

GUIDELINES FOR DISCIPLINARY ACTIONS

In recent years, the American Board of Neurological Surgery (the “ABNS” or the “Board”) has reviewed an increasing number of matters that may lead to potential disciplinary action against ABNS Diplomates or candidates for Certification. The number of cases reviewed by the ABNS Credentials Committee has increased significantly in each year over the past ten years or so. This is largely due to State licensing boards and other enforcement agencies’ use of improved processes for disseminating accurate, timely information regarding candidates and Diplomates with problems, particularly actions taken against medical licenses. The ABNS also learns of problems from sources other than State licensing boards, however, including but not limited to through hospital adverse actions, the ABNS’ own credentialing processes, actions by other neurosurgery organizations, website information (e.g., misrepresentation of credentials), media accounts and complaints raised by other physicians and/or patients.

As the number of Diplomates and candidates potentially subject to sanctions has increased, the ABNS has developed guidelines to promote consistency. This document was most recently updated and approved by the full Board of Directors in May 2018.

I. Limitation On Applicability

Although in most cases the outcome of an ABNS disciplinary action will track the guidance found in this document, fairness and due process require (and ABNS Rules and Regulations mandate) that each case be evaluated on its own merits. Every case is different and involves its own unique set of circumstances. Consequently, this document sets forth general guidelines only, and in certain cases deviation from the guidelines will be appropriate.

Before any significant action against a candidate or Diplomate is taken, the candidate or Diplomate is entitled to a hearing, which may reveal additional aggravating or mitigating factors that justify a departure from the guidelines. Note that no hearing is required if the sanction is only a Letter of Concern (for candidates or Diplomates) or if the sanction for candidates is only a requirement to submit additional information or supplemental application materials (e.g.,

additional case submissions). Similarly, no hearing is required to defer a candidate for oral examination where the candidate no longer meets the criteria to take the examination (e.g., does not have an unrestricted medical license).

II. Options For Discipline

Grounds for Discipline: Pursuant to ABNS Rules, the ABNS Directors have the authority to revoke or suspend any Certificate if:

- The Certificate was issued contrary to or in violation of any Rule or Regulation of the Board;
- The person to whom the Certificate was issued was not eligible to receive or has since become ineligible to hold such Certificate;
- The person to whom the Certificate was issued made any misstatement of fact to the Board in any application or in other material presented to the Board, violated any pledge made in conjunction with any application, or failed to comply with any ABNS rules or decisions;
- The person to whom the Certificate was issued is convicted of, or pleads guilty or nolo contendere to, any felony or any crime related to the provision of health care services, or is excluded from participation in any federal or State health care program;
- Any license to practice medicine of the person to whom the Certificate was issued is revoked, suspended, placed on probation, voluntarily relinquished in order to avoid potential sanctions, or restricted in any way;
- The person to whom the Certificate was issued is expelled from any of the Nominating Societies, a county medical society, or a state medical association for any reason other than nonpayment of dues or lack of meeting attendance;
- The person to whom the Certificate was issued has engaged in professional misconduct, a pattern of negligence or other serious misconduct adversely reflecting on professional competence or integrity (which, for avoidance of doubt, may include without limitation performing unnecessary or contraindicated procedures or engaging in intentional or grossly negligent miscoding); or

- The person to whom the Certificate was issued has violated any ABNS Rule, Regulation or Code of Ethics provision, or has violated the terms of any written agreement with the Board, including but not limited to agreement relating to the person’s status as “Retired” or “Inactive.”
- The person to whom the Certificate was issued has provided a negative reference or complaint to the ABNS regarding a candidate or another Diplomat that is not submitted in good faith (e.g., motivated by economic considerations such as the desire to harm a competitor) and/or is intentionally factually inaccurate or misleading.

Note that since ABNS Rules authorize the revocation or suspension of a Certificate, the ABNS also has the authority to impose any of the lesser sanctions noted below in lieu of revocation. Note also that some of these sanctions are not mutually exclusive – the ABNS can, for example, place a Certificate on probation for some period and also require some practice monitoring of the Diplomat.

