

**APPEALS PROCEDURES OF  
THE AMERICAN BOARD OF THORACIC SURGERY**

The policy of the American Board of Thoracic Surgery (ABTS) is to insure that it considers all diplomates and candidates for examination on a consistent and non-discriminatory basis and affords them due process. Accordingly, the ABTS has adopted the following procedures for an applicant to obtain a review of certain ABTS decisions.

**A.**

**DENIAL OF ADMISSION FOR CREDENTIALING PROCESS**

1. Any applicant who is denied by the Board admission to the certification process by the Board may obtain reconsideration of such determination by mailing a written request to the office of the American Board of Thoracic Surgery within 45 days of the date such action was mailed.
2. Because of limitations imposed by the scheduling process for the annual examination of the Board, the process of reconsideration or appeal may result in a delay of up to a year from date of appeal for reconsideration for admission to the certification process.
3. The then current ABTS costs for reconsideration or appeal will be borne by the Board office, except that ABTS shall not be responsible for the payment of any expense incurred by any person in bringing an appeal or in seeking to retain his or her certificate.

Reconsideration Process

1. Upon receipt of a request for reconsideration, a copy of the Appeals Procedures of the American Board of Thoracic Surgery shall be mailed to the applicant with a summary by the Executive Director of the Board of the findings which were the basis for the original decision unfavorable to the applicant.
2. The applicant shall have 45 days subsequent to the mailing of the Appeals Procedures and summary to submit in writing arguments in support of his/her request for reconsideration. The applicant may submit letters of recommendation or any additional materials believed to be pertinent to the request for reconsideration. The Credentials Committee may request the applicant to submit further information as it deems desirable.
3. Upon written request (submitted within 45 days subsequent to the mailing of the Appeals Procedures and summary), the applicant may appear before the Credentials Committee to present his/her position in person, at a time and place specified by the committee, subject to any conditions established by the committee. Failure of the applicant to provide information requested or to cooperate reasonably with the committee shall be adequate grounds to preclude further consideration of the applicant's request. Should the applicant plan to be accompanied by legal counsel, this plan must be included in the applicant's written request.

4. The results of the Credentials Committee's reconsideration shall be sent to the applicant in writing.

#### Appeal of Reconsideration

1. An applicant may appeal an adverse decision regarding the reconsideration process by mailing a written request for appeal to the office of the American Board of Thoracic Surgery within 45 days after the date the decision regarding reconsideration was mailed. The Chair of the Board shall then appoint an ad hoc Appeals Committee consisting of not less than three members of the Board who did not participate in the initial review or reconsideration of the applicant's case.
2. The Executive Director of the Board shall prepare a summary of the applicant's case, including the information sent to the applicant at the time of his/her request for reconsideration, the applicant's written response, any additional information obtained by the Credentials Committee in the course of the reconsideration process, and the basis for denying reconsideration.
3. A copy of the Executive Director's summary shall be sent to the applicant. The applicant may, within 45 days of the date of mailing of this summary, submit his/her written Statement of Position to the office of the American Board of Thoracic Surgery.
4. Copies of all foregoing materials shall be submitted to the Credentials Committee for its written response, a copy of which shall be sent to the applicant.
5. Thereafter, the Executive Director shall send to the ad hoc Appeals Committee copies of all preceding materials. No other information may be submitted by the Credentials Committee or by the applicant for consideration by the ad hoc Appeals Committee.
6. The ad hoc Appeals Committee shall either uphold or reverse the decision of the Credentials Committee on the basis of the information provided to it. The decision of the ad hoc Appeals Committee, acting on behalf of the American Board of Thoracic Surgery, shall be final.

#### **B.**

#### **WRITTEN EXAMINATION: RECONSIDERATION**

1. Individuals may only request reconsideration regarding potential fraud, misconduct or irregularities during the written examination process, not the content of the examination, the sufficiency or accuracy of the answers given, scoring of the examination, nor any other matter.
2. Any individual who wishes to seek reconsideration on the basis of fraud, misconduct or irregularities may immediately upon conclusion of the written examination, and in any event no later than 7 days following the written examination, request that the Board allow him or her to retake the examination at no additional cost.

