

# **AMERICAN BOARD OF ORTHOPAEDIC SURGERY**



## **Appeals Procedures for American Board of Orthopaedic Surgery Candidates and Diplomates**

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- A. A Candidate or Diplomate who has received an unfavorable ruling by the American Board of Orthopaedic Surgery (ABOS or Board) regarding his or her eligibility to sit for or participate in an ABOS examination process, or his or her ABOS Board Certification status, may appeal such determination by mailing or emailing a written notice of appeal to the office of the ABOS, Attn: Executive Medical Director, within sixty (60) days of the date the Candidate or Diplomate received the unfavorable ruling being appealed.

**EXCEPTION:** A decision by the ABOS Written Examinations Committee or the ABOS Oral Examinations Committee that a Candidate or Diplomate has failed an ABOS Examination or the ABOS Web-Based Longitudinal Assessment (ABOS WLA) Process may be appealed only in the manner and to the extent provided in H and I below.

- B. A decision by the ABOS Credentials Committee to defer a Candidate's or Diplomate's admission to an ABOS Examination or ABOS WLA, to require a Diplomate to take an Oral Recertification Examination, or to require a Diplomate to take a written Recertification Examination in lieu of Web-Based Longitudinal Assessment, or undergo a Site Visit, is not viewed by the Board as an adverse action and no appeal of such a decision is permitted, except that decisions deferring admission to an ABOS Examination for more than two consecutive years are appealable..
- C. Upon receipt of a notice of appeal, the concerned Board committee shall consider any information timely submitted by the Candidate or Diplomate in support of his or her appeal and make such further investigation as it deems appropriate. The concerned Board committee shall notify the Candidate or Diplomate of its decision in writing.
- D. If the concerned Board Committee denies the appeal, the Candidate or Diplomate 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 the appeals procedure below:
1. The Candidate or Diplomate must notify the Board in writing of his or her intent to appeal the concerned Board committee's decision within 60 days after the date on which the decision of the concerned Board Committee denying the appeal was communicated to him or her, by mailing or emailing a written notice of appeal to the office of the ABOS, Attn: Executive Medical Director.
  2. The ABOS Executive Medical Director 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 as the Chair of the Appeals Committee.
  3. The Chair of the Appeals Committee shall convene a hearing before the Appeals Committee within a reasonable time after their respective appointments but not less than ninety (90) days after the appointment of the Appeals Committee.

**E. Prior to the Hearing:**

*The ABOS reserves the right to make changes in its rules and procedures for its examination and certification at any time and without prior notice. These rules and procedures supersede all rules and procedures prior to March 23, 2021.*

1. The concerned Board committee shall provide the ABOS Executive Medical 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 and the subject matter of their expected testimony; 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 Candidate or Diplomate 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 Candidate or Diplomate not less than thirty (30) days prior to the hearing.
  2. Not less than seven (7) days prior to the hearing, the Candidate or Diplomate shall provide the ABOS 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 the subject matter of their expected testimony; and copies of any written reports, affidavits, statements of experts, or other documents or exhibits which he or she intends to present at the hearing.
  3. The ABOS shall submit the written material referred to in this Section E. to the members of the Appeals Committee prior to the hearing.
- F.** The hearing shall be a hearing de novo. The concerned Board committee and the Candidate or Diplomate 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 concerned Board committee must establish to the satisfaction of the Appeals Committee that the preponderance of the evidence supports confirmation of the concerned Board committee's decision.
  2. Candidates and Diplomates shall not be entitled to receive the names or other identifying information concerning people who provided peer reviews to the Credentials Committee, and, to preserve anonymity of peer reviews, the peer reviews may not be shared with the Candidate or Diplomate. The representatives of the Credentials Committee may summarize the information provided to the Credentials Committee through the peer review process.
  3. 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 original determination, provided that such information or evidence has previously been provided as required under paragraph E.1. The committee and its representatives may call, examine, and cross-examine witnesses provided that any witnesses called by the concerned Board committee have been listed as required in Section E.1.

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4. The Candidate or Diplomate shall have the right to be represented at the hearing by legal counsel or any person of his or her choice. The Candidate or Diplomate or his or her representative may present such relevant information and evidence as he or she deems appropriate in support of his or her position, provided that such information or evidence has previously been provided as required in Section E.2 above. The failure of the individual to produce information or documents requested by the concerned Board committee as required in E.2 shall be grounds for upholding and confirming the determination of the concerned Board committee. The Candidate or Diplomate and his or her representative may call, examine, and cross-examine witnesses provided that any witnesses called on behalf of the Candidate or Diplomate have been listed as required in Section E.2.
5. The hearing panel may limit presentations by either side if the presentations are unduly repetitive or improper. Presentations by each side will be limited to one hour, unless the hearing panel determines that there are extraordinary circumstances which warrant allowing additional time.
6. A transcript of the hearing shall be made available to the Candidate or Diplomate upon request.

**G. After the Conclusion of the Hearing:**

The Appeals Committee shall make its decision following the hearing. If a majority of the members of the Appeals Committee determine, on the basis of the information and evidence presented to them, 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 ABOS Executive Medical Director shall inform the Candidate or Diplomate and the concerned Board committee of the Appeals Committee decision in writing within a reasonable time following the hearing. The decision of the Appeals Committee shall be final and binding.

**H. ABOS Part II and Oral Recertification Examinations Appeals:**

A Candidate or Diplomate taking an ABOS Part II or ABOS Oral 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 not impartial, may request in the debriefing session that he or she be reexamined immediately after the examination. The request shall be made to the Chair of the ABOS Oral Examinations Committee and reviewed by the ABOS President and the ABOS Executive Medical Director. If, after discussing the matter with the Candidate or Diplomate and making such other investigation as they may deem appropriate, a majority of the ABOS President, the ABOS Executive Medical Director, and the Chair of the ABOS Oral Examinations Committee determine that reasonable grounds exist for the Candidate's or 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 result will be disregarded and only the performance on the reexamination shall be considered in determining his or her score

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on the examination. This is the only appeal process for the ABOS Part II or ABOS Oral Recertification Examination.

**I. ABOS Part I Examination and ABOS Computer-Based Recertification Examinations Appeals:**

A Diplomate who fails a computer administered ABOS Examination may request in writing that his or her examination be re-scored by hand to verify the accuracy of the results as reported. Such a request is to be made within sixty (60) days after the Diplomate has received notice 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 of a failure on any computer administered ABOS Examination.