permission from individual clients prior to electronically recording a client.
- c. Contagious, Fatal Diseases  
Certificants shall be aware of and follow the applicable legal requirements for disclosure of contagious and fatal diseases.
- d. Client Identity  
Certificants shall omit the identity of the individual client when using data for training, research, publication, and/or marketing unless a written release is obtained from the individual client.
- e. Technology  
It is recommended that certificants utilize the most recent security available for all technology used.
- f. Transmitting Confidential Information  
Certificants shall take precautions by using the most current security measures available to ensure the confidentiality of information transmitted through the use of telecommunication and electronic technologies. A recommended practice would be to limit transmissions to general communications that are not client specific, and/or use non-descript language.

### **RPC 2.04 – Interruption of Services**

Certificants shall make reasonable efforts to ensure continuity of services in the event that services are interrupted by factors such as unavailability, relocation, illness, disability, or death of any party involved in the case.

### **RPC 2.05 – Termination of Services**

Certificants shall terminate disability management services to individual clients when such services are no longer required, no longer serve the individual client's needs or interests, or when requested by the organizational client/payor. When requested in writing by the organizational client/payor to remain working on an individual client's case by providing indirect services, certificants will notify all relevant parties in writing of their continuation of work on the case. Certificants in fee-for-service relationships may also terminate services with clients due to nonpayment of fees under the following conditions: (1) the client was informed of payment responsibilities and the effects of nonpayment or the termination of payment by a third party and (2) the client poses an imminent danger to self or others. As appropriate, certificants shall refer clients to another qualified professional to address issues unresolved at the time of termination.



## **SECTION 3 – Provision of Services to Organizational Clients**

### **RPC 3.01 – Forensic Evaluation**

When providing forensic evaluations for an individual or organization, the primary obligation of certificants shall be to produce objective findings and opinions that can be substantiated based on information and techniques appropriate to the evaluation, and as required by applicable case law within the appropriate jurisdiction, which may include assessment of the individual and/or review of records. Certificants shall define the limits of their reports or testimony, especially when an assessment of the individual has not been conducted.

### **RPC 3.02 – Indirect Service Provision**

Certificants who are employed by third parties as case consultants or expert witnesses and who engage in communication with the individual client shall fully disclose to the client and/or his or her designee their role and limits of their relationship. Communication includes all forms of written or oral interactions regardless of the type of communication tool used. When there is no pretense or intent to provide disability management services directly to an individual client, and where there will be no communication, disclosure by the certificant is not required. When serving as case consultants or expert witnesses, certificants shall provide unbiased, objective opinions.



# PROCEDURES FOR PROCESSING COMPLAINTS

## Release of Information

Clients of any certificant (as defined below) who choose to file a complaint against such certificant under these Procedures for Processing Complaints will be required to grant permission to the certificant to release all records of interactions between such complainant and the certificant to the Committee (as defined below) and to answer all questions the Committee may ask concerning those interactions. Thus, the entire contents of such individual's file, including documents from other service providers, may become part of the evidence. Furthermore, the complainant will be required to grant permission to allow the Committee to send copies of any materials submitted in conjunction with the complaint to the certificant.

Individuals who file a complaint but are not the client and yet use client information to support their claim, must obtain written permission from the client to submit the information, or must remove all identifying information from the materials submitted in conjunction with the complaint.

## Statement of Purpose

1. The Certification of Disability Management Specialists Commission is dedicated to promoting the certification of professional disability managers through credentialing to advance the quality of service provided to clients.
2. The Commission, in furthering its objectives and through the Professional Conduct Committee, administers the Code that has been developed and approved by the Commission. The intent of the Commission is to monitor the professional conduct of its certificants to promote sound ethical practices. The Commission does not, however, warrant the performance of any individual.
3. These Procedures for Processing Complaints facilitate the work of the Professional Conduct Committee by specifying procedures for (a) processing cases of alleged violation of the Code, (b) sanctioning certificants, and (c) appeals.

