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# **Chapter 7**

## **Legal Aspects**

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## **7:1 General Information**

This chapter discusses the legal aspects relating to NASAR Training and Certifications. All Board Members, Staff, Instructors, Lead Evaluators and Evaluators should understand the laws and polices relating to NASAR Training and Certifications.

## **7:2 National Child Protection Act**

*See chapter 6:5 Background Check Policy*

## **7:3 Copyrights/Copying of NASAR Materials**

The National Association for Search and Rescue copyrights NASAR textbooks, manuals and other training and certification materials. These materials may not be copied in whole, or in part, without the prior written consent of NASAR. Permission to copy, reprint or use portions of NASAR textbooks must be obtained in writing from the NASAR Executive Director.

## **7:4 Trademarks**

The National Association for Search and Rescue stylized logo combined with the written name is a service mark for the National Association for Search and Rescue and is registered with the US Patent and Trademark Office. Only NASAR Staff has the authority to use the mark. The mark symbolizes the identity of the National Association for Search and Rescue and when placed on publications and materials it distinctly identifies that the document has originated from the National Association for Search and Rescue.

The National Association for Search and Rescue stylized logo may not appear in advertising or announcements for NASAR courses or certification unless authorized by NASAR staff.

Advertising and announcements may state that a specific course or certification is a NASAR course or certification if the criteria are met.

NASAR members may use the approved “Member” NASAR logo located on the NASAR website.

Instructors, Lead Evaluators and Evaluators may not use the NASAR stylized logo on business cards or advertising materials.

NASAR Leadership may only use the NASAR stylized logo or letterhead when they are on direct assignment from the Board of Directors or Executive Director.

## **7:5 Administrative Investigation Guidelines and Procedures/ Disciplinary Action**

### **I. Overview**

Individuals in the position of Instructor, Evaluator, and Lead Evaluator for NASAR are given authorization to act within the position description as defined in the Job Descriptions of the appropriate Program Administration Manual.

Instructors, Evaluators, and Lead Evaluators are agents of NASAR and as such are expected to act in the best interests of the Association. Instructors, Evaluators, and Lead Evaluators will represent the Association in a positive and professional manner at all times.

The Executive Director and/or Education Services Director will evaluate all unsatisfactory critiques and complaints.

The Instructor, Evaluator or Lead Evaluator in question will be notified of the unsatisfactory critique and/or complaint within 5 business days by the Executive Director and/or Education Services Director from when the complaint is received in writing. This notification will contain the following information:

- Name of the Complainant (s).
- Date and time of the event.
- Type of course, location.
- Specific allegations and/or foundation for the complaint.
- Specific information that the complaint is based on.
- Name, address, and contact information of the investigating person on this complaint.
- Possible remedies to the subject if the complaint is sustained.

The conditions of the course/exam will be investigated by a person designated by the NASAR Executive Director.

If the complaint is not substantiated by the initial investigation, the individual making the complaint shall be contacted in writing or by phone (with documentation of time and place) and advised that the complaint is not sustained.

### **II. Administrative Investigation Criteria**

Administrative Investigations must be filed within 30 days of the incident and may be conducted for the following reasons:

- Consistent poor performance based upon written attendee critiques.
- Specific complaints from the public as to the performance of a NASAR Instructor, Evaluator or Lead Evaluator while performing in that capacity.
- Any act brought to the attention of NASAR that, in the opinion of the Executive Director or Board of Directors, discredits NASAR. This includes any criminal act allegedly performed by the Instructor, Evaluator or Lead Evaluator, whether in a NASAR class/certification exam or at any other time.

### **III. Administrative Investigation Process**

#### **A. Lead Investigator**

The Education Services Director has the authority to conduct Administrative Investigations for the following positions:

- Instructor, Evaluator or Lead Evaluator

The Executive Director has the authority to conduct Administrative Investigations for the following positions:

- Subject Matter Committee Chair
- Program Course Managers
- Education Services Director

#### **B. Initial Notice of Investigation**

Upon receipt of the complaint or cause for Administrative Investigation, the Executive Director and/or Education Services Director shall:

- Determine if the complaint meets the threshold for an Administrative Investigation (Re: Section II Administrative Investigation Criteria).
- Within five business days (notification may occur earlier but in no case later) of receiving a written complaint, the subject of the complaint, will receive in writing information regarding the allegations. This will be sent by the Executive Director or Education Services Director using the Notification of Investigation form.
- Within seven business days, the Administrative Investigator is appointed and the investigation is released to the Administrative Investigator (the assignment may occur earlier but in no case later).
- All documents generated or received by the Executive Director or Education Services Director will be time stamped. All documents turned over to the Administrative Investigator shall be timed and dated on receipt or when they are generated. Documentation shall be gathered in a chronological order from the date of the event or date of the Complaint.

#### **C. Investigation Procedures**

The Administrative Investigator will obtain a copy of the Complaint and the Notification of Administrative Investigator from the Executive Director or Education Services Director within five business days of their appointment to the investigation.

The Administrative Investigator will review the appropriate Program Administration Manual to determine pertinent sections where alleged violations are relevant.

