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# **Fraud, Waste and Abuse Case Procedures**

For BOC-Accredited Facilities

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# Fraud, Waste and Abuse Case Procedures

## For BOC-Accredited Facilities

### Introduction

The Board of Certification/Accreditation, International (BOC) develops and promotes high accreditation standards for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) providers, as set forth in the [BOC Accreditation Standards Guide](#). The following disciplinary procedures are the rules for processing possible violations of these standards. These rules apply to those facilities accredited by BOC. This document describes and outlines the procedures for handling Fraud, Waste and Abuse (FWA) cases brought to the attention of BOC. When facility owners apply for accreditation or reaccreditation, they agree to abide by BOC policies, including the BOC Accreditation Standards and the standards as set forth by the Centers for Medicare and Medicaid Services (CMS). In addition, BOC-accredited facilities agree that: these procedures are a fair process for resolving all FWA charges; they will be bound by decisions made pursuant to these procedures; these procedures do not constitute a contract between BOC and the facility; and BOC-accredited facilities must maintain continued compliance, even as these procedures are updated. These policies and procedures are revisited regularly and may be amended at any time in the sole discretion of BOC in response to substantial real-world experience provided by BOC-accredited businesses. All such amendments are retroactive unless otherwise provided.

### A. General

**1. Nature of the Process.** These procedures are the only means to resolve all BOC FWA charges. By applying for accreditation or reaccreditation, facilities agree that they will not challenge the authority of BOC to apply the BOC Accreditation Standards or the CMS Supplier and Quality Standards and will not challenge the results of any BOC action taken under these policies in a legal or government forum. These FWA procedures are not formal legal proceedings, so the rules and practices of legal proceedings may not be observed. BOC will review the pertinent information presented when considering FWA investigations, cases and decisions.

BOC FWA Case Procedures are designed to operate without the assistance of attorneys. Any party may be represented by an attorney with respect to FWA proceedings and procedures; however, if a party has retained an attorney, that party and attorney may be directed to communicate with BOC only through BOC legal counsel. In all other cases, the parties are encouraged to communicate directly with BOC.

**2. Participants.** FWA cases may be decided by BOC's Chief Executive Officer (CEO), Credentialing Director, Board Chair and/or any representative designated by the CEO or authorized by these procedures. A facility owner who is the subject of an FWA charge or investigation will be, and is identified as, the "respondent" in these rules. The person(s) initiating an FWA charge against a facility will be, and is identified as, the "complainant(s)."

**3. Complainants / FWA Charge Statement.** Any person, group or, in appropriate cases, BOC may initiate an FWA case and act as a complainant. A complainant other than BOC must complete the information requested on an FWA Charge Statement and submit the completed form to BOC's Credentialing Director. This form is available on BOC's website ([https://www.bocusa.org/files/FWA\\_Charge\\_Statement.pdf](https://www.bocusa.org/files/FWA_Charge_Statement.pdf)). Each FWA Charge Statement must include a detailed written description of the factual allegations supporting the FWA charge(s). At the discretion of the Credentialing Director, in certain instances the charge may be accepted via telephone.

**4. Time Requirements.** BOC will make every effort to follow the time requirements set forth in this document. However, if BOC does not meet a time requirement, the final resolution of any FWA matter will stand.

Complainants and respondents are required to comply with all time requirements specified in this document. Time extensions or postponements may be granted by the BOC CEO, Credentialing Director or Board Chair, if a timely written request explains a reasonable need for such action.

5. **Litigation / Other Proceedings.** BOC may accept and resolve FWA charges when civil, criminal litigation or other proceedings related to the charge have been, or are presently, before a court, regulatory agency or professional body. BOC may also continue or delay FWA charges in such cases.
6. **FWA Charges Concerning Non-BOC Accredited Facilities.** In the event that BOC receives an FWA inquiry or FWA Charge Statement concerning a facility that does not hold a BOC accreditation or who is not an applicant, a representative of BOC will inform the complainant and may refer the complainant and/or the complaint itself to an appropriate authority.
7. **Improper Disclosure / False or Misleading Responses.** Any failure to disclose pertinent information or the submission of any false or misleading disclosure by a facility owner with respect to an FWA charge, criminal case, disciplinary proceeding or similar matter concerning him or her may constitute a violation.
8. **Time Limitations Concerning FWA Charges.** BOC may consider any FWA charge, regardless of:
  - (a) Whether the respondent held a BOC accreditation at the time of the alleged violation.
  - (b) When the alleged violation occurred.
  - (c) Whether the respondent continues to hold or seek a BOC accreditation during the course of any FWA case.
9. **Confidentiality.** All material related to an FWA case prepared by or submitted to BOC will be confidential, but the identity of the complainant will be shared with the respondent.

