



# Professional Background Screening Association Member Code of Conduct and Member Procedures for Review of Member Conduct

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The PBSA Member Code of Conduct was adopted by the PBSA Board in June, 2003. The Member Procedures for review of a member's employee's conduct was adopted by the PBSA Board of Directors on July 17, 2008.

## Preamble

The Professional Background Screening Association ("PBSA" or the "Association") is a not-for-profit, tax-exempt trade association formed to promote, develop, educate, and otherwise further the Employment and Tenant Screening industry. PBSA's principal membership class consists of corporations, firms, individuals, and other entities engaged in Employment and Tenant Screening.

The business and affairs of the association are managed under the direction of the PBSA Board of Directors (the "Board"). The PBSA Member Code of Conduct (the "Member Code") serves as a Member Code of conduct for employees of members of PBSA. For purposes of the **Member Procedures for Review of Member Conduct**, these individuals are sometimes referred to as members. Violations of the Member Code may result in sanctions imposed under the Member Procedures for Review of Member Conduct (the "Member Procedures"). The principles and requirements that comprise the Member Code and the Member Procedures are based upon, and are designed to ensure full compliance by PBSA member's employees with the Member Code. At the same time, the Member Code and Member Procedures are not designed to supplant courts of law in the resolution of disputes within the Employment and Tenant Screening industry. Moreover, the checks and balances built into the Member Code and Member Procedures are designed to strike the proper balance between ensuring full compliance with a member's obligations and ensuring the integrity and efficacy of the Member Code on the one hand, and protecting members, through the use of reasonable due process, against patently false, malicious or groundless accusations that could result in significant business or personal harm if not properly handled.



## Member Code of Conduct

### CODE

All Employees of Member Companies shall:

1. Perform professional duties in accordance with the law and the highest moral principles. \*
2. Observe the precepts of truthfulness, honesty, and integrity.
3. Be faithful and diligent in discharging professional responsibilities.
4. Be competent in discharging professional responsibilities.
5. Safeguard confidential information and exercise due care to prevent its improper disclosure.
6. Not knowingly comment falsely concerning a colleague's competence, performance, or professional capabilities.

Nothing in this code limits a member from engaging in fair, competitive business practices.

### EXPLANATIONS

Individuals shall:

- 1.1 Uphold the law of the land in which the services are rendered and perform all duties in an honorable manner.  
\*Note: the PBSA shall not be used as an avenue to pursue any legal matter which is otherwise more appropriately handled in a court of law. The Ethics Advisory Group Chair will determine whether the complaint is otherwise more appropriately handled in a court of law.
- 1.2. Not knowingly become associated in responsibility for work with colleagues who do not conform to the law and these ethical standards.
- 1.3. Be just and respect the rights of others in performing professional responsibilities.

Individuals shall:

- 2.1. Disclose all relevant information to those having the right to know.
- 2.2. Define "right to know" as a legally enforceable claim or demand by a person for disclosure of information. Such a right does not depend upon prior knowledge by the person of the existence of the information to be disclosed.
- 2.3. Not knowingly release misleading information nor encourage or otherwise participate in the release of such information.

Individuals shall:

- 3.1. Be deemed faithful when fair and steadfast in adherence to promises and commitments.
- 3.2. Be deemed diligent when employing best efforts in an assignment.
- 3.3. Not act in matters involving conflicts of interest without appropriate disclosure and approval.
- 3.4. Represent services or products fairly and truthfully.

Individuals shall:

- 4.1. Be deemed competent who possess and apply the skills and knowledge required for the task.
- 4.2. Not accept a task beyond the member's competence nor shall competence be claimed when not possessed.

Individuals shall:

- 5.1. Accept that "due care" requires the professional must not knowingly reveal confidential information or use a confidence to the disadvantage of the principal or to the advantage of the member or a third person, unless the principal consents after full disclosure of all the facts. This confidentiality continues after the business relationship between the member and his principal has terminated.
- 5.2. Not be bound by confidentiality if they have not agreed to do so. Individuals are not bound by confidential disclosures made of acts or omissions which constitute a violation of the law.
- 5.3. Understand confidential disclosures made by principals are not recognized by law as privileged in a legal proceeding. Individuals may be required to testify in a legal proceeding to the information received in confidence from a principal over the objection of that principal's counsel.
- 5.4. Not disclose confidential information for personal gain without appropriate authorization.

Individuals shall:

- 6.1 Not knowingly comment falsely concerning a colleague's competence, performance, or professional capabilities.