Potential Sanctions/Diplomates: To date, the ABNS typically has adopted one of the following measures in disciplinary cases it has reviewed involving ABNS Diplomates :

- No Action
- Letter of Concern
- Requests for Additional Information
- Required Participation in Maintenance of Certification (“MOC”) (this may apply to Diplomates who have non-time limited Certificates and are not otherwise required to participate in MOC)
- Probation of Certificate
- Suspension of Certificate
- Practice Monitoring and/or Restrictions
- Revocation of Certificate

Potential Sanctions/Candidates: In disciplinary cases involving candidates for Certification (i.e., physicians in the Certification process who have not yet successfully completed the process), the ABNS typically has adopted one of the following measures:

- No Action
- Letter of Concern
- Requests for Additional Information
- Requirements for additional case submissions, reference letters or other application-related supplemental materials
- Deferral of Sitting for the Oral Examination
- Requirement to Begin Anew the Entire Certification Process (commencing with taking the ABNS Primary Written examination)
- Practice Monitoring and/or Restrictions
- Permanent Exclusion from the Certification Process

III. Revocation, Suspension or Probation of State License – Practice Related

General Guidance: In cases where a Diplomate’s state medical license has been revoked, suspended or placed on probation for practice-related reasons, the ABNS will typically take the same action against the Diplomate’s Certificate. For example, if a Diplomate’s medical license has been revoked, the ABNS usually will revoke the Diplomate’s Certification. If the Diplomate’s medical license has been suspended, the ABNS usually will suspend the Diplomate’s Certification co-terminus with licensure suspension.

In deciding what action to take, the Board will focus on the substance of the state action, rather than the state’s characterization since different states use different phrases to describe their actions. For the purpose of these guidelines, “revocation” means that the Diplomate may no longer practice clinical medicine in the state either permanently or indefinitely. “Suspension” means that the Diplomate may not practice for some period of time and/or until the Diplomate

has complied with certain conditions. Voluntary or involuntary surrender of a license to avoid state sanctions typically is equivalent to “revocation.”

“Practice-related” means that the state licensure action is based on conduct related to the Diplomate’s professional practice. This includes but is not limited to curtailment of hospital privileges, inability to practice safely due to physical or mental disability or substance abuse, inappropriate prescribing of medications, gross negligence or incompetence, insurance or billing fraud, medical record documentation issues, misinformation on licensure, credentialing, or certification applications, providing false or inappropriate expert witness testimony, and/or other practice-related unprofessional conduct.

Revocation of a Certificate is permanent. Although former Diplomates whose Certificates have been revoked may petition the ABNS to become certified again, those petitions rarely will be approved and if so, only at the sole discretion of the Board. Approval typically will be granted only in cases where the Board concludes that:

- In retrospect lifetime revocation has proved to be disproportionate to the Diplomate’s offense, and
- The Diplomate has taken steps to maintain or substantially improve the level of his or her knowledge and skills.

In those cases where the ABNS grants a former Diplomate’s petition, the Diplomate typically will not become Certified until he or she has again met certain requirements imposed by the ABNS, which may include repeating some of the steps of the initial Certification process (e.g., submission of cases for review; re-passing the oral examination). All Certificates newly issued to former Diplomates will be time-limited, regardless of the type of Certificate previously held.

Suspension of a Certificate means that during the period of suspension an individual may not hold him or herself out to the public (patients, providers, and/or insurers, etc.) as Certified by the ABNS. A Diplomate violating this prohibition shall be subject to additional sanctions. Depending on the degree of the individual’s culpability, these will typically mean an extension

of the period of suspension or revocation of the Certificate. Suspension typically will remain in effect for the period of suspension of the Diplomate's state license. When a license is fully restored, the Diplomate may apply for reinstatement of Certification. Such applications typically will be approved; however, the ABNS may deny an application or impose conditions on approval where appropriate, for instance when the length of the suspension raises concerns about the individual's current knowledge and skills. Also, the Board will require the Diplomate to participate in MOC once the Certificate has been reinstated, even where he or she originally held a non-time-limited Certificate.

Probation of a Certificate means that during the period of probation an individual may hold him or herself out to the public (patients, providers, insurers, etc.) as certified by the ABNS, but any additional problems arising during the period of probation will receive additional scrutiny by the ABNS and may result in more severe sanctions than would be the case had the Certificate not been placed on probation. The individual also must accurately report the probation on license renewal forms, hospital and payor credential applications, malpractice renewal applications and similar forms. Also, the Board often will require the Diplomate to participate in MOC, even where he or she originally held a non-time-limited Certificate.

Candidates for Certification: Note that where a candidate's State medical license has been revoked, suspended, placed on probation or otherwise restricted, under ABNS Rules the candidate will not be eligible to take the ABNS oral examination (and therefore will not be eligible to become ABNS Certified) until such time as his or her license has been restored to active, unrestricted status.