Until an FWA case has been closed or finalized pursuant to this policy, all parties must maintain the confidentiality of all information related to the FWA case, including its existence, consistent with these rules. If any party discloses information related to the FWA case contrary to these rules, the CEO, Credentialing Director and/or the Board Chair may terminate the FWA charge if such disclosure is by the complainant or may impose any sanction included within these rules if such disclosure is by the respondent.

10. **Failure to Cooperate.** If any party refuses to fully cooperate or participate with BOC or its representatives, and it is determined that the lack of cooperation is without good cause, BOC may take one of the following actions:
  - (d) The CEO, Credentialing Director and/or the Board Chair may terminate the FWA charge of an uncooperative complainant.
  - (e) If a respondent is uncooperative, the CEO, Credentialing Director and/or the Board Chair may impose any sanction described in Section H, Disciplinary Actions.
11. **Resignation from BOC.** Should a respondent attempt to relinquish BOC accreditation or withdraw an application during the course of any FWA inquiry or case, BOC reserves the right to continue the matter to a final resolution according to these procedures.

## **B. FWA Inquiries / FWA Charge Statement Process**

1. **FWA Inquiries.** Any person or group seeking to file a charge concerning a BOC accredited facility should contact the BOC Credentialing Director. The Credentialing Director will forward to the complainant a copy of the [BOC Accreditation Standards Guide](#), FWA Case Procedures and the form titled "FWA Charge Statement." At the discretion of the Credentialing Director, in certain instances, the charge may instead be

accepted via telephone. The Credentialing Director will forward the information to the Compliance Specialist to record all FWA inquiries and identify the person(s) making the inquiry, the facility identified and the nature of the problem. This case log will remain confidential and will be available only to authorized representatives of BOC, or it may be released for review to cooperating agencies and organizations.

2. **FWA Charge Statement / Description of Charges.** In order for BOC to consider an FWA charge, a complainant must complete and submit to the Credentialing Director an FWA Charge Statement, including all information required by the form. At the discretion of the Credentialing Director, in certain instances the charge may be accepted via telephone. Public documents such as newspaper stories, court verdicts or agency decisions are not acceptable as FWA charge statements without an accompanying description of the charge, but such material may be submitted as documentation to support a charge. The Credentialing Director will communicate to the complainant whether the charges submitted are accepted or rejected for a formal FWA investigation.

### **C. Acceptance/Rejection of FWA Charges**

1. **Receipt of Charge.** When an FWA Charge Statement is received by BOC, the Credentialing Director will:
  - (a) Review the material received.
  - (b) Review the allegations made concerning the charges.
  - (c) Determine whether the charges are presented in sufficient detail to permit BOC to conduct a preliminary investigation.
  - (d) If necessary, contact the complainant and request additional factual material.
2. **Charge Acceptance.** The Credentialing Director will review each charge presented in the FWA Charge Statement submitted by a complainant and then determine if it will become the subject of a formal FWA Charge and Investigation. The following criteria will be considered to determine if a charge is accepted or rejected:
  - (a) Whether the respondent is an accredited facility.
  - (b) Whether the passage of time since the alleged violation requires that the charge be rejected.
  - (c) Whether relevant, reliable information or proof concerning the charge is available.
  - (d) Whether the complainant is willing to provide proof or other information to BOC concerning the charge.
  - (e) Whether the charge appears to be justified or insupportable, considering the proof available to BOC.
3. **Charge Rejection.** If the Credentialing Director determines that an allegation should not become the subject of a formal FWA Charge and Investigation, the Credentialing Director will reject the charge(s). The Credentialing Director will notify the complainant of the rejection by letter within approximately twenty-one (21) days of the determination. The Credentialing Director's decision is final and not subject to challenge or appeal. If the complainant discovers new or additional information that he or she believes constitutes an ethics violation, he or she may submit a new FWA Charge Statement.

