

VI. DUE PROCESS

The National Commission makes every effort to protect the procedural due process rights of the recognized specialty sponsoring organizations, recognized certifying boards and applicants for dental specialty sponsoring organization and certifying board recognition by following appropriate and accepted procedural due process practices. As procedural due process is a necessary and integral part of recognition process, the National Commission builds due process measures into various aspects of the recognition process.

The following sections describe the National Commission's procedural due process practices including the appeal process and indicate the sequence of events that are followed when such procedures are needed.

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A. DUE PROCESS RELATED TO REVIEW COMMITTEE AND BOARD OF COMMISSIONER MEETING SPECIAL APPEARANCES

Review Committee Special Appearance of a Recognized Specialty Sponsoring Organization or Certifying Board

If there is a continued lack of compliance with the *Requirements for Recognition* and/or established National Commission policies and procedures and the Board of Commissioners has granted a recognized organization the recognition status of Recognition, *with reporting requirements, intent to withdraw*, the President and Executive Director of a the recognized organization may request a special appearance in front of the respective Review Committee that is reviewing the finalized progress report of the recognized organization. The special appearance will be conducted via video conference call.

Once a recognized specialty sponsoring organization or recognized certifying board has submitted their finalized progress report to the National Commission, the organization will not be allowed to submit any additional documentation.

Review Committee special appearances will be conducted with the following guidelines:

- a. The Review Committee discusses the finalized progress report provided by the recognized specialty sponsoring organization or recognized certifying board prior to the appearance of the representative(s).
- b. The Review Committee chair will introduce members of the Review Committee to the recognized specialty sponsoring organization or recognized certifying board representative(s).
- c. A designated representative is invited to make a verbal opening statement and present the reason for the special appearance.
- d. Following the presentation by the representative, the Review Committee chair allows members of the Review Committee to ask questions.
- e. The Review Committee chair will dismiss the representative(s) prior to the Review Committees consideration of the verbal testimony and finalized progress report.
- f. After consideration of the verbal information provided in the special appearance and the finalized progress report that was submitted, the Review Committee will make one of the following recommendations to the Board of Commissioners:
 - Grant an extension of the recognition status of Recognition, *with reporting requirements, intent to withdraw* for good cause with a corrective action plan based on a/the noncompliance(s) with the *Requirements for Recognition* and/or established National Commission Policies and Procedures.
 - Withdrawal of Recognition

Further, the Review Committee may request that the representative(s) make a special appearance in front of the National Commission Board of Commissioners. The recognized specialty sponsoring organization or recognized certifying board cannot request a special appearance in front of the National Commission Board of Commissioners.

Board of Commissioners Special Appearance of a Recognized Specialty Sponsoring Organization or Certifying Board

If the respective Review Committee has requested that representatives from a recognized specialty sponsoring

organization or recognized certifying board make a special appearance in front of the National Commission Board of Commissioners, the special appearance will be conducted via video conference call.

If the recognized specialty sponsoring organization or recognized certifying board has submitted their finalized progress report to the National Commission, the organization will not be allowed to submit any additional documentation to the Board of Commissioners.

Board of Commissioners special appearances will be conducted with the following guidelines:

- a. The Board of Commissioners discusses the final progress report and recommended action by the respective Review Committee prior to the appearance of the representative(s).
- b. The Chair of the National Commission will introduce representatives of the recognized specialty sponsoring organization or recognized certifying board to the Board of Commissioners
- c. A designated representative is invited to make a verbal opening statement and present the reason for the special appearance.
- d. Following the presentation by the representative, the Chair of the National Commission will allow members of the Board of Commissioners to ask questions.
- e. The Chair of the National Commission will dismiss the representative(s) prior to the Board of Commissioners consideration of the verbal testimony and finalized progress report.
- f. After consideration of the information provided in the special appearance, the finalized progress report and Review Committee recommended action, the Board of Commissioners will make one of the following recommendations:
 - Grant an extension of the recognition status of Recognition, *with reporting requirements, intent to withdraw* for good cause with a corrective action plan based on a/the noncompliance(s) with the *Requirements for Recognition* and/or established National Commission Policies and Procedures.
 - Withdrawal of Recognition