Appeals of State Action: When a Diplomate is appealing revocation, suspension or probation of his or her license, the ABNS decision to act will typically depend on the status of the license during the appeal. The ABNS will not allow a Diplomate to stall ABNS action simply by appealing state licensure decisions, particularly since such appeals can take several years to resolve. In cases where the license revocation or suspension is stayed during the time of an appeal (typically indicating that a court or panel has found some preliminary merit to the Diplomate's challenge), the ABNS will usually not pursue disciplinary action until the appeal is

complete or the stay been lifted. The ABNS also may defer action in cases where, for example, a Diplomate's State license has been summarily suspended pending full investigation of a matter and the Diplomate has not yet been afforded full due process by the State medical Board. It is the Diplomate's obligation to keep the Board apprised of all significant developments in any State licensure action.

Exception to General Guidance – Diplomate Retirement: In some cases, a Diplomate may have retired either prior to or in connection with a State action against his or her license. In those situations, the ABNS will generally give the Diplomate the option of retaining his or her Certificate (thus avoiding a hearing and potential ABNS sanctions) so long as the Diplomate signs a form certifying that he or she is permanently retired from the practice of neurosurgery and agrees to other conditions imposed. This option typically will be offered in cases involving Diplomates who:

- Are 60 years of age or older;
- Have a physical or mental disability that appears to make it impossible to continue the practice of clinical neurosurgery;
- Other facts based on material in the Board's possession suggest that the individual likely has retired; or
- The Diplomate approaches the ABNS to request conversion to retired status.

Diplomates who accept will be listed by the Board as "Certified – Retired." They will be asked to return their ABNS Certificate and will be issued a new Certificate that reflects their retired status. The retirement option (in lieu of sanctions) may not be offered in certain cases where the misconduct of the retiring Diplomate appears to have been willful and/or egregious.

Actions in States Where Diplomates No Longer Practice: Many Diplomates carry licenses in multiple states, including some where they no longer practice. A Diplomate may have active and unrestricted licenses in all states where he or she practices, while licenses in other states may have been revoked or suspended for practice-related issues. This occurs, for example, when a

Diplomate leaves a state where he or she had problems in order to get a fresh start elsewhere. It also may be the result of the Diplomate practicing in a state that has more lax enforcement standards than a state where he or she maintains a license but does not actively practice.

In general, the Board will track the actions of the state(s) where the Diplomate actively practices. Thus, so long as current, active, unrestricted licenses are maintained in each state where he or she actively practices, the ABNS typically will not suspend or revoke a Diplomate's Certificate. The Board reasons that the state where the Diplomate actively practices has primary responsibility for monitoring conduct. To the extent that all of the Diplomate's active practice states have determined that the Diplomate's history and conduct support a full, unrestricted license, the ABNS will generally defer to the decisions of those states. Nonetheless, the ABNS may make exceptions where, for example, a Diplomate appears to have been in trouble in several states over the years and continuously changed locations in order to avoid sanctions. Those situations have become less common in recent years as states became better at tracking and reciprocating the actions of other states.

IV. Revocation, Suspension or Probation of State License – Non-Practice Related

General Guidance: Where a Diplomate's state medical license has been revoked, suspended or placed on probation for non-practice related issues, the ABNS will typically send a letter of concern, or take no action. Non-practice related issues are unrelated to a Diplomate's practice as a physician, for example failure to pay taxes or related fines, or misdemeanor criminal convictions unrelated to the practice of medicine.

Note, however, that where the Diplomate's non-practice related issues are significant (typically involving felonies or actions of similar seriousness), the ABNS may take action against the Diplomate's Certificate notwithstanding the fact that the problem was not practice related. This is particularly likely where a State licensing board has taken action against the Diplomate's medical license in connection with the matter.

Also, although the Board typically will not revoke, suspend or place on probation a Certificate for non-practice related issues, a Diplomate subject to MOC who has his or her license suspended or revoked for non-practice related issues by a state where he or she actively practices may not be able to successfully complete the MOC cycle (since maintaining an active and unrestricted license is an MOC requirement). Consequently, unless and until the Diplomate's license is restored to active and unrestricted status, his or her Certificate may be non-renewed at the end of the cycle.

V. Other State License Actions – Monitoring, Reprimand, Letters of Concern and Censure

General Guidance: States often take actions against licenses that are less severe than revocation, suspension or probation. Such actions include but are not limited to monitoring, reprimands, letters of concern, formal censure and/or requiring additional training or CME. In those cases, the ABNS will typically send a letter of concern or take no action.