### **D. Preliminary Actions and Orders**

1. **Suspension of Accreditation.** The Credentialing Director may issue a Preliminary Suspension Order involuntarily suspending the Accreditation(s). In addition, BOC may request that the BOC accredited facility(s) voluntarily suspend their accreditation(s). Upon suspension, the BOC accredited facility(s) will cease marketing, advertising or representing the business as accredited or otherwise endorsed by BOC until further notice. In addition, the BOC accredited facility(s) will return any BOC certificates to BOC to be

held until the final resolution of the complaint. This Suspension Order will stay in effect until the final resolution of the complaint as determined by the Credentialing Director.

- 2. Circumstances Warranting Preliminary Suspension Orders.** Preliminary Suspension Orders are authorized when:
  - a. The owner, shareholder, member of the business, or business, has been convicted of a criminal act.
  - b. The owner, shareholder, member of the business, or business, has been indicted or similarly charged with a criminal act or violation of a criminal law under statute, law or rule.
  - c. The owner, shareholder, member of the business, or business, has been found in violation of any law, regulation or rule by a professional regulatory body, or has been sanctioned or disciplined by such a regulatory body.
  - d. The owner, shareholder, member of the business, or business, is the subject of a formal complaint or similar charge and/or investigation by a professional regulatory body.
  - e. The owner, shareholder, member of the business, or business, has been found in violation of an ethics code of a professional association or certifying body.
  - f. The owner, shareholder, member of the business, or business, is the subject of litigation or a petition relating to respondent's orthotic/prosthetic practice.
  - g. If the CEO or Credentialing Director determines that the ethics charges constitute a potential danger to public health or safety.
  - h. If the CEO or Credentialing Director determines that the interests of the public or BOC warrant the immediate suspension of the respondent's certification.
- 3. Other Preliminary Orders.** The Credentialing Director may require the owner, shareholder, member of the business, or business, to do or to refrain from doing certain acts by Preliminary Order, including the disclosure/submission of documents relevant to review in a Fraud Waste and Abuse investigation or court judgment. Any Preliminary Order will be reasonably related to the complaint under consideration or to a party's responsibilities under the BOC's and CMS's Fraud Waste and Abuse policies.
- 4. Failure to Comply with Preliminary Orders.** The Credentialing Director may sanction a respondent who fails to comply with a Preliminary Order. The Credentialing Director will consider the severity of the failure to comply and other relevant factors in determining the appropriate sanction (e.g. extending suspension).

## **E. FWA Charges and Investigations**

- 1. FWA Charge and Investigation.** After an FWA charge is accepted, the Credentialing Director may assign a BOC site surveyor to conduct an unannounced visit to investigate the charge or conduct an internal investigation as warranted. If a supplier receives three or more consumer complaints within a 90-day time frame, an on-site visit will be conducted to investigate the complaints and the supplier will be invoiced for a re-survey fee. If the fee is not paid within fifteen (15) days, the supplier's accreditation will be revoked.
- 2. Accreditation Jeopardy Letter.** The BOC site surveyor will submit a report to the Credentialing Director within three (3) days of completing the site visit. The Credentialing Director will review all evidence for proof of compliance with accreditation standards, and if violations are found, the Credentialing Director will generate an Accreditation Jeopardy letter, if appropriate. The Accreditation Jeopardy letter will detail a required corrective action plan for each violated accreditation standard.

## F. FWA Charge Response

1. **Submitting an Accreditation Jeopardy Letter Response.** Within thirty (30) days of the mailing date of an Accreditation Jeopardy letter, the respondent must submit a corrective action plan according to the instructions in the Accreditation Jeopardy letter. The corrective action plan must include the following:
  - (a) A full response to each charge and/or complaint.
  - (b) Copies of all documents that the respondent believes to be relevant to the resolution.
  - (c) Any other information that the respondent believes will assist BOC in considering the accreditation standards violations fairly.
2. **Response to Corrective Action Plan.** The Credentialing Director may require the respondent to supplement or expand on a response and will reply in writing if further information is required.

