



NSWIPP

NSW Institute of
Psychoanalytic
Psychotherapy

PROCEDURES FOR IMPLEMENTATION OF THE CODE OF ETHICS AND CONDUCT FOR MEMBERS OF THE NSWIPP

1. Ethics Subcommittee

1.1 The Ethics Subcommittee shall be constituted as provided in the By-laws of the NSW Institute of Psychoanalytic Psychotherapy.

1.2 Duties of the Ethics Subcommittee

The responsibilities of the Ethics Subcommittee will be:

1.2.1 To consider and respond to communications from members regarding the Code of Ethics and Conduct and the procedures for implementation of the Code.

1.2.2 To make recommendations for appropriate additions and modifications to the Code and Procedures, as indicated by experience or new information. All recommended changes will be subject to approval by the membership at a general meeting.

1.2.3 To consider and respond to communications from members of the Institute and from members of the general public regarding the ethical conduct of the Institute and its members.

1.2.4 To provide a resource of current information regarding ethical issues.

1.2.5 To issue procedural advice and guidelines regarding questions about ethical issues.

1.2.6 To respond, according to the ethical principle 13 as defined in the NSWIPP's Code of Ethics and Conduct, to all complaints and reports referred to it relative to the Code of Ethics and Conduct and to consider them in the manner set out in the procedures in this document.

2. General Principles of the Ethics Subcommittee in regard to questions of Ethical Conduct and Impaired Professional Functioning

Statement of Principle: The implementation of these procedures will be governed both by the need to be mindful of the safety and well-being of patients, and by the concern for and provision of assistance to the member under consideration.

- 2.1 All concerns or complaints of ethical conduct or impaired professional functioning will be responded to by the Chair as quickly as possible, mindful of the need for containment and the need to minimise the distress to all concerned.
- 2.2 Where possible before a complaint is made in writing, the complainant shall be offered the opportunity of a clarifying discussion in person, and shall be provided with copies of the NSWIPP Code of Ethics and Conduct and the Implementation Procedures document.
- 2.3 Each member of the Ethics Subcommittee and the Adhoc Committees shall ensure that no conflict of interest exists for them at any stage during the processes involved in these procedures. Where there is an awareness of a conflict of interest, this shall be dealt with appropriately by the chair or the chair's delegate if the complaint involves the chair.

3. Investigation of a Report of Possible Impaired Professional Functioning due to Ill Health

- 3.1 Any complaint or concern regarding the possible impaired professional functioning due to ill health must be made in writing and referred to the Chair of the Ethics Subcommittee before it is formally considered. A preliminary decision as to whether the complaint or concern is appropriate to be dealt with by the Committee will then be made by the Chair of the Ethics Subcommittee.
- 3.2 The Chair of the Ethics Subcommittee or his/her delegate will appoint two or three members of the Ethics Subcommittee, who are delegated to investigate the matter with the member concerned and with the person who wrote the letter of concern or complaint.
- 3.3 The above letter and the Ethics Subcommittee's letter of acknowledgement regarding the concern would be shown to the member concerned, and his/her cooperation requested.
 - 3.3.1 A course of action to assess the concern or complaint would then be agreed upon between the member concerned and the appointed delegates, subject to ratification by the Ethics Subcommittee.
 - 3.3.2 All parties to the complaint or concern shall be given access to a written copy of the course of action to be followed together with the

name of a contact person or mentor to whom questions about the processing of the complaint are to be directed.

- 3.4 If the member disputes the claim of impaired professional functioning it would be the responsibility of the member to demonstrate to the satisfaction of the appointed delegates that he/she is managing his/her health and professional duties adequately. This could involve the member obtaining appropriate medical and supervision reports.
- 3.5 On completion of the planned course of action (3.4) the appointed delegates would then discuss all details of the matter with the Ethics Subcommittee who will decide:
 - 3.5.1 To proceed no further with the concern or complaint and to inform the parties involved, both personally and in writing, of this decision.
 - 3.5.2. That the concern has been upheld in which case further action will be determined involving one or more of the following;
 - a) appropriate professional help for the impaired member,
 - b) any further measures deemed necessary to safeguard patients and to assist the wellbeing of the impaired member,
 - c) the appointment of an appropriate mentor to support the impaired member in fulfilling the recommendations of the Ethics Subcommittee,
 - d) a possible referral to the Health Services Commissioner, the Psychologists Registration Board, the Medical Board, the Australian Association of Social Workers, or the relevant Professional Association. If this would be a preferred course and in the public interest,
 - e) to refer the matter to the appropriate professional body if at any stage the member concerned refuses to co-operate with these procedures,
 - f) refusal to co-operate with these procedures may constitute misconduct and a breach of standards of the NSWIPP Code of Ethics and Conduct.
- 3.6.1 The member concerned will be informed as soon as possible, both in person and in writing, of any decision made by the Ethics Subcommittee regarding this matter.
- 3.6.2 The complainant shall be informed that their complaint or concern is being addressed by the Ethics Committee.

