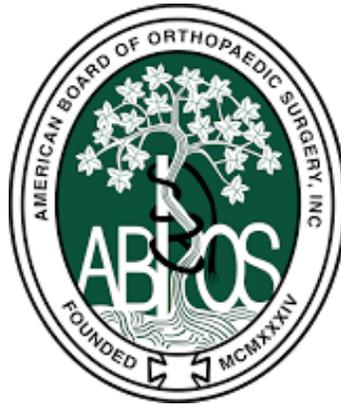


**AMERICAN BOARD  
OF  
ORTHOPAEDIC SURGERY, INC.**



**Appeals Procedures for Maintenance of  
Certification/Recertification Examinations**

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- A. A Diplomate who has received an unfavorable ruling by the Board regarding the Diplomate's eligibility for, or status of, continuing certification, may appeal such determination by mailing a notice of appeal to the office of the American Board of Orthopaedic Surgery, Attn: Executive Medical Director, within sixty (60) days of the date such ruling was mailed to him or her.

**EXCEPTION:** The decision by the Written and Oral Examinations Committee that a Diplomate has failed a MOC/recertifying examination may be appealed only in the manner and to the extent provided in G and H below.

- B. Decisions by the Credentials Committee that a Diplomate's admission to a MOC/recertification examination has been deferred is not viewed by the Board as an adverse action and no appeal of the decision is permitted unless a Diplomate has been denied admission or has been deferred for more than two consecutive years.
- C. Upon receipt of a notice of appeal, the concerned Board committee shall consider any information submitted therewith by the individual in support of his or her appeal and make such further investigation as it deems appropriate. If the committee then decides in a manner favorable to the individual, it shall so notify the individual. If the committee does not so determine, it shall notify the individual and the president of the American Board of Orthopaedic Surgery in writing.
- D. The individual shall then have the right to an appeal hearing to decide whether the determination of the concerned Board committee shall be confirmed, modified, or overruled in accordance with the hearing process described in this appeals procedure below:
1. The President of the American Board of Orthopaedic Surgery shall appoint an ad hoc appeals committee consisting of three directors of the Board who did not participate in making the determination being appealed, one of whom shall be designated by the President as chairperson of the appeals committee.
  2. In the event that the subject matter of the appeal involves complex issues of fact or issues not solely dependent upon medical, surgical, or professional standards, the president of the American Board of Orthopaedic Surgery, at his or her sole discretion, may appoint a hearing officer to conduct the appeal hearing and to submit a full written report and a recommended decision to the ad hoc appeals committee. The hearing officer appointed at the discretion of the president shall be an impartial physician, lawyer, or other professional.
  3. The chairperson of the appeals committee shall convene a hearing before the appeals committee or the hearing officer, if one is appointed, within a reasonable time after their respective appointments but not less than sixty (60) days after the appointment of the appeals committee and the hearing officer, whichever is later.
- E. Prior to the hearing:
1. The concerned Board committee shall provide the executive director with such written information concerning its decision as it deems appropriate; a list of witnesses, if any, whom it expects to call to testify; copies of any written materials that were considered in making the determination appealed (but only if the committee intends to present such materials at the hearing); and a list of information and documents which the individual is required to produce

at the hearing. This material, together with written notice stating the time and place of the hearing, shall be sent to the individual by the executive director not less than thirty (30) days prior to the hearing. Not less than seven (7) days prior to the hearing, the concerned Board committee shall provide the executive director and the individual with copies of any written reports, affidavits, or statements of experts which the concerned Board committee intends to present at the hearing.