3. The Chair of the Examination Committee, the Board Chair, the Executive Director, or a designee of any of these individuals shall review the request to determine whether reasonable grounds exist for the applicant's request.
4. If reasonable grounds are found, the individual shall be allowed to take the examination again at no cost to the individual. The individual's previous examination results will be disregarded and only the score from the second written examination will be used to determine whether the individual has passed or failed the written examination.
5. No other reconsideration or appeal of the written examination process is available.

### C.

#### ORAL EXAMINATION: REEXAMINATION

1. An applicant who believes that any of the examiners have been unfair or biased during portions of the oral examination may immediately upon conclusion of the examination request of the Executive Director of the Board a reexamination by another examiner using different case protocols covering similar subject matter.
2. The Chair of the Examination Committee, the Board Chair, or the Executive Director shall review the request to determine whether reasonable grounds exist for the applicant's request. If reasonable grounds are found, the applicant shall be reexamined immediately by a Board member.
3. In such event, the grade on the original oral examination will be disregarded and only the applicant's performance on the reexamination shall be considered in determining his total score on the examination.
4. No other reconsideration or appeal of the oral examination process is available.

### D.

#### REVOCATION OF A CERTIFICATE

##### 1. RIGHT TO APPEAL

A diplomate has a right to appeal a determination by the ABTS's Board of Directors to revoke a diplomate's certificate. A diplomate whose certificate has been automatically revoked due to the loss of his or her state license has a right to appeal this automatic revocation, but any appellate hearing will be limited to a written hearing as set forth in Section D(6)(a) below, and no further appellate review is permitted as set forth in Section 9 below.

##### 2. NOTICE OF APPEAL

To initiate an appeal of a revocation determination by the ABTS or an automatic revocation for loss of state license, a diplomate must submit a written notice of appeal to the ABTS within 45 days after the date of the ABTS's written notification of the determination or automatic revocation.

The notice of appeal must specify each basis and reason for the appeal and each fact supporting the appeal. The notice must also identify each person believed to have knowledge of any fact relevant to the appeal.

### 3. INITIAL REVIEW

The ABTS's Chair, or his\her designee, shall review each notice of appeal to determine:

whether it was submitted in accordance with the procedure set forth herein, and

whether the appeal states facts which reasonably tend to support a finding that the ABTS's determination may have been rendered improperly.

If the Chair, or his\her designee, finds the notice of appeal to be deficient, he\she shall so advise the appellant in writing and state the reasons for this finding.

If the appellant is advised that his\her initial notice of appeal is deficient, he\she may, within 45 days thereafter, resubmit the original notice in an effort to correct the deficiencies noted. The Chair, or his\her designee, shall review this resubmission, in accordance with standards set forth above for reviewing the original notice of appeal. A decision concerning a resubmitted notice of appeal shall be final and the appellant may not reappeal this decision.

If the Chair, or his\her designee, finds that the notice of appeal is sufficient, the Chair, or his\her designee, shall arrange for an appellate hearing to review the ABTS's determination.

### 4. APPELLATE BODY

The ABTS Credentials Committee will hear all appeals of determinations relating to revocations.

The ABTS Credentials Committee shall have a minimum of three members and, in addition, the ABTS's Chair will serve, ex-officio.

An appellate hearing held by the ABTS Credentials Committee shall be conducted by three or more members of the Committee. The Credentials Committee does not need to meet more than twice each year to conduct appellate hearings.

### 5. TYPE AND NOTICE OF HEARING

Appeals will be by either an oral or written hearing.

The type of hearing to be provided is within the discretion of the ABTS's Chair, or his/her designee. In making this determination the Chair, or his/her designee, shall consider, among other things, whether the credibility of any individual is likely to be an issue. Appeals of automatic revocations resulting from loss of state license shall be by written hearing only.

At least 45 days prior to an appellate hearing, the ABTS shall send the appellant a written notice of the hearing.

The notice shall specify whether the hearing will be written or oral.

The notice shall also inform the appellant that he/she must submit, in writing and no later than 21 days prior to the hearing, any relevant documents, statements, data or other evidence that he/she wishes the Credentials Committee to consider at the hearing.

If the hearing is oral, the notice shall also state the time and place of the hearing. In addition, the notice will inform the appellant that if the appellant intends to offer testimony other than his/her own testimony at the hearing, the appellant must disclose the names of the witnesses and a brief description of their testimony to the ABTS no later than 21 days before the hearing.

