



# ABP Corporate Policy

## Appellate Review Procedure (Appeals)

The American Board of Pediatrics (ABP) will, on a consistent and non-discriminatory basis, afford reasonable due process for all diplomates and candidates receiving certain negative determinations and/or certain ABP disciplinary actions. Accordingly, the ABP has adopted the following rules and procedures for appeals.

### A. RIGHT TO APPEAL

An individual has a right to appeal the following determinations by the ABP:

1. **Appeal Type 1:** A determination that a candidate is in possession of a restricted medical license pursuant to the ABP's Licensure Policy ([www.abp.org/sites/abp/files/policy-licensure-policy.pdf](http://www.abp.org/sites/abp/files/policy-licensure-policy.pdf)) and is therefore ineligible to take a proctored examination.
2. **Appeal Type 2:** A determination that a candidate, who has submitted a completed application for certification in a pediatric subspecialty, is ineligible to take a proctored examination due to i) a determination that the applicant's Scholarly Activity/Research is inadequate, or ii) the practice experience is inadequate for admission via a Practice Pathway.
3. **Appeal Type 3:** A determination that an individual has failed to demonstrate an alleged delay, interruption, or other testing irregularity occurred during an examination administered at a secure test center, pursuant to the ABP's Computer-Based Administration Policy ([www.abp.org/sites/abp/files/policy-computer-based-administration-policy.pdf](http://www.abp.org/sites/abp/files/policy-computer-based-administration-policy.pdf)). A successful appeal from a failed proctored examination will not reverse a failing grade or alter a score. Rather, a successful appeal may result in an invalidation of a score and the candidate being rescheduled to sit for another proctored examination at the next available examination administration.
4. **Appeal Type 4:** A sanction imposed pursuant to the ABP's Disciplinary Policy.

### B. APPELLATE FEES AND COSTS

Appeal Fee: As published or otherwise communicated.

Diplomate and/or candidate costs and expenses in bringing or pursuing an appeal are the sole responsibility of the individual. The ABP is not responsible or obligated for the payment or reimbursement of any expense or cost incurred by any individual bringing or pursuing an appeal regardless of the outcome.

### C. APPEALS PROCEDURES

**Notice of Right to Appeal.** In conveying to an individual an appealable negative determination, the ABP will:

1. State the individual's right to appeal under these procedures,
2. Provide a copy of these Appellate Review Procedures,
3. Disclose the Appeal Fee, and
4. Notify the individual of the deadline to submit a "Notice of Appeal" (below) and the full Appeal Fee.

#### **Notice of Appeal.**

For Appeal Types 1-3, the time limit to submit to the ABP the "Notice of Appeal" and full Appeal Fee is fourteen (14) days from the date of the Notice of Right to Appeal. For Appeal Type 4, the



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time limit to submit to the ABP the “Notice of Appeal” and full Appeal Fee is twenty-eight (28) days from the date of the Notice of Right to Appeal.

To maintain an appeal, Appellant must timely submit to the ABP a written Notice of Appeal, together with all relevant supporting documentation, and the full Appeal Fee. The Notice of Appeal must specify every basis and supporting fact of the appeal. If the ABP does not timely receive the Notice of Appeal, together with all relevant supporting documentation, and/or the full Appeal Fee, the Appellant will have forgone their right to an appeal and the negative determination shall be deemed final. If the ABP finds a Notice of Appeal sufficient, the ABP shall send written notice to the Appellant that his/her/their appeal is commencing.

#### **For Appeal Type 4 Only, Notice of Appeal Determination Meeting**

At least forty-five (45) days prior to the tentative scheduling of the Appeal Determination Meeting, the ABP shall send the Appellant a written notice informing Appellant of the following:

- a. The tentative scheduling date of the Appeal and the Committee that will determine the Appeal.
- b. The relevant issues for consideration on Appeal.
- c. The Appellant’s right to submit, in writing and no less than twenty-one (21) days in advance of the Appeal Determination Meeting additional relevant document, statements, data, information or other evidence that he/she/they wishes the Appeal Committee to consider. Additional submitted materials must be written, and must be in a single electronic (e.g., mail or facsimile) or post mailing.

#### **D. POLICIES APPLICABLE TO ALL APPEALS**

**Written Appeals Only.** No oral hearings or presentations will be granted or allowed. The Appellant and/or his/her/their representative shall not have the right to attend any aspect of the determination of appeals under this subsection.

**Fair and Impartial.** All appeals shall be conducted in a fair and impartial manner.

**No Conflict of Interest.** Any individual participating in an appellate review on behalf of the ABP shall be recused if they have any substantive material conflict of interest with respect to the appeal.

If, due to conflict of interests, it is not possible to constitute a Committee to determine an appeal, the appeal shall be referred to the Executive Committee and such a referred appeal shall be conducted pursuant to all applicable policies herein.

**Committee Determining the Appeal.** Each Committee that determines an appeal shall have a minimum of three voting members, the majority of which will be peer-board certified pediatrician volunteers and, in addition, the ABP’s Chair, President and/or Executive Vice President may serve ex officio.

**Burden on Appellant.** The burden is upon the Appellant to present sufficient evidence to the ABP to prove, by a preponderance of the evidence, that the appealed determination(s) should



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be overturned.

**Determination.** The ABP will make final determinations with respect to the substantive merits of the appeal. In making a final determination, the ABP may consider any materials submitted by the Appellant and/or any other documents, statements, data, or information based on relevance, appropriateness, and/or necessity. Upon presentation of the appellate materials, the Committee will deliberate and then vote by majority on whether it will affirm, reverse, amend, or remand for determination (see below) the relevant issues considered on Appeal.

**Remand.** At the sole discretion of and based on a majority vote of a voting quorum of any given Appeal Committee, an Appeal Committee may refer all or some of the issues considered in the Appeal to the Executive Committee or, upon a determination, request that the Executive Committee review some or all of the Appeal determinations. The Executive Committee will determine, in its discretion and based on a majority vote of a voting quorum, whether it will grant or deny the referral of the appeal or request for review.

**Findings.** The Committee (or, as applicable, Executive Committee) shall set forth its findings, recommendations, and/or any ordered directions in writing and send to the Appellant.

#### E. DIPLOMATE STATUS DURING APPEAL

For any appeal from a negative determination affecting the certification status of an ABP diplomate, the diplomate's certificate shall remain as is until the appeal is deemed final. If a negative determination, in full or part, is upheld and deemed final on appeal, the change in certificate status (if any) will be deemed to be effective as of the date of the first written notification of the negative determination.

#### F. FINALITY

Determinations, findings, or other decisions are final and binding once the appeals procedure is finalized.