

Section 5: SOMB Disciplinary and Complaint Procedures

I. CERTIFICATION DENIAL, SUSPENSION, REVOCATION, RESTRICTION OR MONITORING

The SOMB may deny, suspend, revoke, restrict or otherwise monitor certification of an applicant or a person who is currently certified by the SOMB for any of the following reasons.

A. Grounds for Denial, Suspension, Revocation, Restriction or Other Monitoring of Certificate.

- a. Failure to meet or maintain the minimum eligibility criteria and qualifications for certification established by law or rule adopted by the SOMB;
- b. Falsification of any information or documentation, or concealing a material fact in the application for (re)certification, or during any investigation or quality assurance review;
- c. Misrepresentation of current level/designation of certification, or practicing outside the scope of current level/designation of certification;
- d. Failure to comply with Section 18-8316, Idaho Code, the Rules of the Sex Offender Management Board (IDAPA 57.01.01), or the standards adopted by the SOMB;
- e. Failure to demonstrate an understanding of counter-transference issues and a broad knowledge of sexuality in the general populations, and basic theories and typologies of sex offenders and sexual assault victims;
- f. Failure or refusal to comply with the quality assurance review process or to cooperate during any investigation concerning certification, or otherwise interfering with the quality assurance review or investigative processes, which includes the failure or refusal to provide data, information or records as requested by the SOMB or designee;
- g. Failure to comply with any Final order issued by the SOMB, informal disciplinary measures, or remedial steps or corrective action ordered by the SOMB as a condition of continued certification, including practicing on a suspended or restricted certification;
- h. Engaging in conduct that departs from the SOMB Standards;
- i. Revocation, suspension, limitation, reprimand, voluntary surrender or any other disciplinary action or proceeding, including investigation against a license, certificate or privilege to practice by a professional licensing board;

- j. Conviction of, or entry of a withheld judgment or plea of *nolo contendere* to, conduct constituting a felony;
- k. Conviction of a crime of moral turpitude; or
- l. Failure to notify the SOMB in writing of any circumstances that affect their eligibility for certification, including any disciplinary action taken against the certification holder by a respective professional licensing board, or conviction of any felony or crime of moral turpitude.

B. Mirroring Orders and Emergency Suspensions.

a. Mirroring Orders.

- i. In the event a state licensing board with authority over a certificate holder's professional license takes action against the certificate holder's professional license in any fashion which suspends, restricts, limits or affects the certificate holder's ability to provide services pursuant to their SOMB certification, the certificate holder shall promptly notify the SOMB of the action.
- ii. Upon notification of such action and receipt of an official order from the professional licensing board, the SOMB shall be authorized to issue its order suspending, restricting, limiting or otherwise affecting the certificate holder's SOMB certification in the same fashion as the professional licensing board action.
- iii. The SOMB order may be issued without further hearing or proceeding, but shall be subject to the effect of any reversal or modification of the professional licensing board action by reason of appeal or rehearing.

b. Emergency Suspension.

- i. Pursuant to Section 67-5247, Idaho Code, if the SOMB finds that public health, safety or welfare requires immediate emergency action the SOMB may take such action necessary to prevent or avoid the immediate danger.
- ii. The SOMB may issue an order suspending a certificate pending formal proceedings for revocation or other action. Such order shall include a brief, reasoned statement justifying the existence of an emergency and the decision to take the specific action. The order will be effective when issued.
- iii. After issuance of an emergency order, the SOMB will immediately initiate the disciplinary process procedures that would have occurred had an emergency not existed.

C. Levels of Discipline.

- a. Formal Discipline. Formal disciplinary action consists of suspension, revocation, or other restrictions. Formal disciplinary actions restrict or otherwise impede a certificate holder's ability to perform sex offender services consistent with their certification level. Formal disciplinary action decisions will be posted on the SOMB website and the central roster, and notification will be made to the courts.
 - i. Suspension. A certificate may be suspended by the SOMB for a period not to exceed one (1) year. During a period of suspension, the certificate holder may not perform post-conviction evaluations, provide specialized sex-offender treatment or conduct post-conviction sex offender polygraphs as provided in Section 18-8314, Idaho Code.
 - ii. Revocation. A certificate may be revoked by the SOMB for a period not to exceed one (1) year. Upon a second or subsequent revocation, a certificate may be revoked for a period not to exceed five (5) years. During a period of revocation, the certificate holder may not perform post-conviction evaluations, provide specialized sex-offender treatment or conduct post-conviction sex offender polygraphs as provided in Section 18-8314, Idaho Code.
 - iii. Restrictions. A certificate may be restricted by requiring that the certificate holder comply with the SOMB's directives. The duration of any restriction placed on a certificate will be established by a specified date, by the performance of a certain remedial or corrective action, or a combination thereof; however the duration of a certificate under restriction should not exceed one (1) year.
- b. Informal Discipline. Informal disciplinary action consists of monitoring a certificate holder or issuing letters of informal reprimand or counseling. Informal disciplinary actions do not restrict or otherwise impede a certificate holder's ability to perform sex offender services consistent with their certification level. Informal disciplinary actions are not public, will not be posted on the SOMB website or central roster, and notification will not be made to the courts.
 - i. Monitoring consists of routinely reviewing a certificate holder's performance to assist the certificate holder with understanding the dynamics of the population served and compliance with the SOMB standards. Monitoring may