4. Investigating Reports of Alleged Misconduct or Breach of Standards

- 4.1 A complaint regarding alleged misconduct or breaches of the Code of Ethics by a member of the Institute must be made in writing and referred to the Chair of the Ethics Subcommittee before it is considered.

- 4.2 The complainant must clearly describe the alleged misconduct or breach of standards including the name of the member and any other persons involved.
- 4.3 While a complaint will be presumed to be a request for the Ethics Subcommittee to take action and to include permission for the complaint to be shown to those persons whom the Chair may designate, the person making the complaint shall provide permission for copies of the complaint to be sent to such other persons as the Chair may deem necessary. In the absence of such permission the Ethics Subcommittee shall proceed no further with the complaint and shall notify the complainant accordingly.
- 4.4 The complainant will meet to discuss the matter with the Chair of the Ethics Subcommittee or with a person or person/s designated by the Chair, and may include legal counsel of the Institute. The complainant also has the right to be accompanied by a witness of his or her choice.
- 4.5.1 In all cases of a complaint fulfilling the above conditions, the Ethics Subcommittee will initiate all necessary action in accordance with these provisions of implementation.
- 4.5.2 All parties to the complaint shall be given access to a written copy of the course of action to be followed together with the name of a contact person or mentor to whom questions about the processing of the complaint are to be directed.
- 4.6 Once a complaint is made, it must be investigated as a protection to all concerned – the therapist involved, the patients of the therapist, the Institute and the community.
- 4.7 The action taken to determine whether there is any substance to the allegation must be prompt in order on the one hand to limit the spread of the allegation if it is unfounded, or, on the other hand, if it is well attested, to attempt to limit the extent of further violation.
- 4.8 The Chair of the Ethics Subcommittee will promptly inform the member against whom the complaint has been made regarding the full details of the alleged misconduct or breach of standards.
- 4.9 Where circumstances exist to suggest a prima facie case that violation has occurred, the Chair or his delegate and one other person appointed by the Chair will arrange to meet with the member against whom the allegation has been made in order to explain the Institute's procedures and to establish whether or not there is a prima facie case for a formal hearing. A member may choose to be accompanied by a witness of his or her choice and the Ethics Subcommittee may choose to involve legal counsel of the Institute.
- 4.10.1 Where in the opinion of the Chair, there is no prima facie case made out by the complainant or there is evidence that the allegation of misconduct or breach of standards cannot be validly supported, the information will remain confidential to the Ethics Subcommittee and the President of the Institute and no further action will be taken.

- 4.10.2 Both the member and the complainant shall be offered the opportunity to personally discuss this outcome.
- 4.11 Whether or not a prima facie case has been established, the President shall be informed.

5. Formal Hearings in Cases of Misconduct or Breaches of Standards

- 5.1 The Ethics Subcommittee will appoint an Ad Hoc Hearings Committee consisting of three to five members of the Ethics Subcommittee, who have not been previously involved under Paragraph 4.9 and who have no other conflict of interest with this appointment.

Conflict of interest applies where members of the Institute have or may be seen to have special past or current personal or financial associations with the complainant or the member against whom the complaint has been made (hereafter referred to as the member).

- 5.2 The Ad Hoc Hearings Committee must include at least one member of the Executive Committee and a majority of non Executive Committee members.
- 5.2.1 In the event that an Ad Hoc Hearings Committee cannot be fully constituted from members of the Ethics Subcommittee, because some members would have a conflict of interest, the Executive Committee will appoint the additional members necessary to form the full Ad Hoc Hearings Committee taking into account but not being bound by recommendations from the Ethics Subcommittee.
- 5.2.2 The Ad Hoc Hearings Committee must in this case be specifically authorised by the Executive Committee in writing to have delegated to it the powers and functions of the Executive Committee in deciding whether or not there has been a misconduct or breach of standards.
- 5.2.3 The identity of those on the Ad Hoc Hearings Committee is to be kept confidential to the Executive Committee and to those who need to know because of direct involvement in the process.
- 5.3 The Ad Hoc Hearings Committee shall regulate its own proceedings and having regard to questions of fairness, may conduct its enquiries in such a way as it considers best in the circumstances. It will review in confidence all pertinent records including confidential records and will seek the advice of legal counsel as it deems appropriate before arranging a hearing of the application.
- 5.4 At the discretion of the Ad Hoc Hearings Committee the hearing may take place in the presence of and/or with the guidance of the Institute's legal counsel.