2. Not less than seven (7) days prior to the hearing, the individual shall provide the executive director and the concerned Board committee with such written information concerning his or her position as he or she deems appropriate; a list of witnesses, if any, whom he or she expects to call to testify; and copies of any written reports, affidavits, or statements of experts which he or she intends to present at the hearing.
  3. The executive director shall submit the written material referred to in this Section D to the members of the appeals committee or to the hearing officer, if one has been appointed, prior to the hearing. Copies of this material must also be submitted to the individual and the concerned Board committee no later than the time when submitted to the appeals committee or the hearing officer.
- F. The hearing, whether conducted before the appeals committee or a hearing officer, shall be a hearing de novo. The concerned Board committee and the individual shall have the right to present all relevant information and evidence in support of their respective positions, and neither the concerned Board committee nor the individual shall be limited to the information and evidence considered by the concerned Board committee in making its original determination or its reconsideration of the original decision.
1. The concerned Board committee shall have the burden of proving at the hearing that the determinations being appealed should be confirmed. The standard of proof to be applied by the appeals committee and the hearing officer in deciding whether the information and evidence presented at the hearing is sufficient to warrant confirmation of the determinations being appealed is by the preponderance or greater weight of the evidence.
  2. At the hearing, the concerned Board committee and its legal or other representatives shall present such relevant information and evidence as it deems appropriate to support its previously made determinations. However, the committee shall not have the right to present any information or evidence not previously provided as required under paragraph D.1. The committee and its representatives may call, examine, and cross-examine witnesses.
  3. The individual shall have the right to be represented at the hearing by legal counsel or any person of his or her choice. He or she may present such relevant information and evidence as he or she deems appropriate in support of his or her position. However, the individual shall not have the right to present any information or evidence not previously provided as required under paragraph D.2. The failure of the individual to produce information or documents requested by the concerned Board committee as required in D.2. shall be grounds for upholding and confirming the determinations of the concerned Board committee. The individual and his or her representative may call, examine, and cross-examine witnesses.

4. The individual and the concerned Board committee may submit written statements at the close of the hearing. A written record of the hearing shall be made available to the individual at one-half the cost of its preparation.

G. After the conclusion of the hearing:

If the hearing has been conducted before a hearing officer, the hearing officer shall prepare a written report based upon the information and evidence presented including the findings of fact determined by the hearing officer and a recommended decision as to whether the determination being appealed should be confirmed, modified, or overruled. The hearing officer shall submit the written report to the appeals committee and send copies to the individual and the concerned Board committee. The individual and/or the concerned Board committee may file objections to the report and recommendations of the hearing officer with the appeals committee within ten (10) days after receipt of such report. The opposing party shall then have ten (10) days to file its response to such objections with the appeals committee.

The appeals committee shall make its decision following the hearing. If the hearing has been conducted before a hearing officer, the appeals committee will first receive the written report and recommendations of the hearing officer and the objections and responses filed thereto by the parties. If a majority of the members of the appeals committee determine, on the basis of the information and evidence presented to them, including, when applicable, the report and recommendations of the hearing officer, that the determination of the concerned Board committee should be confirmed or modified, the appeals committee shall so declare. If a majority determines that the concerned Board committee's determination should be overruled, the appeals committee shall so declare. The appeals committee shall inform the individual and the concerned Board committee of its decision in writing within a reasonable time following the hearing, explaining the basis for its judgment. The decision of the appeals committee shall be final and binding.

A Diplomate taking the Oral MOC/recertification Examination who believes the examination was administered in an unfair or inaccurate manner or that one or more of his or her oral examiners was well acquainted with him or her or was not impartial, may immediately, in the debriefing session, request that he or she be reexamined. The request shall be made to the chairperson of the Oral Examinations Committee and reviewed by the President and the Secretary. If, after discussing the matter with the Diplomate and making such other investigation as they may deem appropriate, a majority of the President, the Secretary, and the Chairperson of the Oral Examinations Committee determine that reasonable grounds exist for the Diplomate's request, he or she shall be reexamined at the earliest available session by another panel of oral examiners. In such event, the first oral examination will be disregarded and only the Diplomate's performance on the reexamination shall be considered in determining his or her score on the examination. This is the only appeal to the oral MOC/recertification examination.

A Diplomate who fails a computer administered MOC/recertification examination may request in writing that his or her examination be re-scored by hand to certify the accuracy of the results as reported to him or her. Such a request is to be made within sixty (60) days of his or her being notified of the results of the examination. The request must be accompanied by a check for \$100 payable to the American Board of Orthopaedic Surgery to cover the cost of hand scoring. There shall be no further appeal from a failure on any computer administered MOC/recertification examination.