Review Committee Special Appearance of Applicant Organizations

If an applicant for specialty sponsoring organization or specialty certifying board recognition has previously submitted one (1) application for recognition that has been denied recognition based on non-compliance with the *Requirements for Recognition* and/or established National Commission policies and procedures, and has submitted a second application for recognition, the President and Executive Director of the applicant organization may request a special appearance in front of the respective Review Committee that is reviewing the application for recognition. The special appearance will be conducted via video conference call.

The applicant organization will not be allowed to submit any additional documentation that was not contained in the application recognition.

Review Committee special appearances will be conducted with the following guidelines:

- a. The Review Committee discusses the application for recognition provided by the applicant organization prior to the appearance of the representative(s).
- b. The Review Committee chair will introduce members of the Review Committee to the applicant organization representative(s).
- c. A designated representative is invited to make a verbal opening statement and present the reason for the special appearance.
- d. Following the presentation by the representative(s), the Review Committee chair allows members of the Review Committee to ask questions.
- e. The Review Committee Chair will dismiss the representative(s) prior to the Review Committees consideration of the verbal testimony and application for recognition.
- f. After consideration of the information provided in the special appearance and the application for recognition was submitted the Review Committee will make one of the following recommendations to the Board of Commissioners:
 - Grant Recognition
 - Postpone action, pending additional information

- Deny Recognition

Further, the Review Committee may request that the representative(s) make a special appearance in front of the National Commission Board of Commissioners. The applicant organization cannot request a special appearance in front of the National Commission Board of Commissioners.

Board of Commissioners Special Appearance of Applicant Organizations

If the respective Review Committee has requested that representatives from an applicant organization make a special appearance in front of the National Commission Board of Commissioners based on a previous denial of recognition due to non-compliance with the *Requirement(s) for Recognition* and/or established National Commission policies and procedures, the special appearance will be conducted via video conference call.

The applicant organization will not be allowed to submit any additional documentation that was not contained in the application recognition.

Board of Commissioners special appearances will be conducted with the following guidelines:

- a. The Board of Commissioners discusses the application for recognition and the respective Review Committees recommended action prior to the appearance of the representative(s).
- b. The Chair of the National Commission will introduce representatives of the applicant organization to the Board of Commissioners.
- c. A designated representative is invited to make a verbal opening statement and present the reason for the special appearance.
- d. Following the presentation by the representative(s), the Chair of the National Commission will allow members of the Board of Commissioners to ask questions.
- e. The Chair of the National Commission will dismiss the representative(s) prior to the Board of Commissioners consideration of the verbal testimony and application for recognition.
- f. After consideration of the information provided in the special appearance, the application for recognition and the recommendation of the respective Review Committee, the Board of Commissioners will make one of the following recommendations:
 - Grant Recognition
 - Postpone action, pending additional information
 - Deny Recognition

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B. FUNCTION AND PROCEDURES OF THE APPEAL BOARD AND APPEAL BOARD HEARING PANEL

The National Commission Appeal Board is an autonomous body, separate from the National Commission Board of Commissioners. The primary function of the Appeal Board is to determine whether the Board of Commissioners arrived at a decision regarding the denial or withdrawal of specialty sponsoring organization or certifying board recognition by properly applying the National Commission's established policies and procedures and criteria to the facts presented to the Board of Commissioners. In addition, the National Commission's *Rules* stipulate that the Appeal Board shall provide the recognized sponsoring specialty organization, recognized certifying board or applicant organization filing the appeal, the opportunity to be represented by legal counsel and shall give the organization the opportunity to offer evidence and argument in writing and/or orally to try to refute or overcome the findings and decision of the Board of Commissioners. When an appeal has been received by the National Commission office, a five (5) member Appeal Board Hearing Panel will be formed from the pool of potential Appeal Board members to hear the appeal. In order for the Appeal Board Hearing Panel to hear an appeal all five (5) members of the hearing panel must be present.