## SECTION A – Definitions

**Certificant:** As used in these Procedures only, the “certificant” will refer to the CDMS who is alleged to have violated the Code.

**Code:** The CDMS Code of Professional Conduct.

**CDMS Commission:** The Certification of Disability Management Specialists Commission.

**Committee:** The Professional Conduct Committee.

**CDMS:** Certified Disability Management Specialist.

**Procedures:** These Procedures for Processing Complaints.



## SECTION B – Executive Committee Members

1. **Membership** – The Executive Committee is a standing Committee of the CDMS Commission (the Commission) consisting of four (4) members of the Commission.
2. **Meetings** – The Committee may meet in person or by telephone conference a minimum of four (4) times per year.
3. **Quorum** – A quorum of three (3) members of the Committee is necessary to conduct a hearing or any other business to come before the Committee.
4. **Recusal** – In the event any member of the Committee has a personal interest in the case or has any knowledge of the facts of the case other than what has been provided to all Committee members, he/she will withdraw from hearing the case. In the event that the Commission Chair of the Committee will withdraw, the Chair will appoint another Committee member as Acting Chair.
5. **Replacements** – If a Committee member excuses himself/herself from a complaint and insufficient members are available to conduct business, the Chair of the Commission will appoint a former CDMS Commissioner, who is a certificant, to act as a member of the Committee.
6. **General Responsibilities related to Professional Conduct** – The Committee is responsible for (a) educating certificants and the general public as to the provisions of the Code; (b) periodically reviewing and recommending changes in the Code, including these Procedures; (c) receiving and processing complaints of alleged violations of the Code; and (d) receiving and processing questions with respect to the Code. The Committee members have an obligation to act in an unbiased manner, to work expeditiously, to safeguard the confidentiality of the Committee’s activities, and to follow procedures established to protect the rights of all individuals involved.
7. **Jurisdiction** – The Committee has jurisdiction to consider whether an individual has violated the Code if the individual is a current certificant. In the event that the Commission receives a complaint concerning an individual who does not possess a CDMS credential, a representative of the Commission will inform the complainant and may refer the complainant to an appropriate authority. Should a certificant attempt to relinquish certification during the course of any case, the Commission reserves the right to continue the matter for a final and binding resolution according to these rules.

## SECTION C – Professional Conduct Complaints

1. **Persons Who May File** – The Committee will accept complaints that a certificant has violated one or more Rules of the Code from the following:
  - a. Certificants or members of the general public who have reason to believe that a certificant has violated the Code.
  - b. The Committee Chair, when the Committee has reason to believe through reliable information received or obtained by it that a certificant has violated the Code.
2. **Complaints** – The Committee will accept only signed, written complaints on the CDMS Complaint Form, available on the website at [www.CDMS.org](http://www.CDMS.org). If telephone inquiries from individuals are received regarding the filing of complaints, the individuals calling will be informed of the signed, written communication requirement and asked to comply. Complainants should provide supporting documentation related to their complaint for the



committee's consideration. If applicable, court testimony submitted as part of a complaint must be in the form of an official transcript of the proceedings.

3. **Correspondence on Complaints** – All correspondence related to a complaint must be in writing and addressed to the Executive Committee, CDMS Commission, 4700 W. Lake Avenue, Glenview, IL 60025, and must be marked “Confidential.” This process is necessary to protect the confidentiality of the complainant and the certificant.
4. **Duties of a CDMS** – All certificants are pledged, in accordance with the Code, to cooperate with proceedings of the Commission for any alleged violation of the Code.
5. **Timelines** – The timelines set forth in these standards are guidelines only and have been established to provide a reasonable framework for processing complaints. The Committee will grant an extension of a deadline requested by a certificant or complainant only when justified by unusual circumstances. The Committee may, at its discretion, delay or postpone its review of any case.
6. **Administration of Complaints** – The responsibilities of the Committee with respect to professional conduct complaints will include but not be limited to the following:

