

# Due Process and the National Commission Appeal Board

July 2023



National Commission on Recognition of  
Dental Specialties and Certifying Boards

# National Commission and Due Process

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- The objective of due process is to strictly enforce the due process principle of transparency and making objective and fair decisions.
- The National Commission makes every effort to protect the procedural due process rights of applicants for dental specialty and certifying board recognition and protect the procedural due process rights of the recognized specialties and their respective certifying boards by following appropriate procedural due process practices.
- Procedural due process is a necessary and integral part of the recognition and re-recognition process.
- Adverse actions, or those that may be appealed, are defined as actions related to denial or withdrawal of recognition. Such decisions become final fourteen (14) days after the date on the notification letter or when an appeal has been resolved.



# Function of the Appeal Board

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- Appeal Board is the appellate body of the National Commission and is an autonomous, separate body from the Board of Commissioners.
- Primary function of the Appeal Board is to determine whether the Board of Commissioners arrived at a decision regarding the denial of recognition or revocation of specialty sponsoring organization or certifying board recognition by properly applying the National Commission's published policies and procedures and criteria to the facts presented to the Board of Commissioners.
- Role of the Appeal Board is not to determine whether the Board of Commissioners made the proper decision.
- Having an Appeal Board in place allows organizations the opportunity to offer evidence and argument in writing and/or orally in an attempt to refute or overcome the findings and decisions of the Board of Commissioners.



# Appeal Board Hearing Panel Pool Composition

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- 17 Appeal Board Members
  - One (1) member appointed by each of the twelve recognized dental specialty sponsoring organizations
  - Four (4) general dentist members appointed by the ADA President
  - One (1) public member appointed by National Commission
- Term of office is one (1) four (4) year term.



# Appeal Board Hearing Panel

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- Per the *Rules* of the National Commission, the Hearing Panel will consist of the following five (5) members:
  - two (2) general dentists
  - one (1) public member
  - two (2) specialists
- National Commission Director, in conjunction with legal counsel, will select two (2) general dentists and two (2) specialists from the available appeal pool to serve on the hearing panel.
- National Commission Director, in conjunction with legal counsel, will also identify one (1) general dentist and one (1) specialist from the Appeal Board pool to serve as alternates in case the originally identified Hearing Panel members are unable to fulfill their duties.
- For the Hearing Panel to hear an appeal, all five (5) members of the hearing panel must be present.



# Appeal Procedures

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- If the Board of Commissioners determines that recognition should be denied or withdrawn, the sponsoring organization or certifying board will be notified within ten (10) business days of the Board of Commissioners decision.
- The sponsoring organization or certifying board will be notified of its right to appeal the decision and informed of the \$10,000 appeal fee.
- A written request for appeal must be filed within fourteen (14) days after receipt of the final decision by the Board of Commissioners.
- The filing of the appeal automatically stays the decision of the Board of Commissioners.
- The Hearing Panel must convene and hold its hearing within thirty (30) days after the appeal is filed.
- If the organization does not file a timely appeal of the Board of Commissioners findings and decision, the Board of Commissioners decision will become final.



# Appeal Procedures

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- During the hearing, the appellant may be represented by legal counsel and will be given the opportunity to offer evidence both orally or written to refute the decision of the Board of Commissioners.
- The 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 denial or withdrawal of recognition.
- Hearing Panel cannot consider any facts or information that was not previously presented to or considered by the Board of Commissioners because it is not the initial reviewing body.
- It is not the function of the Hearing Panel to determine if the facts justify the decision of the Board of Commissioners, unless it can be shown the Board of Commissioners decision was clearly against the weight of the evidence.



# Appeal Procedures

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- Hearing Panel cannot hear testimony that is relative to the reasonableness of previously determined *Requirements for Recognition* since it is outside the scope of the Appeal Board.
- The Hearing Panel can make the following decisions:
  - Affirm the decision of the Board of Commissioners
  - Remand, documenting a specific procedural error and/or specific *Requirement(s)* to be re-evaluated.
- The decision rendered by the Hearing Panel is final and binding.





# Appeal Board Hearing Guidelines

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- Prior to the appearance of the appellant representative(s), the Hearing Panel will meet in executive session to discuss the evidence provided by the appellant.
- After the Hearing Panel has discussed the evidence, the Hearing Panel will leave executive session and meet with the appellant representative(s).
- A brief opening statement is made by the National Commission Director establishing the Board of Commissioners findings.
- Appellant presents its case.
- National Commission Director may present a rebuttal.
- After hearing all the evidence, the appellant representative(s) are dismissed, and the Hearing Panel meets in executive session to discuss the evidence and render a final decision.



# Appeal Board Hearing Panel Decision

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- The final decision will be based on a 4/5<sup>th</sup> vote of the members of the Hearing Panel.
- If the decision is to remand the issue back to the Board of Commissioners, the Hearing Panel must identify the specific procedural error or *Requirement(s) for Recognition* to be re-evaluated.
- The Appellant will be notified by certified mail of the decision of the Hearing Panel, including a statement of specifics, within ten (10) days following the hearing.
- The final decision of the Appeal Board Hearing Panel cannot be appealed.



## In Summary

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While the Appeal Board only becomes active when an appeal is filed, the Appeal Board plays an important role in ensuring that the Board of Commissioners properly upholds due process by transparently abiding by its policies and procedures.