### **Member Procedures for Review of Member Conduct**

I. Introduction:

- A. The Member Code serves as a Member Code of Conduct for employees of PBSA members (hereafter referred to as "Members" for purposes of these Procedures). Members of PBSA, as a condition of membership, acknowledge their commitment and agreement to uphold its principles and provisions. Violations of the Member Code may result in sanctions imposed under these Member Procedures.
- B. The grounds for disciplinary action are one or more material, demonstrable violations of any provision of the Member Code. Multiple alleged violations of the Member Code may be consolidated, at the discretion of the Ethics Advisory Group Chair (as such term is defined below), into a single Complaint (as such term is defined below).
- C. These Member Procedures shall apply to all Complaints, allegations, inquiries, or submissions involving a potential violation of the Member Code (hereinafter collectively referred to as "Complaints") received by PBSA about a member, whether initiated by another member, an officer, employee, member, or agent of PBSA, or other third party.
- D. Actions taken under these Member Procedures do not constitute enforcement of the law, although referral to appropriate federal, state, or local government agencies may be made about a member's conduct in appropriate situations. Persons bringing Complaints are not entitled to any relief or damages by virtue of this process. Complaints essentially of a commercial nature (such as claims alleging defamation by or unfair business practices of a competitor), or primarily requesting judicial-type relief, may not be considered under these Member Procedures unless they also involve potential violations of the Member Code.

II. Development and Administration of Member Procedures

- A. The Board is responsible for the development and administration of these Member Procedures; however, the PBSA Ethics Advisory Group (the "Advisory Group") is delegated to administer these Member Procedures on behalf of the Board.

- B. The Ethics Advisory Group Chair Advisory Group is specifically responsible for ensuring that these Member Procedures are implemented and followed consistently and objectively.
- C. All Advisory Group members, PBSA employees, and other individuals engaged in investigations or decisions on behalf of PBSA with respect to any Complaint under these Member Procedures are indemnified and shall be held harmless and defended by PBSA against any liability arising from such activities to the extent permitted by law, provided such individuals act in good faith and with reasonable care, without gross negligence or willful misconduct, and do not breach any fiduciary duty owed to PBSA. No individual who (directly or through his or her family or business) has any personal or private business involvement in or connection to the alleged misconduct or any other conflict of interest shall be permitted to participate in the matter to be reviewed. Any such involvement or connection shall be immediately disclosed by the affected individual to the Advisory Group and to the Board.

### III. Complaints

- A. **Complaints may be made and transmitted to the Ethics Advisory Group Chair, any member of the Advisory Group, or any officer or director of PBSA (including the PBSA Chair) (collectively, "Complaint Recipients") in any manner.** The council does not intervene in disputes between PBSA members and (a) their principal stakeholders, (b) their clients, (c) other agencies, or (d) consumers. The council will only consider allegations which raise a concern regarding a member's conformity with the PBSA member Code of Conduct when brought forth by another agency (whether member or not), a current or former employee/worker. Written Complaints identifying the Complainant are preferred, however, if credible evidence of a violation of the Member Code is presented, the Complaint Recipient shall reduce the evidence to writing and promptly forward it to the Ethics Advisory Group Chair. Moreover, all credible evidence of Member Code violations of which a Complaint Recipient becomes aware shall be subject to mandatory written referral by the Complaint Recipient to the Ethics Advisory Group Chair. Such referrals shall be subject to these Member Procedures. In addition, in all instances, any Complaint Recipient may self-initiate a written Complaint if circumstances warrant. All Complaints received by any person other than a Complaint Recipient should be immediately directed or forwarded to the Ethics Advisory Group Chair.
- B. **Direct or indirect retaliation of any kind by PBSA or its officers, directors, employees, members, or agents against any individual that makes, initiates or is involved in the making of a Complaint is strictly prohibited.** This prohibition on retaliation shall be enforced strictly by the PBSA Board. Similarly, Complaints made with knowledge of their falsity, in whole or in part, are strictly prohibited. This prohibition on the making of knowingly false Complaints shall be enforced strictly by the PBSA Board.
- C. **In the event of legal or regulatory proceedings related to the subject matter of the complaint, the association reserves the right to suspend any association proceedings until the legal or regulatory proceeding is resolved.**
- D. **All identifying information shall be redacted from any complaint materials provided to Ethics Advisory Group chairs or members; to the fullest extent possible, the advisory group's decisions shall be made on a "blind" basis, i.e. in a manner such that the advisory group members do not know the identity of the subject of the complaint.**
- E. **Upon receipt and preliminary review of each Complaint, the Ethics Advisory Group Chair may conclude, in the Ethics Advisory Group Chair's sole discretion, that the Complaint: (1) contains facially unreliable or insufficient information or (2) is patently frivolous or trivial.** In such cases, the Ethics Advisory Group Chair may determine that the Complaint does not constitute a potentially actionable Complaint that would justify bringing it before the Advisory Group for determination of whether there has been a material violation of the Member Code. If so, such Complaint shall be dismissed without prejudice by the

Ethics Advisory Group Chair, and written notice to Complainant shall be provided. All such preliminary dispositions of Complaints by the Ethics Advisory Group Chair shall be immediately reported in writing to all members of the Advisory Group, with a copy to the PBSA Chair and to PBSA's general counsel. Any such Complaint may be re-initiated at any subsequent time pursuant to these Member Procedures.