Review complaints that have been received;

  - a. Determine whether the alleged behavior, if true, would violate the RCPs, and whether the Committee should accept the complaint under these Procedures;
  - b. If the Committee determines that the complaint contains insufficient information to make a fair determination of whether the behavior alleged in the complaint would be cause for action by the Committee, the Committee may request further written information from the complainant or other person;
  - c. Notify the complainant that the Committee has determined that no action will be taken; or, if action is to be taken, notify the complainant and the certificant of acceptance of the complaint; and
  - d. When appropriate, the Committee will arrange for legal advice with the assistance of the Commission Executive Director.
7. **Withdrawal of Complaints** – If the certificant voluntarily relinquishes certification or if the certificant or complainant fails to cooperate with an ethical inquiry in any way, the Commission may, at its discretion, continue its investigation, noting in its final report the circumstances of the certificant's or complainant's failure to cooperate. The Committee, in its sole discretion, may terminate the complaint of an uncooperative complainant. Even if the complainant and certificant agree to discontinue the complaint process, the Committee may, at its discretion, complete the adjudication process if available evidence indicates that this is warranted.



8. **Certificant Response** – If a complaint is accepted, the certificant will be asked to respond in writing to the complaint against him/her, addressing each of the following:
  - a. Acknowledge the section of the Code that he/she has been accused of having violated; and
  - b. Submit any fact affidavits, documents, or written arguments that he/she wishes to be considered by the Committee in reviewing the complaint.

The certificant will be informed, by certified and regular mail, that if he/she wants to respond, he/she must do so in writing within thirty (30) days from the date of notification. If a certificant fails to respond in writing to a request from the Committee, the Committee may impose sanctions on the basis of the complaint alone. Should the Committee request further information from the certificant, the certificant will be given thirty (30) days from the date of the request to respond.

9. **Preliminary Disposition of Complaint** – After receiving the response of the certificant, Committee members will be provided copies of the response and supporting fact affidavits, documents, or written arguments provided by the certificant and others. At the next meeting or teleconference of the Committee, the Committee will discuss the complaint, response, and any supporting documentation. On the basis of the complaint and the certificant’s response, the Committee must act as follows:
  - a. If no violation is found, the case will be closed and all parties will be notified of case closure in writing; or
  - b. If reasonable basis is found to exist for any violation alleged in the complaint, all parties will be notified in writing. Upon a finding of reasonable basis, the certificant may make a written request for a hearing before the Committee or the Committee, in its discretion, may initiate a hearing.

## SECTION D – Professional Conduct Hearings

1. **Initiation** – If a hearing has been requested by the certificant or initiated by the Committee, the Chair will schedule a hearing on the case and notify the complainant and the certificant, by certified and regular mail, of their right to attend the hearing with legal counsel. The hearing will be held before the Committee.
2. **Purpose**
  - a. A hearing will be conducted to determine whether a violation of the Code has occurred and, if so, to determine appropriate disciplinary action.
  - b. The Committee will be guided in its deliberations by principles of basic fairness and professionalism, and will keep its deliberations as confidential as possible, except as provided herein.
3. **Notice to Parties** – The Chair will advise the certificant or his/her legal counsel and the complainant, by certified and regular mail, of the time and place for the hearing.