Proceed with the investigation to include:

- Interviews all pertinent parties
  - Interviews may be recorded
- Obtain signed and notarized written statement pertaining to the event

- Obtain copies of relevant documents such as land use permits, public service contracts, emails regarding the facilities or other agreements that may have transpired between the complainant and the defendant.
- Documentation to be collected includes copies of all email correspondence related to the event and between parties, notes from telephone conversations, documents specific to the event such as class rosters, critiques, testing materials, correspondence from students, and all other relevant documentation.
- The investigator shall document all contacts and record all materials as part of the investigative file.

#### **D. Findings**

When the investigation is completed, the Administrative Investigator shall prepare a Letter of Findings, attach it to the completed Administrative Investigation as a cover letter, and submit this to the Executive Director or Education Services Director.

Finding shall be defined as the following:

- Founded – The event occurred and was in violation of a Program Administration Manual
- Unfounded – The event did not occur or it occurred and was not a violation of a Program Administration Manual
- Inconclusive – Not enough evidence to ascertain if a violation occurred.

The Executive Director or the Education Services Director shall review the finding as submitted by the Administrative Investigator.

Once the finding of the investigation is concluded and the time period for appeal has elapsed, the person filing the complaint shall receive a letter of findings from the Executive Director or Executive Services Director.

#### **IV. Discipline**

The Executive Director or Education Services Director shall take into consideration the following:

- Any disciplinary action taken against the subject of complaint in the last 12 months
- Overall performance on attendee critiques

If the complaint is sustained, the Instructor, Evaluator or Lead Evaluator will receive a verbal warning, written reprimand, probation, downgrade or termination.

The level of discipline is progressive and any rule violation of the same minor nature in a rolling 12 month period could receive the next higher discipline at the discretion of the Executive Director or Education Services Director. An example of a minor violation is incomplete paperwork.

Rule violations of a significant nature, can start at any level of discipline at the discretion of the Executive Director or Education Services Director. An example of a significant rule violation is conducting a course or certification that clearly jeopardizes the safety of candidates.

### **A. Downgrading**

Authorization to conduct NASAR approved courses and certifications may be suspended and/or revoked for any Instructor, Evaluator or Lead Evaluator. This process is known as a downgrade. This could result from repeated unsatisfactory attendee critiques or correspondence.

#### **1. Procedures**

The Education Services Director will evaluate all unsatisfactory attendee critiques

- The Instructor, Evaluator or Lead Evaluator in question will be notified of the unsatisfactory attendee critique(s) and/or written complaint(s).
- The conditions of the attendee critique(s) and/or written complaint(s) will be investigated by the Education Services Director
- If concerns are determined to be baseless, the procedure will stop, and the Instructor Evaluator or Lead Evaluator will be notified
- If concerns are determined to be valid, the Instructor, Evaluator or Lead Evaluator will be placed on probation requiring one of the following actions, as determined by the investigators:
  - The Instructor, Evaluator or Lead Evaluator will receive written warning of the validated complaint and receive recommendations on correction. Additional support (and monitoring) will be offered to the Instructor, Evaluator or Lead Evaluator in future courses/certifications. (This situation applies to minor administrative and technical problems)
  - The Instructor, Evaluator or Lead Evaluator will be required to teach a course or conduct a certification with a designated person before being able to offer further NASAR Courses or Certifications
- If unsatisfactory evaluations continue, the Instructor, Evaluator or Lead Evaluator in question will have his/her status downgraded or removed, until such time as he/she can complete a reevaluation as directed by the Education Services Director
- The Instructor, Evaluator or Lead Evaluator can appeal the downgrade decision (See Section V. Appeals Process)

### **B. Removal of an Instructor, Evaluator or Lead Evaluator**

NASAR retains the right to remove an Instructor, Evaluator, or Lead Evaluator authorization with its absolute sole discretion, at any time, based upon its determination that an individual is not operating or representing themselves or NASAR in the best interest of the Association. Instructor, Evaluator, or Lead Evaluator authorization will be removed if the individual is convicted of any felony or crime of moral turpitude.

Additional examples of reasons to remove an Instructor, Evaluator, or Lead Evaluator include, but are not limited to; not lead evaluating a NASAR exam appropriately; receiving generally unfavorable written attendee complaints; and failing to present a positive, helpful, professional image of the Association. Other examples are: not satisfactorily completing assignments made

by the Education Services Director, NASAR Officers, Directors and Subject Matter Committee Chairs.

## **V. Appeals Process**

Persons wishing to appeal a sustained discipline may do so by filing a written appeal to the Executive Director. The Instructor, Evaluator, Lead Evaluator may appeal the findings of the investigation, the discipline or both.

The Executive Director will convene the Arbitration Board. No person on the arbitration Board will be a party involved in the complaint (i.e. Administrative Investigator, witness, etc). The Arbitration Board will consist of one person designated by the Executive Director, one person designated by the defendant and one person agreed upon both the Executive Director and the defendant. The chair of the Arbitration Board will be the person designated by the Executive Director.

To be considered timely, the request for appeal must be made in writing within ten (10) business days following notification of a particular action. Untimely appeals will not be considered.

The Arbitration Board shall convene within 10 business days of being appointed and will conclude within 30 days of their first meeting.

Decisions of the Arbitration Board will be final. The Arbitration Board may come back with the following decisions:

- Concur with findings
- Concur with discipline
- Concur with finding but disagree with discipline and Arbitration Board will send recommendation for discipline to Executive Director or Education Services Director
- Disagree with finding and Arbitration Board will recommend new findings.

NASAR is not responsible for reimbursement of expenses incurred by the individual filing the written appeal.