## 6. PROCEDURE FOR HOLDING HEARINGS

### a. **Written Hearings**

The appellant shall not have the right to attend written hearings.

The Credentials Committee may consult with the ABTS's legal counsel at any stage of a written hearing to advise it on procedural issues. The ABTS's legal counsel also may bring any matter to the Credentials Committee's attention relating to the written hearing but shall not vote on any decision made by the Credentials Committee.

The Credentials Committee may consider during any written hearing evidence submitted by the appellant and any other documents, statements, data, or other evidence that the Credentials Committee decides, in its discretion, is relevant and appropriate.

Written hearings may be conducted by written correspondence or telephone communications among Committee members.

### b. **Oral Hearings**

The appellant may, if he/she chooses, be present at oral hearings.

The Credentials Committee may have legal counsel for the ABTS present at any stage of an oral hearing to advise it on procedural issues and to bring any other

matter to the Credentials Committee's attention. The ABTS's legal counsel shall not vote on any decision made by the Credentials Committee.

The appellant may have legal counsel present at an oral hearing, but the counsel may not participate in the hearing.

Any ABTS Board of Directors' member may be present at an oral hearing and may bring any Board of Directors' matter to the Committee's attention that he\she deems appropriate.

The Credentials Committee may consider at any oral hearing evidence submitted by the appellant and any other documents, statements, data, or other evidence that the Credentials Committee decides, in its discretion, is relevant and appropriate. In addition, the Credentials Committee may also consider the testimony of the appellant, the testimony of witnesses disclosed to the ABTS by the appellant and the testimony of any other person whose testimony the Credentials Committee decides, in its discretion, is relevant and appropriate. The appellant shall have an opportunity to examine any witness who testifies.

#### 7. PROCEDURE FOR WRITTEN AND ORAL HEARINGS

All appellate hearings before the ABTS Credentials Committee shall be conducted in a fair and impartial manner.

The Credentials Committee Chair, or his\her designee, shall preside over appellate hearings and shall rule on all procedural issues. The Credentials Committee Chair, or his\her designee, shall determine the order and manner in which evidence is presented to the Credentials Committee at the hearing.

The burden is upon the appellant to present sufficient evidence to the Credentials Committee to prove that he\she should not have had his\her certificate revoked by the ABTS.

A transcript of oral hearings shall be made.

Appellate hearings will close once the Credentials Committee members, and the appellant present at the oral hearing, have had a reasonable opportunity to address the issues before the Credentials Committee.

#### 8. FINDINGS

After a written or oral hearing, the Credentials Committee will deliberate and then vote on whether it will uphold revocation of a diplomate's certificate.

The Credentials Committee shall uphold the revocation of a diplomate's certificate only if a majority of the Credentials Committee members vote in favor of doing so. Otherwise, the Credentials Committee shall allow the diplomate to retain his certificate.

If the Credentials Committee upholds the revocation of a diplomate's certificate, the applicant will be required to return his or her certificate to the ABTS and the date of revocation shall be the date the appellate committee voted to uphold the decision of the ABTS Board.

The Credentials Committee shall set forth its findings and any ordered relief in writing and mail it to the applicant within sixty days of the hearing.

9. APPELLATE REVIEW OF FINDINGS OF THE ABTS CREDENTIALS COMMITTEE

A diplomate, the Credentials Committee, or a member of the ABTS staff, may request in writing that the Executive Committee of the ABTS's Board of Directors review any finding of the Credentials Committee, except for findings involving automatic revocations due to loss of state license, which shall not be entitled to further appellate review. This request must be made in writing within 45 days after the mailing of the Credentials Committee's findings.

The only basis on which the Executive Committee may grant a diplomate's request for a review is if the appellant has discovered additional evidence which was not known by the applicant or diplomate and which could not have been discovered by the exercise of diligence at the time that the Credentials Committee rendered its findings or ruling.

It shall be within the sole discretion of the Executive Committee whether to grant a review and what type of review, if any, it will provide.

10. FINALITY

All determinations, findings and other decisions made by the ABTS, its committees, or staff are final and binding unless a right to appeal is specifically granted by these rules and a timely, and otherwise proper, appeal has been made. Appealable 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.