- also include recommendations for specialized training or use of a mentor approved by the SOMB.
- ii. Letters of Informal Reprimand or Counseling are used to provide guidance or recommendations to the certificate holder concerning areas for improvement.
 - c. **Withholding Formal Discipline and Probation.** The SOMB may withhold the imposition of any formal discipline and place the certificate holder on a period of probation not to exceed two (2) years. The SOMB may impose any conditions of probation as deemed necessary to ensure compliance with the SOMB standards of practice, including but not limited to attendance at specialized training, review of work product by the SOMB or designee, or supervision by a senior level certificate holder. Failure to comply with a probationary term may result in the imposition of any suspended discipline after a hearing.
 - d. Certificate holders facing formal disciplinary action will have a right to a hearing as provided below. Certificate holders facing informal disciplinary action will not have a right to a hearing, but may face formal disciplinary action for not complying with any informal disciplinary action as agreed to by both parties. Should a certificate holder not agree to the informal disciplinary action recommended by the SOMB, the SOMB reserves the right to initiate formal disciplinary proceedings.
 - e. The SOMB is not authorized to impose civil remedies, such as monetary damages or restitution, to compensate complainants or to resolve fee disputes, which are civil matters.
 - f. The SOMB is not authorized to impose criminal penalties, such as criminal probation or incarceration.

II. DISCIPLINARY PROCESS

The disciplinary process begins upon receipt of information by the SOMB that a certificate holder has violated any of the provisions of Idaho Code, SOMB Rules or SOMB standards.

- A. The disciplinary process may be initiated by the receipt of a written complaint from any person, including any member of the public, a client of the certificate holder, court personnel, and legal representatives. The disciplinary process may also be initiated as a result of a quality assurance review or based upon a review of

information submitted to the SOMB during the certification process, monitoring process or while under formal probation.

B. Process for Submitting Complaints.

- a. All complaints must be in writing and contain the following information:
 - i. The full name and address of the complainant;
 - ii. The name, address and telephone number (if known) of the certificate holder; and
 - iii. A clear and accurate statement of the facts describing the allegations against the certificate holder.
- b. Complaints filed against a person who is not certified by the SOMB at the time of the events contained in the allegation will not be reviewed by the SOMB.
- c. The SOMB will provide written notice to the complainant that the complaint has been received and under review. Notice shall occur within fifteen (15) business days of receiving the complaint.
- d. The identity of the complainant will remain confidential until such time as it is determined that disciplinary action will be taken.
- e. Anonymous complaints will be accepted and reviewed; however, the inability of the SOMB to obtain information to support the allegations will result in the complaint being dismissed.

C. Initial Review.

- a. An initial or preliminary review of any complaint or information received will be conducted by the SOMB coordinator to determine if the SOMB has jurisdiction.
- b. If the SOMB has jurisdiction, the complaint and any supporting information will be routed to the Certification Committee for review to determine if there is a possible violation of the SOMB's rules or standards.
- c. If there is no jurisdiction or if the review does not reveal any possible violations, the case will be closed with a letter sent to the certificate holder and the individual, if any, who filed the complaint.
- d. Any complaints received alleging criminal activity will be referred to the appropriate law enforcement agency.
- e. Any complaints received alleging activity in violation of any professional licensing standards will be referred to the appropriate professional licensing board.