- 5.5 The member will be notified in writing of the above arrangements, receiving not less than 30 days' notice of the hearing unless the Ad Hoc Hearings Committee is of the view that there is such urgency attending the complaint that an earlier hearing is necessary. In that notification the member will be informed:
- 5.5.1 Of the details of the complaint and any supporting evidence.
 - 5.5.2 That he/she is permitted to have in attendance his/her own legal counsel or other representative as desired.
 - 5.5.3 Of the names of those appointed to the Ad Hoc Hearings Committee to allow the member to make any legal objection.
 - 5.5.4 That at the hearing he/she will have an opportunity to answer the case made against him/her.
 - 5.5.5 That the Ad Hoc Hearings Committee will be able to inform itself of the facts in such manner as is just in the circumstances, taking into account matters it considers relevant but will not be bound by the rules of evidence excepting in connection with matters having direct bearing on the allegations made against the member or which reflect upon the member's professional reputation or personal character.
- 5.6 When the Ad Hoc Hearings Committee is satisfied that it has reviewed all pertinent information, it will by majority make a decision as to one of the following:
- a) Exoneration: the member is cleared from blame where the evidence shows no unethical conduct.
 - b) Dismissal of complaint because of insufficient reliable evidence or other procedural defects.
 - c) That the member has been guilty of misconduct or breach of standards.
 - d) In the event that a decision is not made, the matter is referred to the Executive Committee for a decision under the conditions stipulated in 7.
- 5.7 Where the Ad Hoc Hearings Committee finds the member guilty of misconduct or breach of standards, there will be the requirement that the member not hold any office or position on any committee of the Institute for the duration of the measure chosen by the Ad Hoc Hearings Committee. The Ad Hoc Hearings Committee will by simple majority decide on one or more of the following measures:
- a) A period of rehabilitation with specific requirements and regular review.
 - b) Reprimand, with a period of rehabilitation with specific requirements and regular review.

- c) Suspension from membership in the Institute for a stipulated period, but for no more than two years. Special conditions shall be required during this period.
 - d) Required resignation from membership with the option of reapplying under specified conditions.
 - e) Expulsion from membership of the Institute.
- 5.8 The Ad Hoc Hearings Committee will then report its decision to the Executive Committee. As the Ad Hoc Hearings Committee is acting on behalf of the Executive Committee, its decision will be final and the information and proceedings of the Ad Hoc Hearings Committee will be kept confidential within the Ad Hoc Hearings Committee and not be discussed by the Executive Committee.
- 5.9 The member and other parties involved will be informed in writing by the President or his/her delegate within seven days of the decision of the Ad Hoc Hearings Committee being presented to the Executive Committee.
- 5.10 If the member against whom the complaint has been made wishes to appeal the decision to the Executive Committee on the basis of procedural error, he/she must indicate the nature of the alleged error in writing within thirty days from the date of mailing of the notice. Unless written notification from the member against whom the complaint has been made is received within the specified time, the right to appeal will be forfeited.
- 5.11 The material considered by the Ad Hoc Hearings Committee in the course of the hearing and all associated documents will be sealed and held in a bank security facility in the name of the NSW Institute of Psychotherapy, access to be restricted to the current and subsequent Presidents of the Institute. The sealed material will be made available by the President only as deemed appropriate by the Executive Committee if and when a further ethical or legal issue arises involving the individual in question, or the individual appeals or reapplies for membership.

6. Appeals Procedure

- 6.1 If the member against whom the complaint has been made exercises his/her right to appeal the decision on the basis of procedural error, the Executive Committee shall appoint an Ad Hoc Appeals Committee consisting of five members, two from the Executive Committee and two previous office bearers of the Institute and one person who is outside the psychotherapy profession, such as a lawyer, a clergy person or a Justice of the Peace. The appointment of the Appeals Committee must be confirmed by a majority vote of the Committee.
- 6.2 The Appeals Ad Hoc Committee is to be empowered in writing to act on behalf of the Executive Committee in adjudicating the appeal, and its decision will be considered final.
- 6.3 The Ad Hoc Appeals Committee will review in confidence all pertinent records including the proceedings of the Ad Hoc Hearings Committee.

