

POLICY 309: Appeal Process Subsequent to Adverse Action for Advanced Practice Provider Programs

The appeal process allows an advanced practice provider program to appeal an adverse action taken by the ACEN Board of Commissioners and ARC-PA Commissioners.

Decisions Eligible for Appeal

An advanced practice provider program may only appeal an adverse action taken by the ACEN Board of Commissioners and ARC-PA Commissioners. An adverse action is defined as a denial of joint initial accreditation or a denial of joint continuing accreditation.

Grounds for Appeal

- I. There are two grounds for appeal:
 - a. The Commissioners' decision was arbitrary; that is, it was unreasonable and not based on, or consistent with, the published Advanced Practice Provider Standards and Criteria or the ACEN and ARC-PA published policies and/or procedures for advanced practice provider programs; or
 - b. The Commissioners failed to follow its published advanced practice provider policies and/or procedures and this failure was significant in leading to the Commissioners' decision.

Notice of Appeal

An adverse action taken regarding the accreditation status of an advanced practice provider program may be appealed within 30 calendar days of the advanced practice provider program's receipt of notice of such adverse action. An advanced practice provider program shall initiate an appeal by filing a written notice of intent to appeal. The notice of appeal shall be sent by overnight delivery with proof of receipt to the ACEN CEO and ARC-PA Executive Director at the same time it is sent by email. The notice of appeal shall be sent by the designated administrative officer of the appellant program's sponsoring organization to the ACEN Chief Executive Officer and ARC-PA Executive Director. Upon receipt of the notice, the ACEN and ARC-PA shall maintain the prior accreditation status of the advanced practice provider program until the disposition of the appeal.

The request of an advanced practice provider program for an appeal process must identify the specific alleged procedural failures or the specific way the decision was arbitrary, that is, was unreasonable and not based on, or consistent with, the published Advanced Practice Provider Standards and Criteria or ACEN and ARC-PA published advanced practice provider policies and/or procedures.

The appeal process will be completed within a reasonable amount of time following the date of receipt of the notice of intent to appeal. The date for the reexamination hearing will be

determined by the availability of Reexamination Committee members to hear the case and by the establishment of a quorum. The final determination of the date will be made by the ACEN Chief Executive Officer and ARC-PA Executive Director after consultation with the Reexamination Committee members and the appellant program. The ACEN and ARC-PA will make every effort to honor the preference of the appellant program but cannot guarantee the date.

The notice of intent to appeal fee must be submitted with the written notice of intent to appeal. The appeal process fee is due within 45 calendar days of the submission of the notice of intent to appeal. The appeal will be considered withdrawn if the advanced practice provider program fails to submit the appeal process fee within 45 calendar days of the submission of the notice of intent to appeal. The reexamination hearing will not be scheduled until the appeal process fee has been paid in full. Additionally, the appellant program will be charged a non-refundable administrative appeal fee, which must be submitted with the written notice of intent to appeal. Credit cards are not an acceptable form of payment for the notice of intent to appeal fee, the appeal process fee, or the non-refundable administrative appeal fee.

If the travel, lodging, meal, legal, and other expenses directly related to the appeal process incurred by the ACEN and ARC-PA exceed the cumulative total of the notice of intent to appeal fee and appeal process fee, the advanced practice provider program will be responsible for the difference and will receive a subsequent invoice for the additional expenses not covered by the fees. Credit cards are not an acceptable form of payment for invoices for appeal-related expenses. If the travel, lodging, meal, legal, and other expenses directly related to the appeal process incurred by the ACEN and ARC-PA are less than the cumulative total of the notice of intent to appeal fee and appeal process fee, the advanced practice provider program will be refunded the difference. The appellant program is responsible for all the travel, lodging, meal, legal, and other expenses directly related to the appeal process incurred by the ACEN and ARC-PA regardless of the outcome, disposition, and/or cancellation of the reexamination hearing.

Appointment of a Reexamination Committee

Three members from the Reexamination Committee membership shall be appointed to a Reexamination Committee to examine a specific appeal. One advanced practice provider program administrator or one advanced practice provider program educator, one nurse practitioner or physician assistant, and one public member. Current members of the ACEN Board of Commissioners and current ARC-PA Commissioners may not serve on the Reexamination Committee.

The ACEN Chief Executive Officer and ARC-PA Executive Director shall appoint the Reexamination Committee. A member of the Reexamination Committee shall recuse him/herself from the Reexamination Committee if there is a conflict of interest or an

appearance of a conflict of interest. Reexamination Committee members are subject to the requirements of Policy #301.