- F. **If a Complaint is deemed by the Ethics Advisory Group Chair on a preliminary basis to be a potentially actionable Complaint, the Ethics Advisory Group Chair shall see that written notice is provided to the member whose conduct has been called into question, advising the member that an investigation is being initiated.** The Ethics Advisory Group Chair also shall provide written notice to the Complainant that the Complaint is being reviewed by the Advisory Group.

#### IV. Review of Complaint

- A. **For each Complaint involving an alleged violation of the Member Code that the Ethics Advisory Group Chair believes is a potentially actionable Complaint, the Ethics Advisory Group Chair shall authorize an investigation into its specific facts or circumstances to whatever extent is necessary in order to clarify, expand or corroborate the information provided by its submitter, and in order to assist the Advisory Group in making a determination as to whether charges (and, if so, what charges) against the member should be brought.** The Advisory Group may be assisted in the conduct of its investigation by PBSA staff, legal counsel, and/or outside experts, provided that no such staff person, legal counsel, or outside expert has any actual or apparent conflict of interest with respect to the matter and provided such individuals agree to maintain the complete confidentiality of the investigation. Both the Complainant and the member whose conduct has been called into question may be contacted by the Advisory Group or its agents for additional information with respect to the Complaint. In addition, the Advisory Group or its agents may contact other individuals who may have knowledge of the facts and circumstances surrounding the Complaint.
- B. **The Advisory Group shall then determine whether the Complaint warrants the bringing of charges under these Member Procedures against the member whose conduct has been called into question.** If the Advisory Group concludes that charges should be brought, it shall prepare written charges and a written report explaining the alleged aggrieved conduct and why such conduct constitutes grounds for disciplinary action under the Member Procedures. If the Advisory Group concludes that no charges should be brought, it shall dismiss the charges without prejudice and so notify the Ethics Advisory Group Chair, Advisory Group and member(s) in writing. All such dispositions of Complaints shall be immediately reported in writing to all members of the Advisory Group, with a copy to the PBSA Chair and to PBSA's general counsel. Any such Complaint may be re-initiated at any subsequent time pursuant to these Member Procedures. Whether or not charges are brought, for all Complaints, the Advisory Group should determine whether the matter should be referred to another entity engaged in the administration of law, and, if so, should promptly do so.
- C. **If the Advisory Group recommends that charges be brought, the Ethics Advisory Group Chair shall notify the member to be charged and send the member a copy of the charges and the Advisory Group's report. The Ethics Advisory Group Chair shall advise the member that an investigation will be conducted and that a hearing will be held, providing the member with the proposed date and time for such a hearing. The member shall be advised that he or she may request the opportunity to submit information or arguments contesting the charge in person or in writing, by submitting such request to the Advisory Group within thirty days from receipt of the notice (or such other period established by the Advisory Group, if any). The member also shall be advised that he or she may have the right to review evidence to be presented at the hearing and that he or she may be represented by legal counsel. The member shall be sent a copy of these Member Procedures.**

- D. **All investigations and deliberations of the Advisory Group are to be conducted in strict confidence to the extent possible**, except that the Advisory Group shall be permitted to disclose any relevant information when compelled by law or to parties essential to the review and investigation of the alleged misconduct. All investigations and deliberations of the Advisory Group shall be conducted objectively, without prejudice of any kind. An investigation may be directed toward any aspect of a Complaint that is relevant or potentially relevant. The identity of the complainant shall not be revealed to respondents, unless the Ethics Advisory Group determines otherwise.

The Advisory Group hearing may be held in person, or by telephone, electronic or video at the discretion of the Ethics Advisory Group Chair. The Ethics Advisory Group Chair shall preside and make evidentiary and other procedural rulings with the advice of PBSA's general counsel. If a hearing is held with the charged member present, the Ethics Advisory Group Chair shall, in his or her discretion, determine the rules of evidence and for oral presentations by the parties, as advised and approved by PBSA's general counsel. Written statements may be accepted as evidence. If witnesses appear, they shall be subject to cross-examination. The charged member may be always accompanied and represented by legal counsel, at the member's sole discretion and expense.