#### 4. Conduct of Hearing

- a. The location of the hearing will be determined at the discretion of the Committee. Parties to the complaint, including witnesses, may participate in person or by telephone. The Committee will provide a private room to conduct the hearing and no observers, other than appropriate Commission staff, or recording devices other than a recording device used by the Committee, will be permitted.
- b. The Chair administering the complaint will preside over the hearing and deliberations of the Committee. At the conclusion of the hearing and deliberations of the Committee, the Commission will promptly issue written notice to the certificant of the Committee's decision. The Commission will also notify the complainant in writing of the disposition of the complaint.
- c. A record of the hearing will be made and preserved until all appeals are completed or the appeals period has expired. The record will consist of a summary of testimony received or a verbatim transcript, at the discretion of the Committee. Documents presented in evidence will be retained, at the Commission's administrative office, as set forth in Section I below.
- d. The certificant and the complainant will be entitled to have legal counsel or a representative present to advise and represent them throughout the hearing. Legal counsel for the Commission may also be present at the hearing to advise the Committee and will have the privilege of the floor.
- e. Either party will have the right to call witnesses to substantiate his/her version of the case.
- f. The Committee will have the right to call witnesses it believes may provide further insight into the matter.
- g. Witnesses will not be present during the hearing except when they are called upon to testify and will be excused upon completion of their testimony and any cross-examination.
- h. The Chair will allow questions to be asked of any witness by members of the Committee and, at its discretion, by the opposition if such questions and testimony are relevant to the issues in the case.
- i. The Chair will determine what questions and testimony are relevant to the case. Should the hearing be subject to irrelevant testimony, the Chair may call a brief recess until order can be restored.
- j. Both the complainant and the certificant, and any witnesses and legal counsel that they may have must pay their own expenses. The Commission will pay the expenses of the Committee members. Parties initiating telephone contact will assume the expenses related to the calls.
- k. If the certificant fails to appear at or participate in the hearing, the Committee will decide the complaint and determine what testimony it will hear on record. Failure of the certificant to participate in the hearing will not be viewed by the Committee as sufficient grounds alone for taking disciplinary action.



## 5. Presentation of Evidence

- a. The Standard Order of Testimony for Commission Hearings will be as follows, as applicable:

<u>Activity</u>	<u>Time</u>
Convening of Hearing	
Opening Statement by Chair	
Opening Statement by Certificant's Attorney or Certificant	10 Minutes
Testimony from Complainant	20 Minutes
Questioning of Complainant by Committee & Commission Attorney	
Questioning of Complainant by Certificant's Attorney or Certificant	15 Minutes
Testimony from Complainant's Witnesses	30 Minutes
Questioning of Complainant's Witnesses by Committee & Commission Attorney	
Testimony from Certificant	20 Minutes
Questioning of Certificant by Committee & Commission Attorney	
Questioning of Certificant by Complainant's Attorney or Complainant	15 Minutes
Testimony from Certificant's Witnesses	30 Minutes
Questioning of Certificant's Witnesses by Committee & Commission Attorney	
Closing Statement from Certificant's Attorney or Certificant	5 Minutes
Conclusion of Hearing	

- b. The Chair will have the authority to modify the Standard Order of Testimony for any hearing, in the event the Chair deems it necessary or appropriate.
- c. The certificant may refuse to testify at a hearing and will not be found in violation of the Code simply for refusing to testify. Once the certificant chooses to testify, however, he/she may be questioned by the complainant and members of the Committee, subject to the constitutional rights of the certificant.
- d. Testimony that is merely cumulative or repetitious may, at the discretion of the Chair, be excluded.
- e. All parties providing testimony will be required to attest to the veracity of their statements.
- f. Any written documentation submitted by the parties in connection with a hearing after the deadlines determined by the Committee may, at the Committee's discretion, be excluded or receive limited consideration.

## 6. Relevancy of Evidence

- a. The Committee hearing is not a court of law and is not required to observe formal rules of evidence. Evidence that would be inadmissible in a court of law may be admissible in the hearing before the Committee, if it is relevant to the case. Therefore, if the evidence offered tends to explain, clarify, or refute any of the important facts of the case, it should be considered.
- b. The Committee will not consider evidence or testimony for the purpose of supporting any charge that was not set forth in the notice of the hearing or that is not relevant to the issues of the case.



## 7. **Burden of Proof**

- a. The burden of proving a violation of the Code is on the complainant.
- b. Although the charge(s) need not be proved “beyond a reasonable doubt,” a Committee finding that a certificant has violated the Code must be supported by substantial, objective, and believable evidence.