Per the *Rules* of the National Commission, the Appeal Board Hearing Panel will consist of five (5) members; (two (2) general dentists, one (1) public member and two (2) specialists) who will adjudicate and issue a final decision. The National Commission director in consultation with legal counsel will select two (2) general dentists and two (2) specialists from the available appeal board member pool to also serve on the hearing panel. The National

Commission director in consultation with legal counsel will also identify one (1) general dentist and one (1) specialist from the Appeal Board member pool to serve as alternates in case the originally identified Appeal Board Hearing Panel members are unable to fulfill their duties. The pool of potential appeal board members consists of four (4) general dentists appointed by the American Dental Association Board of Trustees, one (1) representative appointed by each of the recognized specialty sponsoring organizations represented on the Board of Commissioners and one (1) public member who has previously served on the Board of Commissioners. In the event that the public member is not available, a public representative who has previous experience serving on other dentally related commissions shall be appointed by the National Commission.

Appeal Board members shall not be:

- a. An employee of the American Dental Association or member of the American Dental Association governing board; or
- b. An individual who has participated in any step of the process leading up to the decision that is being appealed;
- c. A current member of the National Commission Board of Commissioners; and/or a
- d. Spouse, parent, child or sibling of an individual identified above (a through c).

In order to be eligible to serve on the National Commission Appeal Board, all general dentist members must meet the required criteria listed below:

General Dentist Member Required Criteria

- a. Ability to commit to serving a four (4) year term;
- b. Willing to participate as a member of the appellate body should it be convened;
- c. Willing to comply with all National Commission *Rules*, policies and procedures;
- d. Willing to attend the National Commission Orientation Session upon appointment;
- e. Ability to conduct business through electronic means; and
- f. Must not simultaneously serve as an officer in any organization that makes appointments to the National Commission Board of Commissioners or Appeal Board.

The preferred experience criteria below is not required but would be helpful:

General Dentist Member Preferred Experience Criteria

- a. Experience in organized dentistry at the national, state or local level.

In order to be eligible to serve on the National Commission Appeal Board, all specialist members must meet the required criteria listed below:

Specialist Member Required Criteria:

- a. Ability to commit to serving a four (4) year term;
- b. A willingness to participate as a member of the appellate body should it be convened;
- c. A willingness to comply with all National Commission Rules, policies and procedures;
- d. A willingness to attend the National Commission Orientation Session upon appointment;
- e. Ability to conduct business through electronic means; and
- f. Must not simultaneously serve as an officer in any organization that makes appointments to the National Commission Board of Commissioners or Appeal Board.

The preferred experience criteria below is not required but would be helpful:

Specialist Member Preferred Experience Criteria:

- a. Experience in organized dentistry at the national, state or local level;
- b. Experience serving on the Board of Directors of a recognized specialty sponsoring organization and/or certifying board; and
- c. Experience with certification boards such as being a diplomate, examiner, test construction committee member and/or Board member.

1. Appeal Procedure:

If the National Commission Board of Commissioners determines that recognition should be denied or withdrawn, the recognized specialty sponsoring organization, recognized certifying board or application organization will be

notified within ten (10) business days via electronic and certified mail of the Board of Commissioners' decision as well as of its right to appeal the Board of Commissioners decision to the Appeal Board. If the recognized specialty sponsoring organization, recognized certifying board or applicant organization does not file a written request to appeal the Board of Commissioners' decision within fourteen (14) days after it receives notice of the decision the Board of Commissioners' decision will become final. If the recognized specialty sponsoring organization, recognized certifying board or applicant organization does file a written request to appeal and submits the appeal fee the Board of Commissioners' decision before the end of the fourteen (14) day period, the Board of Commissioners' decision will be stayed until the appeal has been resolved. If the written request to appeal is submitted on the last day of the fourteen (14) day period, the request must be received by the National Commission office by the close of business (5:00pm Central Time).