Exceptions include but are not limited to situations in which the state-imposed monitoring or practice conditions are so significant as to constitute a substantial restriction on the Diplomate's practice of neurosurgery. In those instances, the ABNS may consider suspension or probation of the Diplomate's Certificate, which typically will be co-terminus with the period of the licensure action. The ABNS also may require its own monitoring or access to a State-imposed monitor's reports. Where the Diplomate has a non-time-limited Certificate and the state monitoring or practice restriction is the result of concerns relating to clinical competence, the Board may also require the individual to participate in MOC during and/or after the period in which the monitoring or practice conditions are in effect.

Although the ABNS typically will not suspend or revoke a Certificate in cases involving these lesser sanctions, a Diplomate subject to MOC who becomes subject to probation or monitoring in a state where he or she actively practices may not be able to successfully complete the MOC cycle. Once again, unless and until his or her license is restored to active and unrestricted status, his or her Certificate may be non-renewed at the end of the cycle.

VI. Disciplinary Measures Not Based on State Licensure

ABNS Rules permit but do not require the Board to take disciplinary action in cases that are based on actions other than restrictions on a Diplomate's license. Such other grounds include but are not limited to violation of ABNS Rules and Regulations, exclusion from Medicare or Medicaid, expulsion from an ABNS Nominating Society; and serious professional misconduct (which could include such matters as a pattern of malpractice, performing unnecessary or contraindicated procedures, or intentional or grossly negligent miscoding).

General Guidance: These cases tend to be distinct from one another and very specific to their individual circumstances. Consequently, even the most general of guidelines have limited use.

For cases involving possible professional misconduct, the ABNS will tend to track the actions of the state licensing board or other governmental authority that took action, since the ABNS does not have the resources to investigate and pursue every allegation of professional misconduct or every instance of discipline by a hospital, managed care panel, or other third party. There are exceptions, however, where the ABNS believes it has enough evidence to act in the absence of state board or other governmental entity action.

Where a Diplomate has been excluded from participation in Medicare and Medicaid or his or her DEA license been suspended or revoked, a state almost always will take corresponding action against the medical license. In those cases, the ABNS again will track the state's action. In rare case where there is no corresponding state action, the ABNS will track the Medicare/Medicaid/DEA action. For example, if a Diplomate is excluded from Medicare/Medicaid for a specified period of time, the Diplomate's Certificate typically will be suspended for a co-terminus period of exclusion. If a Diplomate has been excluded from Medicare/Medicaid permanently or indefinitely, his or her Certificate typically will be revoked.

Where a Diplomate or candidate for Certification has violated ABNS Rules, the discipline will depend on the seriousness of the violation. The most serious infractions include but are not limited to intentionally compromising the integrity of ABNS examinations (for instance

reproducing and/or disseminating questions), knowingly providing misinformation on an application for certification or MOC, misrepresenting one's Diplomat status (e.g., holding oneself out as Board Certified when he or she has not yet successfully completed the process) and failing to comply with the terms of a disciplinary measure or other requirement imposed by the Board (for example, continuing to advertise oneself as ABNS Certified during a period of suspension, failing to enroll in MOC if required and/or failing to provide mandated updates to the status of one's state licensure). In those situations, the Board will typically impose a significant sanction, which could include suspension or revocation of a Certificate. In the case of a candidate who is not yet certified, he or she may be prohibited from becoming Certified for either some period of time or permanently. Lesser infractions include but are not limited to unintentional non-material misinformation on an application form, failure to notify the Board of changes of address, and failure to timely respond to requests for routine information. These may result in a letter of concern, a warning or no action, unless the violations are repeated.

This guidance does not apply to candidates or Diplomates who miss ABNS deadlines or fail to meet the substantive requirements for initial Certification or MOC. Those situations, which are not considered Rules violations, are addressed in the ABNS Rules and Regulations. Normally, candidates or Diplomates who miss deadlines or fail to meet requirements will be ineligible for initial Certification or renewal of their Certificates, as applicable, unless they have obtained an exemption or exception to the deadlines or requirements.

In past years, the ABNS did not always rigorously enforce breaches of examination integrity. This was partly due to the fact that at one time it was relatively common practice for residency Program Directors to collect and disseminate examination questions; moreover, candidates and Program Directors prior to the mid-2000s may not have been aware that the practice was prohibited. For at least the past several years, however, this prohibition has been made very clear to every candidate and Program Director. It is set forth in the ABNS Rules (Sections 5.7, 11.5) and has been communicated repeatedly to both candidates and Program Directors. It is also set forth in the pledges that candidates sign before both the Primary and Oral Examinations. Consequently, the Board now vigorously enforces violations of examination integrity. As noted,

the reproduction, dissemination, or use of questions could result in a candidate forfeiting the ability to ever become certified. The Board also reserves the right to take appropriate action against residency programs and/or Program Directors.