## 8. **Deliberations of the Committee**

- a. After the hearing is completed, the Committee will meet in a closed session to review the evidence presented and reach a conclusion. The Commission legal counsel may attend the closed session to advise the Committee if the Committee so desires.
- b. The Committee will be the sole judge of the facts and will weigh the evidence presented and assess the credibility of the witnesses. The decision of a majority of the members of the Committee present will be the decision of the Committee and the Commission. The Chair will vote only to break a tie or when the Committee consists of three members.
- c. Only members of the Committee who were present throughout the entire hearing will be eligible to vote.

## 9. **Committee Decisions**

- a. The Committee will first resolve the issue of whether the certificant violated the Code. Applying the burden of proof in Subsection 7 above, the Committee will vote by secret ballot, unless all of the members of the Committee entitled to vote consent to an oral vote.
- b. In the event the Committee does not find that the certificant has violated the Code, the charges will be dismissed. If the Committee finds the certificant has violated the Code, it must then determine what actions or sanctions will be imposed.

# **SECTION E – Committee Actions and Sanctions**

## 1. **Permissible Actions and Sanctions**

- a. **Letter of Instruction:** In the event it is determined that the Code has been violated, the Committee will consider the degree of harm and significant mitigating circumstances and may issue a letter of instruction, by certified and regular mail, which is not a sanction.
- b. **Sanctions:** In the event it is determined that the Code has been violated, and a letter of instruction is not appropriate, the Committee will impose one or a combination of the possible sanctions that follow:
  - i. **Reprimand.** The Committee may stipulate remedial requirements.
  - ii. **Probation** for a specified period of time subject to Committee review of compliance. The Committee may impose remedial requirements to be completed within a specified period of time.



- iii. Suspension from CDMS certification for a specified period of time subject to Committee review of compliance. The Committee may impose remedial requirements to be completed within a specified period of time.
- iv. Revocation of CDMS certification.
- c. The penalty for failing to fulfill, in a satisfactory manner, a remedial requirement imposed by the Committee as a result of a sanction will be automatic revocation unless the Committee determines that the remedial requirement should be modified based on good cause.

## 2. **Notification of Sanctions**

- a. The certificant will be given written notice within thirty days (30) of Committee decisions regarding complaints against him/her. All mailings from the Committee will be sent by regular and certified mail.
- b. The complainant will be given written notice of Committee decisions regarding his/her complaint after the time for appeal has expired.
- c. If a sanction has been issued, appropriate licensure, certification, or registry boards; other mental health licensure, certification, or registry boards; voluntary national certification boards; and appropriate professional associations will also be notified of the results.
- d. If a violation has been found and the certificant's CDMS certification has been suspended or revoked, a notice of the Committee action that includes the section(s) of the Code that were found to have been violated and the sanctions imposed will be published in the Commission newsletter.

## **SECTION F – Appeals**

1. **Basis of Appeals** – Decisions of the Committee that a certificant has violated the Code may be appealed by the certificant found to have been in violation based on one or more of the following grounds:
  - a. The Committee violated its policies and procedures for processing complaints of ethical violations; and/or
  - b. The decision of the Committee was arbitrary and capricious and was not supported by the materials and testimony presented by the complainant and the certificant.
2. **Limitation of Appeals** – After the certificant has received notification that he/she has been found in violation of one or more sections of the Code, he/she will be given thirty (30) days from the date such written notification is sent to notify the Committee in writing via certified mail that he/she is appealing the decision.
3. **Form of Appeal** – An appeal must be in writing stating one or more of the grounds of appeal listed in Subsection F.1(a) or (b) above, and the reasons for the appeal.