- 6.4 When the Ad Hoc Appeals Committee is satisfied that it has reviewed all pertinent information, it will by simple majority make a decision.
- 6.5 Where the decision is that the appeal has failed, the Executive Committee will be so informed and will inform the member in writing within seven days.
- 6.6 Where the Ad Hoc Appeals Committee finds that the complaint regarding the procedure of the Ad Hoc Hearings Committee is upheld, the Executive Committee will either establish a new Ad Hoc Hearings Committee, or dismiss the complaint where it believes there is no basis for continuing with consideration of the complaint.
- 6.7 The new Ad Hoc Hearings Committee will follow procedure as laid down in paragraphs 5.1 to 5.10 above.

7. Disclosures of Decisions

- 7.1 The decision relating to a charge of misconduct or breach of standards which has been ratified by the Committee shall:
 - 7.1.1 Be reported to the members of the Institute, including the name of the charged member, when the decision has resulted in the suspension of the member or expulsion of the member.
 - 7.1.2 Be reported to the members of the Institute when the decision has resulted in the reprimand of the member, but the name of the charged member will be released only at the discretion of the Executive Committee.
- 7.2 The Executive Committee may, in its discretion, report to the members of the Institute decisions or refer to matters brought before it, or the Ethics Subcommittee, provided that the identity of the parties is not revealed.
- 7.3 The Executive Committee may in its discretion, disclose a decision concerning a charge of unethical conduct to other appropriate ethical bodies, or, when required by law, to appropriate Governmental bodies.
- 7.4 In the event of a complaint being upheld and resulting in the member being expelled from the membership of the NSWIPP, notification shall be given to all appropriate organisations on whose register the person is listed.

8. Procedures for Handling Applications for Membership from Ex Members who have been Expelled

- 8.1 The applicant shall submit to the Ethics Subcommittee an application in writing, stating on what basis he/she wishes the application to be considered. The application should contain:

- 8.1.1 A full, frank and detailed disclosure of the circumstances leading up to the person's expulsion from the organisation and the reasons for such expulsion.
 - 8.1.2 A detailed description of that which has occurred in the person's personal and professional life since leaving the organisation, insofar as it relates to the application.
 - 8.1.3 A detailed description of what efforts have been made at rehabilitation insofar as this relates to the application and what in the view of the applicant has been accomplished.
 - 8.1.4 The reasons why the organisation should consider the person a fit and proper person to be a member, bearing in mind the circumstances which led to the expulsion.
- 8.2 Where at the time of expulsion from the organisation a specific period of time has been stipulated by the Executive Committee before which the expelled member could reapply, the Executive Committee, after considering the application, may at its discretion accept a reapplication made prior to the expiration of that time, or otherwise vary the period of time the applicant cannot reapply.
- 8.3 If accepted on this basis and in all other cases, the Ethics Subcommittee will appoint an Ad Hoc Reapplication Committee consisting of three or five members of the Ethics Subcommittee.
- 8.4 In the event that an Ad Hoc Reapplications Committee cannot be fully constituted from members of the Ethics Subcommittee, because some members would have a conflict of interest as defined in paragraph 5.1, procedures as set down in paragraph 5.3.1 will be followed.
- 8.5 The Ad Hoc Reapplications Committee must be specifically authorised by the Executive Committee in writing to have delegated to it the powers and functions of the Executive Committee in deciding whether or not the application should be accepted and the applicant considered by the Membership Advisory Board (MAB).
- 8.6 The Ad Hoc Reapplications Committee must include at least one member of the Executive Committee and a majority of non-Executive Committee members.
- 8.7 The Ad Hoc Reapplication Committee shall regulate its own proceedings and having regard to questions of fairness, may conduct its enquiries in such way as it considers best in the circumstances of any individual application. It will review in confidence all pertinent records including confidential records kept of proceedings leading to the expulsion and will seek the advice of legal counsel as it deems appropriate before arranging a hearing of the application.
- 8.8 At the discretion of the Ad Hoc Reapplication Committee, the hearing may take place in the presence of and/or with the guidance of the Institute's legal counsel.

