



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. A determination that a candidate is ineligible to take an examination due to the ABP's determination that the candidate is in possession of a restricted medical license.
2. A determination that a candidate who has submitted a completed application for certification in a pediatric subspecialty is ineligible to take the examination due to the ABP's determination that i) evidence of and/or the quality of the applicant's Scholarly Activity/Research or Meaningful Accomplishment in Research is inadequate or ii) the practice experience is inadequate for admission via a Practice Pathway.
3. A determination that the individual has failed an examination, limited to appeals of instances of a compromise in the administration of the examination due to environmental or technical issues. An appeal from a failed examination will not reverse a failing grade or alter a score. Rather, a successful appeal may result in an invalidation of a score or result and the candidate being rescheduled to sit for examination at the next available examination administration. In order to be able to institute an appeal under this subsection A(3), the individual must have sent a notice of the alleged compromise in the administration of the examination due to environmental or technical issues, in writing, to the ABP within 72 hours from the completion of the examination at which the compromise allegedly occurred.
4. A sanction imposed pursuant to the ABP's Disciplinary Policy.

In addition to the above, the ABP may, at its sole discretion, grant an appeal of other determinations on a case-by-case basis.

In order for an individual to invoke any right of appeal, an individual must not be party to any legal or administrative proceeding at any time throughout the appellate process that is based in full or in part on substantially similar facts and/or circumstances which relate to the intended appeal.

B. APPELLATE FEES AND COSTS

Appeal Fee: As published. The fee may be returned at the discretion of the ABP.

Diplomate and/or candidate costs and expenses in bringing or pursuing an appeal are the sole responsibility of the individual, including travel expenses, postage/delivery costs, copying costs, legal fees or expenses and any and all other costs and expenses. 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.

C. APPEALS PROCEDURES FOR APPEALS BASED ON A1-A3 ABOVE

1. **Notice of Right to Appeal.** In conveying to an individual a negative determination pursuant to A1-A3 above, the ABP will state the individual's right to appeal under these procedures,



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a copy of these Appellate Review Procedures, the Appeal Fee (if any) and the time limit of fourteen (14) days for the individual to submit to the ABP a “Notice of Appeal” and the full Appeal Fee. With respect to Appeals pursuant to A3, however, an appeal will not be allowed to proceed if the individual had not sent a notice of the alleged compromise in the administration of the examination due to environmental or technical issues, in writing, to the ABP within 72 hours from the completion of the examination at which the compromise allegedly occurred.

2. **Notice of 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 each and every basis and supporting fact of the appeal. The Notice of Appeal and all supporting documentation must be written (audio and/or video recorded materials are not allowed and will not be reviewed) and must be in a single mailing to the ABP. If the ABP does not timely receive a Notice of Appeal and/or the full Appeal Fee, the Appellant will have forgone his/her right to an appeal and the determination shall be deemed final.
3. **Written Appeals Only.** No oral hearings or presentations will be granted or allowed.
4. **Determination.** The ABP’s President, or his/her designee(s) (hereinafter “SMT”), is authorized to make final determinations with respect to 1) the timeliness and/or adequacy of the Applicant’s submission of his/her Notice of Appeal and/or 2) the substantive merits of the appeal. The Appellant and/or his/her representative shall not have the right to attend any aspect of the determination of appeals under this subsection. In making a final determination, the ABP may consider or reject any materials submitted by the Appellant and/or any other documents, statements, data, information based on relevance, appropriateness, and/or necessity.
5. **Notice of Determination.** The result of the Appeal shall be sent to the last known address of the Appellant within seven (7) days of the final determination.

D. APPEALS PROCEDURES FOR APPEALS BASED ON A4 ABOVE

1. **Notice of Right to Appeal.** In conveying to an individual a negative determination pursuant to A4 above, the ABP will state the individual’s right to appeal under these procedures, a copy of these Appellate Review Procedures, the Appeal Fee and the time limit of twenty-eight (28) days for the individual to submit to the ABP a “Notice of Appeal” and the full Appeal Fee.
2. **Notice of 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 each and every basis and supporting fact of the appeal. The Notice of Appeal and all supporting documentation must be written (audio and/or video recorded materials are not allowed and will not be reviewed) and must be in a single mailing to the ABP. If the ABP does not timely receive a Notice of Appeal and/or the full Appeal Fee, the Appellant will have forgone his/her right to an



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appeal and the determination shall be deemed final.

3. Initial Review.

- SMT shall review each Notice of Appeal under this subsection to determine whether it was submitted in accordance with the procedure set forth herein.
- If SMT finds the Notice of Appeal to be deficient, the ABP shall so advise the Appellant in writing and state the reasons for this finding. At the ABP's discretion, the ABP may allow an Appellant to resubmit an amended Notice of Appeal within a specified period of time, correcting any identified deficiencies in the original Notice of Appeal. Any SMT final decisions concerning the sufficiency of an original or, if applicable, resubmitted Notice of Appeal shall be final and the Appellant may not appeal this decision.
- If SMT finds a Notice of Appeal sufficient, the ABP shall forward the appeal (the "Appeal Certification") to the applicable appellate review Committee (the "Appeal Committee") and shall send written notice to the Appellant that his/her appeal is commencing.