- D. Investigation. If it is determined that the SOMB has jurisdiction and the Certification Committee identifies possible violations exist, an investigation will be conducted by a Certification Committee member(s) or designee.
- a. The certificate holder will be notified in writing that a complaint against them has been received by the SOMB or that the SOMB is in receipt of other information causing concern with the certificate holder's compliance with Idaho Code, SOMB Rules, or the SOMB standards and is under investigation. This notice shall occur within fifteen (15) business days.
 - b. At a minimum, the investigation will consist of gathering relevant documents, meeting with the complainant (if any) and any witnesses, and meeting with the certificate holder.
 - c. A certificate holder is required to participate in the investigative process as a condition of certification.
 - d. The investigative findings will be presented to the SOMB, without revealing the identity of the certificate holder, with recommendations for formal discipline, informal discipline, or closure with no further action. The SOMB will either:
 - i. Approve the recommendations of the investigation;
 - ii. Modify the recommendations of the investigation; or
 - iii. Close the case without further action.
- E. Informal Discipline.
- a. The imposition of informal discipline must be approved by the SOMB.
 - b. Letters of Informal Reprimand or Counseling.
 - i. Letters will be mailed to the certificate holder without consultation with the certificate holder.
 - ii. These letters do not constitute a final order and are not subject to review by the district court.
 - c. Monitoring.
 - i. Upon approval by the SOMB, Certification Committee member(s) or designee will contact the certificate holder to discuss the informal discipline and monitoring being recommended.
 - ii. Any agreement to informal discipline involving monitoring will be reduced to writing and signed by both parties.

- iii. The written informal discipline agreement will be presented to the SOMB for final approval. The final approval by the SOMB does not constitute a final order and is not subject to review by the district court.
- F. Notice of Intent to Take Formal Disciplinary Action (“Notice of Intent”). A Notice of Intent will be issued to inform the certificate holder that the SOMB has determined there is cause for formal discipline against the certificate holder. Upon receipt of the Notice of Intent, the certificate holder may contact the designated Certification Committee member or designee to discuss the matter and propose an alternative resolution. The Notice of Intent will include the following information:
- a. The allegations against the certificate holder;
 - b. The identified violations of law, rule and/or standards;
 - c. The formal disciplinary action sought by the SOMB;
 - d. A notice of the certificate holder’s right to an appeal hearing and the right to be represented;
 - e. A notice of default if the certificate holder fails to request an appeal hearing or otherwise fails to respond; and
 - f. A proposed stipulation to resolve the matter without a hearing.
 - i. Resolution by stipulation is a process to impose formal discipline upon a certificate holder whereby the certificate holder and SOMB agree to the violations and formal discipline.
 - ii. Upon the certificate holder signing the stipulation to resolve the disciplinary matter, the signed stipulation will be presented to the SOMB for approval and the issuance of a final order imposing the agreed upon formal discipline.
- G. Request a Hearing.
- a. The certificate holder has thirty (30) days from the date the Notice of Intent was mailed to request a hearing. The request is filed when it is received by the SOMB or postmarked within the time limits set forth in these standards.
 - b. All requests for a hearing must be submitted in writing and provide the following:
 - i. A copy of the decision that is the subject of the hearing;
 - ii. A statement setting forth the reason for disagreement with the SOMB decision; and

iii. A statement of the remedy requested.

H. Failure to Respond.

- a. Should the certificate holder fail to sign the Stipulation or fail to file a request for a hearing concerning the Notice of Intent within the designated time frame, the SOMB will issue a final order indicating the failure of the certificate holder to request a hearing and imposing the discipline set forth in the Notice of Intent.
- b. Petition for Reconsideration.
 - i. A petition for reconsideration may be filed with the SOMB within fourteen (14) days from the date the final order was mailed or served upon the certificate holder.
 - ii. In the petition for reconsideration, the certificate holder will be limited to presenting reasons why they failed to respond to the Notice of Intent within the designated time frame.
 - iii. A petition for reconsideration will be deemed denied if the SOMB does not respond within twenty-one (21) days of its receipt. The certificate holder can then file a petition for review by the district court.

I. Reinstatement of Certification after Denial or Formal Disciplinary Action.

- a. Denial. An applicant whose certification has been denied may reapply subsequent to completing any remedial steps or corrective action as recommended by the SOMB, or when evidence is available confirming that the person meets the required qualifications.
- b. Suspension. A person whose certification has been suspended may apply for reinstatement of their certification after the duration of the suspension has expired by providing the following:
 - i. Submitting a completed application for reinstatement. Reinstatement shall follow the certification *renewal* process as outlined in these standards;
 - ii. Payment of any reinstatement fees;
 - iii. Providing evidence to the satisfaction of the SOMB of compliance with any remedial steps or corrective action ordered by the SOMB; and
 - iv. Any other information requested by the SOMB to demonstrate compliance with minimum criteria and qualifications for certification.
- c. Restriction. A person whose certification has been restricted shall request the SOMB remove the restrictions after the duration of the restriction as established by

the SOMB has expired. If a time frame for restriction was not established, the request may be made after the certificate holder has completed any remedial steps or corrective action required by the SOMB. The certificate holder must provide the following:

- i. Evidence to the satisfaction of the SOMB of compliance with any remedial steps or corrective action ordered by the SOMB; and
 - ii. Any other information requested by the SOMB to demonstrate compliance with minimum criteria and qualifications for certification.
- d. Revocation. A person whose certification has been revoked may request reinstatement after the one (1) year revocation period has expired. Reinstatement shall follow the *initial* certification process as outlined in these standards.
- i. A person must meet all minimum criteria and qualifications for certification to be eligible for reinstatement.
 - ii. The SOMB shall have discretion to impose any monitoring conditions upon a certificate holder whose certificate has been reinstated following revocation.
- e. Withheld Discipline and Probation. A certificate holder whose formal discipline was withheld and placed on probationary status, may seek reinstatement after the period of probation has expired and any conditions imposed have been met providing the following:
- i. Submitting a completed application for reinstatement. Reinstatement shall follow the certification *renewal* process as outlined in these standards;
 - ii. Payment of any reinstatement fees;
 - iii. Providing evidence to the satisfaction of the SOMB of compliance with any remedial steps or corrective action ordered by the SOMB; and
 - iv. Other any other information requested by the SOMB to demonstrate compliance with minimum criteria and qualifications for certification.

III. NOTICE OF INTENT HEARINGS

A. Hearing Officers.

- a. All hearings concerning a Notice of Intent will be held before a hearing officer appointed by the SOMB and conducted pursuant to these procedures.

- b. All decisions by the hearing officer are considered to be a recommended order and will be reviewed by the SOMB prior to the issuance of a final order or remanded back to the hearing officer for further consideration.
 - c. The hearing officer will consider only information that was available to the SOMB at the time the decision was made to impose discipline. If the certificate holder shows there is additional relevant information that was not presented to the SOMB with good cause, the hearing officer will remand the case to the SOMB for consideration. No hearing officer has the jurisdiction or authority to invalidate any state statute, rule, standard or court order. The hearing officer must defer to the SOMB's interpretation of statutes, rules, or standards unless the hearing officer finds the interpretation to be contrary to statute or an abuse of discretion. The hearing officer will not retain jurisdiction on any matter after it has been remanded to the SOMB.
- B. Representation. A party in a contested case proceeding may be represented by legal counsel, at the party's own expense.
 - C. Prehearing Conference. The SOMB adopts the Idaho Rules of Administrative Procedure (IRAP) governing prehearing conferences as provided in IDAPA 04.11.01, Sections 510 through 513. In the event there is a conflict between IRAP and the SOMB rules, the procedures in these SOMB rules will prevail.
 - D. Hearing Processes. The SOMB adopts IRAP governing the hearing process as provided in IDAPA 04.11.01, Sections 550 through 565. In the event there is a conflict between IRAP and the SOMB rules, the procedures in the SOMB rules will prevail.
 - E. Subpoenas. At the request of a party, the hearing officer may issue subpoenas for witnesses or documents, consistent with any limitation imposed on discovery and evidence through these standards.
 - F. Discovery. Prehearing discovery is limited to obtaining the names of witnesses and copies of documents the opposing party intends to offer as exhibits. The hearing officer may order production of this information if a party refuses to comply after receiving a written request. The hearing officer will issue such other orders as are needed for the orderly conduct of the proceeding.