- 8.9 The applicant will be notified in writing of the above arrangements, receiving not less than 30 days' notice of the hearing. In that notification the applicant will be informed:
- 8.9.1 That he/she is permitted to have in attendance his/her own legal counsel or other representative if desired.
 - 8.9.2 Of the names of the members appointed to the Ad Hoc Reapplication Committee to allow the applicant to make any legal objection.
 - 8.9.3 That at the hearing he/she will have an opportunity to advance the case for readmission and
 - 8.9.4 That members of the Ad Hoc Reapplication Committee will be able to inform themselves of the facts in such manner as is just in the circumstances, taking into account matters it considers relevant including:
 - a) The applicant's reasons for wishing to rejoin the Institute and for making the application at that time.
 - b) That the applicant has knowledge of the standards expected of a practitioner, understands and acknowledges the significance of the breach of ethics and unprofessional conduct governing his/her expulsion and has insight into the way that this conduct represented a failure to maintain an adequate level of ethical conduct and professional functioning.
 - c) That any circumstances or situational stresses which may have contributed to the unprofessional conduct have changed so as to make it unlikely that there will be a recurrence of unprofessional behaviour or misconduct.
 - d) That the applicant's attempts at rehabilitation are such as to make it unlikely that there will be a recurrence of unprofessional behaviour or misconduct.
 - e) That there is evidence that he/she knows the nature of any harm caused to others by virtue of the unprofessional conduct, that there is evidence of remorse and that the applicant has taken any steps that would reasonably have been open to him/her to rectify such harm.
- 8.10 The Ad Hoc Reapplication Committee may conduct one or more further hearings with the applicant and pursue other avenues of enquiry it deems relevant.
- 8.11 When the Ad Hoc Reapplication Committee is satisfied that it has reviewed all pertinent information, it will by simple majority make a decision as to whether or not the application should be accepted and the applicant considered by the MAB, to assess whether or not he/she meets formal membership criteria.
- 8.12 The Ad Hoc Reapplication Committee will then report its decision to the Committee. As the Ad Hoc Reapplication Committee is acting on behalf

of the Committee, its decision will be final and the information and proceedings of the Ad Hoc Reapplication Committee will be kept confidential within that committee and not discussed in the Executive Committee.

- 8.13 Where the application is not accepted, the applicant will be informed by the Executive Committee within seven days of this decision and that this decision is final and not open to discussion. The Executive Committee will stipulate a period within which no further application for membership from this person will be accepted.
- 8.14 Where the application has been accepted, the applicant will be invited to submit to the MAB an application for membership conforming to the Institute's membership requirements. On receipt of this application the MAB will initiate the process of assessment of the applicant for membership within thirty days. The applicant must satisfy the MAB that he has fulfilled all formal membership requirements save there is no need to establish to the Executive Committee that he/she is a fit and proper person. Although the MAB will be informed that the applicant is reapplying for membership subsequent to expulsion following a breach of ethics and unprofessional conduct, the MAB will not have access to any of the material considered by the Ad Hoc Reapplication Committee; this remaining confidential to that committee.
- 8.15 The material considered by the Ad Hoc Reapplication Committee in the course of the hearing and all associated documents will be sealed and held in a bank security facility in the name of the NSW Institute of Psychoanalytic Psychotherapy, access to be restricted to the current and subsequent Presidents of the Institute. The sealed material will be made available by the President only as deemed appropriate by the Executive Committee if and when a further ethical or legal issue arises involving the individual in question.

9. Inability to Serve

If for any reason a member or members of any Ad Hoc Committee is temporarily unable to serve, the Executive Committee shall appoint a member(s) to fill the vacancy during the time of the original member's incapacity.

10. Rights and Privileges of all parties concerned

In all hearings:

- a) The rights of procedural fairness and natural justice of all concerned parties will be fully observed in implementing these provisions.
- b) Should the complainant, the member against whom the complaint has been made, or a witness, fail to appear at any hearing, the Ad Hoc Committee concerned may, in its discretion, postpone or dismiss or proceed with the hearing.

11. Feedback

Where possible and practical all parties to a complaint shall be asked to provide feedback regarding the processing of the complaint.

12. Resignation

The NSW Institute of Psychoanalytic Psychotherapy shall be under no obligation to accept a resignation offered by a member when there is a charge of unethical conduct against him or her. An offer of resignation, whether accepted or not, shall not require the termination of an investigation of a charge of unethical conduct, nor prevent the rendering or disclosure of a decision on such a charge.

13. Indemnification

As a condition of membership of the NSW Institute of Psychoanalytic Psychotherapy each member agrees to cooperate with the work of the Ethics Subcommittee on request, and agrees to release, hold harmless, and indemnify the NSW Institute of Psychoanalytic Psychotherapy its officers, agents or members of the Ethics Subcommittee from any and all claims:

- a) arising out of the instituting and processing of ethical matters in respect of said member, and the imposition or disclosure of sanctions as a result of said proceedings.
- b) with respect to any third party action or proceeding brought against such member based upon, relying on, arising from, or with reference to the Ethical and Professional Standards of the NSW Institute of Psychoanalytic Psychotherapy or any ethical proceedings conducted by the NSW Institute of Psychoanalytic Psychotherapy involving such a member.

14. Defamation Liability

The deliberation of the Ethics Subcommittee and the Executive Committee are in the normal course protected by qualified privilege.

15. Review

It is expected that these procedures will be regularly reviewed and modified as indicated by experience or new information.