## G. Final Decision and Order

1. **Resolution of Charges.** The Credentialing Director will consider the matter under these procedures, determine the appropriate resolution to the FWA charge and issue a Final Decision and Order.
2. **Final Decision and Order.** The Final Decision and Order of the Credentialing Director is binding on the parties but may be appealed to the Board Chair by requesting an appeal hearing consistent with the requirements of these procedures.

## H. FWA Appeal to BOC Board Chair

1. **FWA Appeal Hearing.** In the event that the respondent requests a hearing, the BOC Board Chair will attempt to obtain all relevant information and documents. When deemed appropriate, the BOC Board Chair will conduct all FWA Appeal Hearings. In event the Board Chair has a conflict of interest, the BOC Board's Vice Chair or other appropriate designee will fulfill the responsibilities documented in these procedures.
2. **Hearing Schedule and Location.** The hearing date for each FWA case will be scheduled by the Board Chair, CEO or Credentialing Director in consultation with the respondent. Each hearing will be held at a site determined by the Board Chair, CEO or Credentialing Director but typically will take place via telephone conference. If practical, each hearing will be held no less than thirty (30) days and no more than sixty (60) days from the date of the Accreditation Jeopardy letter.
3. **Hearing Notice and Attendance.** The Board Chair, CEO, or Credentialing Director will notify the respondent of the hearing schedule and location in writing. Each party will be required to indicate the following at least seven (7) days before the hearing:
  - (a) Whether the party wishes to participate in the hearing via telephone; if so, the telephone number where the party is to be reached during the hearing.
  - (b) Whether the party intends to participate in the hearing with an attorney or other representative; if so, the name, address and telephone number of such attorney or representative.
  - (c) Whether the party intends to present witnesses during the hearing; if so, the name, address and telephone number of each witness and a brief summary of the content of each witness's proposed testimony.
  - (d) Whether the party intends to present or offer any documentary information or other written proof during the course of the hearing that has not been previously considered by BOC. If such information is offered, the party must provide a copy of each document and a brief description of each document's relevance.

Consistent with the requirements of these procedures, the Board Chair, CEO, or Credentialing Director shall have the sole discretion to determine the manner and extent of hearing participation by each party or other hearing participant, including whether a party or hearing participant shall appear in person or participate via telephone. Any FWA hearing may proceed to a conclusion and decision whether or not the respondent is present.

4. **Postponement of Hearing.** A respondent may request a hearing postponement. This request must be in writing and received by BOC at least ten (10) days prior to the hearing date or as soon as practical. The Board Chair may grant a postponement. Postponement decisions cannot be appealed.
5. **Participation of BOC Legal Counsel.** Should BOC legal counsel be present during an FWA case hearing, legal counsel shall have the privilege of the floor and may conduct the hearing with the Board Chair.
6. **Responsibilities and Rights of the Parties.** In addition to other responsibilities and rights, the respondent may do, or be required to do, the following
  - (a) Attend the hearing and be present during the testimony of all witnesses.
  - (b) Present witnesses, written information and argument on his or her behalf.
  - (c) Review or inspect all oral or written information presented in the case.
  - (d) Comply with all orders or directives issued by BOC.
7. **Witnesses.** At the discretion of the Board Chair, witnesses may be excluded from the hearing except during the presentation of their testimony.
8. **Confidentiality/Inclusion of Other Persons.** All hearings are confidential and private. No third parties are permitted without consent of the Board Chair.
9. **Information and Proof Accepted.** The Board Chair will receive and consider all information appearing to be relevant to an ethics complaint, including any information that may be helpful for a complete understanding of the case. Objections relating to relevance of information and similar issues will be decided by the Board Chair.
10. **Record of the Hearing.** A taped, written or summary record of the hearing will be made by the Board Chair, another BOC representative or a stenographer/recorder; however, no taped, video or other electronic recording of the Hearing will be permitted, unless specifically authorized by the Board Chair. Off-the-record conversation may be requested by parties and will not be part of the hearing record.
11. **Hearing Expenses.** Parties will be responsible for their own expenses associated with the case. Should a party request a written transcript or recording copy of the hearing, a reasonable fee will be assessed for preparation. BOC bears the cost of the hearings and investigations that are performed by BOC representatives.
12. **Closing of the Hearing Record.** The hearing record will be closed following the conclusion of the hearing unless otherwise directed by BOC. Any party, including the Board Chair, may request that the record remain open for thirty (30) days for the purpose of receiving additional documentary information and similar evidence. The Board Chair may deny requests to keep records open and such decisions cannot be appealed.