4. Determination of Oral or Written Only Appeal Hearing.

For Appeals initiated under A4, SMT is authorized to determine whether the Appeal hearing will be oral or written. This determination will be conveyed in the written notice to the Appellant that his/her appeal is commencing.

5. Notice of Hearing Determinations.

Within twenty-one (21) days of receipt of the Appeal Certification and at least forty-five (45) days prior to the tentative scheduling of the Appeal hearing, the ABP shall send the Appellant a written notice of the hearing ("Notice of Hearing") informing Appellant of the following:

- a. Whether the hearing will be written or oral;
- 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 hearing additional relevant documents, statements, data, information or other evidence that he/she wishes the Appeal Committee to consider. Additional submitted materials must be written; audio and/or visual recorded materials are not allowed and will not be reviewed;
- d. The tentative scheduling of the Appeal hearing;
- e. If the hearing is oral, the Notice of Hearing shall state the time and place of the hearing. In addition the Notice of Hearing shall inform Appellant that if the Appellant intends to offer testimony at the hearing, including his/her own testimony, the Appellant must disclose to the ABP no less than twenty-one (21) days in advance of the Appeal hearing the names, contact information and relevant relationship to Appellant or appellate issues of the witnesses and a brief description of their testimony.

6. Procedures for Holding Hearings.

- a. Written Hearings.
 - i. Neither the Appellant nor his/her representative(s) shall have the right to attend



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- any portion or aspect of written hearings.
 - ii. The Appeal Committee, in its sole discretion, may consider or reject any materials submitted by the Appellant and/or any other documents, statements, data, information based on relevance, appropriateness, and/or necessity.
 - iii. Written hearings may be conducted by written correspondence or telephone communications among Appeal Committee members.
- b. **Oral Hearings.**
- i. No less than twenty-one (21) days in advance of the Appeal hearing the ABP will inform Appellant of any witnesses it intends to call at the hearing, together with a description of the witness and a brief description of their testimony.
 - ii. The Appellant and/or his/her representative(s) may, if he/she chooses, be present at oral hearings. The opportunity for the Appellant's representative(s), including legal counsel, to address the Appeal Committee is left to the sole discretion of the Appeal Committee at the time of the hearing.
 - iii. The Appeals Committee may, in its sole discretion, consider, reject or limit any evidence submitted by the Appellant, evidence and/or testimony to be presented during the hearing and any other documents, statements, data, information or other evidence based on relevance, appropriateness, and/or necessity. The determination to allow any individual, including the Appellant, to testify at the hearing and/or the limitations on testimony are within the sole discretion of the Appeal Committee and can be made at any time through the end of the hearing. As is reasonably feasible, however, no less than fourteen (14) days in advance of the Appeal hearing, the Appeal Committee will inform Appellant of any testimony it will not accept, taking into consideration whether such intended testimony is duplicative, unnecessary or not materially germane to any issues on Appeal.
 - iv. A transcript of oral hearings shall be made.
 - v. Oral hearings will close at the discretion of the Appeal Committee, taking into consideration whether the Appellant has had a reasonable opportunity to address the issues on Appeal.
7. **Findings.**
- a. After a written or oral hearing, the Appeal Committee will deliberate and then vote by majority on whether it will affirm, reverse, amend or remand the appealed determination.
 - b. The Appeal Committee shall set forth its findings, recommendations and/or any ordered directions in writing and mail to the Appellant within sixty (60) days of the hearing.

E. POLICIES APPLICABLE TO ALL APPEALS

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 and material conflict of interest with respect to the appeal.



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

Chair of Appeal Committee. Each Appeal Committee shall be chaired by the respective Committee Chair, or his/her designee. The designated Chair shall preside over appellate hearings and shall rule on all procedural issues. The designated Chair shall determine the manner in which evidence is presented, the length of testimony, and all other issues relating to running of the appellate hearing.

Appeal Committee. Each Appeal Committee shall have a minimum of three voting members 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 Appeal Committee to prove, by a preponderance of the evidence, that the appealed issue(s) should be overturned.

Appellate Referral or Review. 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 an appeal to the Executive Committee or, upon a determination, request that the Executive Committee review some or all of the Appeal Committee 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.

The ABP reserves the right to consult with third parties, including legal counsel and other professional, to assist in the administration and analysis of any appeal.

F. DIPLOMATE STATUS DURING APPEAL OF REVOCATION DETERMINATION

For any appeal from a negative determination affecting the certification status of an ABP diplomate, the diplomate's certificate shall remain current and in good-standing 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 will be deemed to be effective as of the date of the first written notification of the negative determination.

G. FINALITY

Determinations, findings or other decisions are final and binding once the appeals procedure provided by these rules has been exhausted or the time for making an appeal has expired.

Policy Adopted Date: 06/81

Last Non-Contextual Revision: 09/19

Last Revision Approved by Board of Directors and/or Executive Committee: 03/18