- G. Evidence. The SOMB adopts IRAP governing the admission of evidence as provided in IDAPA 04.11.01, Sections 600 through 606, with the exception of Section 603. In the event there is a conflict between IRAP and the SOMB rules, the procedures in the SOMB rules will prevail.
- H. Record of Decisions. The SOMB adopts IRAP governing the record of decision as provided in IDAPA 04.11.01, Sections 650 through 651. In the event there is a conflict between IRAP and the SOMB rules, the procedures in the SOMB rules will prevail.
- I. Disposition of Case without a Hearing. Any contested case may be resolved without a hearing on the merits of the Notice of Intent by stipulation, settlement, motion to dismiss, summary judgment, default, withdrawal, or for lack of jurisdiction. The hearing officer must dismiss a request for hearing that is not filed within the time limits set forth in these standards.
- J. Default. The SOMB adopts IRAP governing the default process as provided in IDAPA 04.11.01, Sections 700 through 702. In the event there is a conflict between IRAP and the SOMB rules, the procedures in the SOMB rules will prevail.
- K. Filing of Documents. All documents intended to be used as exhibits must be filed with the hearing officer. Copies of such documents will be provided to every party, including a copy to the SOMB, at the time they are filed with the hearing officer, in person or by first class mail. Service by mail is complete when the document, properly addressed and stamped, is deposited in the United States or Statehouse mail. A certificate showing delivery to all parties will accompany all documents when they are filed with the hearing officer.
- L. Burden of Proof.
 - a. The SOMB has the burden of proving the violations set forth in the Notice of Intent.
 - b. Unless otherwise stated in statute, rule or regulation, the evidentiary standard of proof is by a preponderance of the evidence.
- M. Decision and Recommended Order.
 - a. Recommended orders are orders issued by a hearing officer that will become a final order of the SOMB only after review of the recommended order by the SOMB pursuant to Section 67-5244, Idaho Code.

- b. A recommended order must be issued by the hearing officer not later than thirty (30) days after the case is submitted for decision.
- c. The recommended order must include the following information:
 - i. Specific findings on all major facts at issue, a reasoned statement in support of the decision and all other findings and recommendations of the hearing officer;
 - ii. A decision recommending to affirm, reverse or modify the action or decision of the SOMB set forth in the Notice of Intent or remanding the case for further proceedings; and
 - iii. The procedures and time limits for filing requests for review of the recommended order by the SOMB.
- d. Motions for reconsideration of a recommended order will not be accepted.

N. Review of Recommended Order by SOMB.

- a. Within twenty-one (21) days of the service of the recommended order, any party may in writing support or take exceptions to any part of the recommended order and file briefs in support of the party's position on any issue in the proceeding. The request must identify all legal and factual bases of disagreement with the recommended order.
- b. The opposing party shall have twenty-one (21) days to respond. The SOMB determines whether oral argument will be allowed and whether a transcript of the hearing is needed. If a transcript is needed, it will be provided by the party who requests the review of the recommended order.
- c. The SOMB must exercise all of the decision making power it would have had if it presided over the hearing and shall issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown.
- d. The SOMB may remand the matter to the hearing officer for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

O. Final Order.

- a. The SOMB may affirm, modify or reverse the recommended order, or remand the matter to the hearing officer for further proceedings.

- b. The SOMB final order or remand will be issued within sixty (60) days of the service of the recommended order, unless a review of the recommended order was filed.
- c. In addition to the decision by the SOMB, every final order must contain the following information:
 - i. Any party aggrieved by this order may appeal this final order to district court by filing a petition in the district court of the county in which:
 - 1. The hearing was held;
 - 2. The final action by the SOMB was taken; or
 - 3. The party seeking review of the order resides.
 - ii. A petition for review by the district court must be filed within twenty-eight (28) days of:
 - 1. The service of the final order; or
 - 2. The failure within twenty-one (21) days to grant or deny a petition for review following the issuance of a final order as a result of the certificate holder's failure to respond to the Notice of Intent.
 - iii. The petition for review of a final order does not stay the effectiveness or enforcement of the order under appeal, unless otherwise ordered or mandated by law. However, any party affected by the final order may petition the SOMB to stay the order and the SOMB may stay the final order on its own motion.
- d. Motions for reconsideration of a final order will not be accepted, except when issued as a result of failing to respond to the Notice of Intent.

P. Service.

- a. Certificate holders may be served by the SOMB, or designated hearing officer, by regular mail, or by certified mail, return receipt requested, to the certificate holders' last known mailing address or by personal service.
- b. The parties may consent to services by electronic means, including facsimile or e-mail.
- c. Service is deemed complete when a copy of the document, properly addressed and stamped, is deposited in the United States mail or Statehouse mail, if the party is a State employee or State agency, or when there is electronic verification that a facsimile or email has been sent.

- d. All documents intended to be part of the SOMB record must be served on the designated representative of each party and be accompanied by a proof of service stating the service date, each party served and the method of service.

Q. Calculation of Time.

- a. Calculation of time is calendar days, unless otherwise specified.
- b. Whenever an act is required to be done within a certain number of days, the given day is not included in the count, but the last day of the period so computed is included in the count.
- c. If the day the act must be done is a Saturday, Sunday or legal holiday, the act may be done on the first day following that is not a Saturday, Sunday or a legal holiday.