



## THE NEED FOR DUE PROCESS IN CERTIFICATION DISCIPLINARY CASES

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As we all have heard many times before, no person can be deprived of life, liberty or property without due process of law. While it is doubtful that our Founding Fathers were thinking about certification organizations at the time they wrote this passage, due process is still something that certification organizations should consider in any disciplinary case. Even in many of the most “cut and dried” cases, credential holders should be given ample opportunity to present their case before any action is taken. For certification organizations, this can create a difficult balancing act between a credential holder’s right to be heard, and the organization’s duty to protect the public from harm.

Why is due process so important? Most credentials have some economic value. Revoking someone’s credential may hurt her ability to make a living. If this is the case, an organization may run the risk of litigation. This is especially true if it revokes or suspends a credential holder’s credential without affording her adequate due process.

On the other hand, there is always a risk that a credential holder who has violated the organization’s Code of Ethics, may continue to harm the public. The longer it takes a certification organization to revoke or suspend a credential, the longer the credential holder may represent she is credentialed. This puts the public at risk. If

a person is harmed due to a certification organization’s inability to timely act, the certification organization may be named in a lawsuit and even found to be liable. Therefore, all organizations should try to create a thorough but timely judicial procedure for all certification investigations.

We recommend that all certification organizations periodically review their judicial policies to ensure that they are fair, reasonable and consistent with industry standards and expectations. But how does an organization determine if its rules and procedures are fair? Here are a few general requirements that should be in all organization’s rules and procedures:

1. Credential holders should have sufficient notice of the charges against them before action is taken.
2. Credential holders should be able to review the evidence against them.
3. Credential holders should be given a right to be heard/respond.
4. The organization should set forth written reasons why action has been taken against the Credential holder.
5. The organization should have pre-established sanctions for various levels of inappropriate conduct.

6. The Credential holders should have the right to appeal an adverse decision.
7. The decision makers should be impartial.

Any judiciary committee should try to be “overly” fair in all situations. They should be willing to be flexible to ensure that a credential holder has had ample opportunity to defend herself. At the same time, while timelines should be guidelines, they should be adhered to as best as possible, so that all parties know when the matter will be concluded.

Ultimately, courts are likely to defer to an organization’s knowledge and experience in industry-related matters. As long as proper procedures have been followed, courts are reluctant to interfere with the actual decision of an organization’s investigative proceeding and conclusion, absent clear error. Indeed, the courts have

made it clear that in evaluating organizational procedures, constitutional “due process” is not required. Instead, the courts will apply a lesser standard of whether the conduct was fair and reasonable.

If you have any questions regarding whether your current procedures provide a credential holder with adequate due process, or whether a decision against a credential holder is fair and reasonable, we recommend contacting legal counsel. Unfortunately for many organizations, legal counsel is often contacted only after problems arise.

While disciplinary processes can appear to be intimidating, they do not need to be cumbersome. By investing the time now to create proper procedural processes, your organization can avoid future claims that fair process was not followed. At the same time credential holders will feel that they has an opportunity to be heard, even if the decision was adverse to their interests.