At the time of submission of the written request for appeal, the appealing organization must provide a specific reason for the appeal and must also remit the fee associated with the appeal. The filing of the written appeal including the specific reason for the appeal and the appeal fee will automatically stay the final decision of the Board of Commissioners. The National Commission Appeal Board Hearing Panel will convene and hold its hearing within thirty (30) days after the written appeal is filed and the fee has been remitted and cleared the appellant organizations financial institution.

The Appeal Board Hearing Panel is limited in its inquiry to review substantive procedural due process issues raised by the appellants and factual determinations up to the time of the Board of Commissioners decision regarding the withdrawal of recognition from a recognized organization or the denial of recognition for applicants. It is not proper for the Appeal Board Hearing Panel to receive and/or consider facts not previously presented to the Board of Commissioners since it does not sit as an initial reviewing body. Similarly, it is not the function of the Appeal Board Hearing Panel to determine whether the facts, singularly or cumulatively, justify the decision of the Board of Commissioners, unless it can be shown that the Board of Commissioners decision was clearly against the weight of the evidence. Further, the Appeal Board Hearing Panel will not hear testimony relative to the reasonableness of the *Requirements for Recognition* because it is outside the Hearing Panel's scope of authority. The Appeal Board Hearing Panel may make one of the following decisions:

- to affirm the decision of the Board of Commissioners
- or remand the issue back to the Board of Commissioners with specific instructions on what the Board of Commissioners should review.

The decision rendered by the Appeal Board Hearing Panel is final and binding.

2. Appeal Board Hearing Guidelines:

- a. The Appeal Board Hearing Panel discusses the original evidence/documentation that was provided to the National Commission Board of Commissioners and the documentation provided by the recognized specialty sponsoring organization, recognized certifying board or applicant organization prior to the appearance of the representative(s) related to why the appellant is appealing.
- b. The Appeal Board Hearing Panel chair will introduce members of the Appeal Board Hearing Panel members to the appellant organization representative(s). The number of appellant representative(s) will be limited to the organization's president and legal counsel, if represented by counsel. The National Commission Chair will attend the appeal hearing as an observer.
- c. An opening statement will be made by the director of the National Commission for the purpose of establishing the Board of Commissioners findings and the reasons. This may include oral and/or written testimony and evidence. The evidence presented by the director of the National Commission will include a full historical timeline of the non-compliance(s) that led to the withdrawal or denial of recognition.
- d. The Appellant will then present its argument to the Appeal Board Hearing Panel. This may include oral and/or written testimony and evidence.
- e. The director of the National Commission will have the option to present a rebuttal of the Appellants argument.
- f. After hearing the evidence, the appellant organization and National Commission Chair are dismissed. The Appeal Board Hearing Panel, Director of the National Commission and National Commission Legal Counsel meet in executive session to discuss the appeal and make its decision. The Appeal Board Hearing Panel's decision may be to affirm the decision of the Board of Commissioners or remand the

decision back to the Board of Commissioners. The decision shall be based on four fifths vote of the members of the Appeal Board Hearing Panel.

- g. When the decision is to remand, the Appeal Board Hearing Panel will identify the specific *Requirement(s) for Recognition* to be reevaluated by the Board of Commissioners.
- h. The Appellant will be notified by the Appeal Board Hearing Panel decision by electronic and certified mail of the decision of the Appeal Board Hearing Panel, including a statement of specifics, within ten (10) days following the hearing.
- i. If the decision of the Appeal Board Hearing Panel is to uphold the decision of the Board of Commissioners, the National Commission will post a statement related to the withdrawal or denial of recognition on the National Commission website.
- j. The decision of the Appeal Board Hearing Panel is final and cannot be appealed.

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