4. **Appeals Panel** – The Commission Chair will appoint a three (3) person appeals panel consisting of at least one (1) former Commission member, who is currently a certificant, with the balance being certificants, none of whom served on the Committee at the time the original decision was rendered. The Commission’s attorney will serve as legal advisor and have the privilege of the floor.
5. **Standard of Review** – The three (3) member appeals panel will be given copies of the materials available to the Committee when it made its decision, a copy of the hearing transcript if a hearing was held, a copy of the Committee’s decision and a copy of the letter filed by the appealing certificant. The appeals panel will not accept new evidence, but will review the complaint only on the basis of the existing record.
6. **Decision of Appeal** – The decision of a majority of the members of the appeals panel will be the final decision. The decision will be rendered within a reasonable period of time. The decision of the appeals panel may include one of the following:
  - a. The decision of the Committee is upheld.
  - b. The decision of the Committee is reversed and/or remanded with guidance to the Committee for a new hearing. The reason for this action will be given in detail to the Committee in writing.

When a Committee decision is reversed and/or remanded, the complainant and the certificant will be informed in writing and additional information may be requested. The Committee will then render another decision after further hearing. A decision of the appeals panel to uphold the Committee decision is final.

## **SECTION G – New Evidence**

In the event substantial new evidence, which was not available to the certificant at the time of the hearing, is presented in a case where a final decision has been rendered, the Committee may reopen the case, if deemed appropriate by the Committee. The Committee will consider substantial new evidence and, if it is found to be substantiated and capable of exonerating a certificant originally found to have violated the Code, the Committee will reopen the case and proceed with the entire complaint process again.

## **SECTION H – Legal Actions Relating to Professional Conduct Complaints**

1. All parties to a complaint are required to notify the Committee if they learn of any type of legal action (civil, criminal, or administrative) being filed in relation to the complaint.
2. In the event any type of legal action is filed regarding an accepted complaint, all actions related to the complaint may, at the discretion of the Committee, be stayed until the legal action has been concluded.
3. If actions to a complaint are stayed, the complainant and the certificant will be notified in writing.
4. When actions on a complaint are continued after a legal action is concluded, the complainant and the certificant will be notified in writing.



## SECTION I – Records

1. The records of the Committee regarding complaints are confidential except as provided herein.
  - a. All information concerning complaints against certificants will be confidential except that the Committee may disclose such information when compelled by a validly issued subpoena or when otherwise required by law or valid court order.
  - b. Nothing in this Section will be construed to prevent the Committee from communicating with the complainant, witnesses, potential members of fact-finding committees, or other sources of information necessary to enable the Committee to carry out its function, nor to prevent the notice of sanctions described in Subsection E.2 above.
2. Original copies of complaint records will be maintained in files at the Commission administrative office or at an off-site location chosen by the Commission for a specified period of time as listed below:
  - a. Files of Sanctions or Letters of Instruction – In cases where the Committee has found an ethical violation and imposed any sanction or Letter of Instruction, a copy of the Committee’s decision will be maintained indefinitely. A copy of the entire record on such matter will be maintained for not less than five (5) years after the Committee closed the case.
  - b. Files for Non-Violations – Except for those cases closed for insufficient evidence, personally identifiable information concerning a certificant who has been found not to have violated the Code will be maintained for not less than one (1) year after the Committee has closed the case.
  - c. Files for Insufficient Information – In cases where the Committee has closed a case due to evidence insufficient to sustain a complaint of ethical violation, records containing personally identifiable information will be maintained for not less than one (1) year after the Committee has closed the case.
  - d. Files After Death – All records containing personally identifiable information will be destroyed one (1) year after the Commission is notified of the death of the certificant.
  - e. Records for Education Purposes – Nothing in this Section will preclude the Committee from maintaining records in a form that prevents identification of the certificant so that it may be used for archival, educational, or other legitimate purposes.
3. Members of the Committee will keep copies of complaint records confidential and will destroy copies of their records relating to a complaint on the sooner of the date the time for appeal has expired or the date the member is no longer a member of the Committee.



## ACKNOWLEDGMENT

The CDMS Commission wishes to thank the ACA for granting permission to adopt its Guidelines and Procedures for Ethical Complaints.

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