#### V. Determination of Violation

- A. **Upon completion of its investigation and the hearing, the Advisory Group shall determine by majority vote, upon a preponderance of the evidence, whether there has been a violation of the Member Code.**
- a. **If the Advisory Group determines that a violation has not occurred, the Complaint shall be dismissed with prejudice, with written notice thereof provided to the charged member, as well as to the Complainant.** A written summary shall be provided to the Board.
  - b. **When the Advisory Group finds that there has been a violation, the matter shall be sent to an independent third-party, whose fees shall be paid by PBSA, to seek resolution without formal sanctions via the Board.** The independent third party shall be identified by the Ethics Advisory Group Chair and PBSA Executive Director. The independent third party shall work with the Ethics Advisory Group Chair and charged member to identify a resolution which must be presented in writing and agreed to by the PBSA Board and the charged member.
- B. **If resolution is not reached via an independent third party, the Advisory Group shall provide a written summary with a proposed sanction to the Board.** Written notice of the Advisory Group's determination, the proposed sanction, and the fact that the matter will be reviewed by the Board shall thereafter be provided to the charged member.
- C. If the Complainant or charged member is a current member of the Board, that individual shall be barred from any involvement by the Board and shall not engage in any meetings by the Board on the subject.
- D. **The Board shall review the recommendations of the Advisory Group based upon the record presented.** The charged member may submit a written statement to the Board prior to the Board making its decision but may not otherwise appear before or participate in the Board's deliberations. The Board may accept, reject, or modify the Advisory Group's determinations either with respect to the determination of a violation or the recommended sanction to be imposed via majority Board vote in a meeting in which quorum has been established. The Board's decision shall be provided in writing to the charged member and the Complainant so long as the Complainant has signed a confidentiality agreement. If the Board determines that a violation has not occurred, then the Complaint shall be dismissed with prejudice, with written notice thereof provided to the charged member and the Complainant.
- E. The Board may consider a recommendation from the Advisory Group that the member in violation of the Member Code should be offered the opportunity to submit a written assurance that the conduct in

question has been terminated and will not recur. The decisions of the Advisory Group to make such a recommendation and of the Board to accept it are within their respective discretionary powers. If such an offer is extended, the charged member must promptly submit the required written assurance to the Board, and the assurance must be submitted in terms that are acceptable to the Board, including but not limited to any probationary period, if required by the Board. If the Board accepts the assurance, then written notice thereof shall be provided to the charged member and the Complainant so long as the Complainant has signed a confidentiality agreement. Complaints disposed of in this manner shall be deemed to have been disposed of without prejudice.

- F. All examinations of the record by, and deliberations of, the Board are to be conducted in strict confidence to the extent possible, except that the Board shall be permitted to disclose any relevant information when compelled by law. All examinations of the record and deliberations of the Board shall be conducted objectively, without prejudice of any kind.

## VI. Sanctions

One or more of the following sanctions may be imposed by the Board upon a member whom the Board has determined to have violated the Member Code. The sanction applied must reasonably relate to the nature and severity of the violation, focusing on reformation of the conduct of the affected member and deterrence of the same or similar conduct by others.

The sanctions are:

1. Written reprimand to, or censure of, the member (combined with any probationary period, if desired);
2. Suspension by the Board from membership on the Board for a designated period of time (combined with any probationary period, if desired);
3. Suspension by the Board from membership for a designated period of time (combined with any probationary period, if desired);
4. Suspension by the Board of the member from membership on one or more PBSA Advisory Groups or similar bodies for a designated period of time (combined with any probationary period, if desired);
5. Permanent expulsion of the member by the Board from membership on one or more PBSA committees or similar bodies;
6. Suspension of the member by the Board from membership in PBSA (combined with any probationary period, if desired);
7. Permanent expulsion by the Board of the member from membership in PBSA.

Once one or more of the above sanctions is imposed, the Complaint shall be deemed to have been disposed of with prejudice. For each of these sanctions, a written summary of the determination and the sanction, along with the member's name, may be published, in the sole discretion of the Board, in a printed or electronic medium that is distributed to all other PBSA members.

## VII. Resignation

If a member who is the subject of a Complaint voluntarily resigns (in writing) his or her membership during the pendency of a Complaint under these Member Procedures, the Complaint shall be dismissed without prejudice and without any further action by the Advisory Group or the Board. The member may not seek membership for a

period of five years from the effective date of his or her resignation. However, the Board may communicate the fact and date of the member's resignation, and the fact and general nature of the Complaint that was pending at the time of resignation, to or at the request of one or more government entities engaged in the administration of law. Similarly, in the event of such resignation, the Complainant shall be notified in writing of the fact and date of the resignation and that the Board has dismissed the Complaint (without prejudice) as a consequence.