## I. Disciplinary Actions

1. **Disciplinary Actions Available.** When a respondent has been found to have violated one or more of the accreditation standards, BOC may issue and order one or more of the following disciplinary and remedial actions:

- (a) The accredited facility or applicant may be ineligible for reaccreditation or accreditation and any reapplication of the respondent for BOC accreditation may be denied.
- (b) A requirement for the respondent to take corrective action(s).
- (c) A private reprimand and censure of the respondent concerning the accreditation standard violation(s).
- (d) The revocation of any BOC accreditation held by the respondent, which shall include the requirements that the respondent return to BOC all original or copied credential materials and immediately stop any and all professional identification or affiliation with BOC.
- (e) Any other sanction deemed reasonable and appropriate by BOC.

**2. Referral and Notification Action.** At its sole discretion, BOC may notify appropriate government or professional bodies of any final disciplinary action taken. Such notification may be sent by BOC at any point after the time period for the respondent to appeal has lapsed. During an appeal period, BOC may respond to inquiries concerning FWA cases and may indicate the existence of such proceedings.

## **J. Finalizing and Closing FWA Cases**

- 1. Events That Will Cause Closure of an FWA Case.** An FWA case will be closed and all proceedings ended when any of the following occur:
- (a) Following the lapse of any appeal rights, the FWA case has not been accepted and the charges have been rejected as the basis for an FWA Charge and Investigation pursuant to these rules.
  - (b) Following the lapse of any appeal rights, a final decision has been issued by the CEO, Credentialing Director or Board Chair pursuant to these procedures.
  - (c) An FWA charge has been terminated or withdrawn by the complainant(s).\*
  - (d) The respondent is no longer accredited by BOC.\*
  - (e) The respondent is no longer in business.\*

*\*In these instances, BOC reserves the right to continue the matter to a final resolution according to these procedures.*

**2. Events That Will Cause a BOC FWA Case Decision and Order to Become Final.** The result of an FWA Case Decision and Order that is not appealed will be final. The decision of the FWA Appeal Hearing will be final and no further appeals will be available to any party.

## **K. Reapplication Procedures Following Revocation Orders**

- 1. Revocation Orders / Reapplication Petition.** Three (3) years after the issuance of a final revocation order issued under these rules, a respondent may submit to the Credentialing Director a petition for permission to reapply for accreditation as set forth in Section 4, below.
- 2. Contents of Reapplication.** Subject to the time requirements above, the Credentialing Director will consider reapplication petitions from those who have been the subject to accreditation revocation. Reapplication petitions must include the following information:
- (a) A statement of the relevant FWA case name and the date that the final BOC FWA decision was issued.
  - (b) A statement of the reasons that the respondent believes support or justify the acceptance of the reapplication petition, including a statement explaining why the respondent should now receive BOC accreditation.

(c) Copies of any relevant documents or other material upon which the respondent relies in support of the petition.

3. **Reapplication Petition.** Within ninety (90) days after the submission of a complete reapplication petition or as soon after as practical, the Credentialing Director will review and rule on the petition.
4. **Reapplication Decisions and Orders.** Within thirty (30) days of conclusion of the Credentialing Director's review of a reapplication or as soon as practical, the Credentialing Director will prepare and issue a Decision and Order explaining the decision with respect to the petition. The final Decision and Order will indicate whether the petition is granted, denied or continued to a later date. If appropriate, the Decision and Order will indicate any conditions of accreditation or reaccreditation. Copies of the Decision and Order will be sent via U.S. mail with a return receipt requested or via another appropriate delivery method. This Decision and Order is not subject to appeal.