The ACEN Chief Executive Officer and ARC-PA Executive Director shall provide notice of the Reexamination Committee membership to the appellant program. The appellant program will have the opportunity to review the proposed Reexamination Committee members for any conflicts of interest. Within three business days of the appellant program's receipt of the names of the proposed Reexamination Committee membership, the appellant program shall provide written notice of any assertions that a proposed Reexamination Committee member has a conflict of interest to the ACEN Chief Executive Officer and ARC-PA Executive Director. If the ACEN Chief Executive Officer and ARC-PA Executive Director determines a conflict of interest exists, another Reexamination Committee member shall be appointed within three business days with notification to the appellant program. The appellant program shall have an opportunity to review the appointed Reexamination Committee member for any conflict of interest. Within three business days of the appellant program's receipt of the name of the appointed panel member, the appellant program shall provide written notice of any assertion that the substituted Reexamination Committee member has a conflict of interest to the ACEN Chief Executive Officer and ARC-PA Executive Director. If the ACEN Chief Executive Officer and ARC-PA Executive Director determines that the panel member has a conflict of interest, the procedures of this paragraph shall be repeated until a Reexamination Committee member is secured and the Reexamination Committee is determined. The ACEN Chief Executive Officer's and ARC-PA Executive Director's determination of a conflict of interest shall be final.

Where necessary to avoid a conflict of interest or in other exceptional circumstances, the ACEN Chief Executive Officer and ARC-PA Executive Director may, in consultation with the appellant program, select individuals outside of the approved list maintained by the ACEN of persons qualified to serve as Reexamination Committee members as long as such panel member otherwise meets the qualifications to be a panel member.

Procedures for Governing the Appeal Process and reexamination hearing

The appeal process and reexamination hearing are collegial and shall not be bound by technical or formal rules of evidence or pleading. The reexamination hearing is an administrative process, not judicial hearing, with each party to the appeal advocating its position. Therefore, legal rules of evidence and legal procedures, such as the examination of the competency of members of the Reexamination Committee, the use of sidebars, or cross-examining those present, are prohibited.

Throughout the appeal process and reexamination hearing, the appellant program will bear the burden of proof.

The ACEN and ARC-PA are responsible for sending all material concerning the appeal to members of the Reexamination Committee; for providing support services, including lodging,

transportation and meeting space for the Reexamination Committee members; for confirming the date of the reexamination hearing; and for securing the services of a court reporter.

The following procedures must be adhered to in an appeal.

Documents for the Hearing

1. At least 30 calendar days before the date of the reexamination hearing, the ACEN and ARC-PA must submit to the appellant program and the Reexamination Committee documents (administrative record) used by the ACEN Board of Commissioners and ARC-PA Commissioners leading to and arriving at the decision regarding the advanced practice provider program. The administrative record includes (a) all and only the materials available used by the ACEN Board of Commissioners and ARC-PA Commissioners leading to and arriving at the decision regarding the advanced practice provider program, (b) the official ACEN correspondence leading to the adverse action and also related to the appeal, and (c) as applicable, other documents bearing on the substance of the appeal.
2. At least 14 calendar days before the date of the reexamination hearing, the appellant program must submit to the ACEN Chief Executive Officer and ARC-PA Executive Director the brief it intends to present at the reexamination hearing. The brief must specifically direct Reexamination Committee members to citations in the administrative record which justify the appellant program's grounds for appeal. The appellant program must cite page numbers of the text supporting its position. The appellant program is required to submit seven print copies of its brief. Failure of the appellant program to provide a brief within the specified period time shall be cause for case dismissal by the Reexamination Committee.
3. At least 10 calendar days before the date of the reexamination hearing, the ACEN and ARC-PA are required to submit copies of the administrative record and the appellant program's brief to the Reexamination Committee.
4. At least seven calendar days before the date of the reexamination hearing, the ACEN and ARC-PA must submit to the appellant program and Reexamination Committee its response to the appellant program's brief.
5. Neither the appellant program nor the ACEN and ARC-PA may submit additional briefs or any other materials during or following the reexamination hearing.

The Reexamination Hearing

1. The Reexamination Committee will select a Chair who will be responsible for ensuring effective implementation of the reexamination hearing process and for filing

- the Reexamination Committee's decision with the ACEN Chief Executive Officer and the ARC-PA Executive Director.
2. The Chair of the Reexamination Committee may have a preliminary conference, in person or by telephone, either at the Chair's request or at the request of a party, to discuss the procedures for the appeal. The conference will be conducted by the Chair with representatives from both parties in attendance.
 3. At least 14 calendar days before the date of the reexamination hearing, the appellant program and the ACEN and ARC-PA must submit to each other the names and titles of those individuals selected to appear as witnesses, representatives, and legal counsel, one of whom must be the program administrator. Once the names are submitted to each other there may be no substitutions, except as may be approved by the Chair.
 4. The ACEN Board of Commissioners and ARC-PA Commissioners based its adverse action on reports, sponsoring organization responses, documentation, and evidence presented by the sponsoring organization at the time of its review. If the appellant program failed to present documentation and evidence available at the time the ACEN Board of Commissioners and ARC-PA Commissioners took adverse action, it cannot make that information available for consideration by the Reexamination Committee under any circumstances. In addition, neither the ACEN, ARC-PA, or the appellant program may include new information/materials as part of their briefs presented to the Reexamination Committee nor may they introduce new evidence during the reexamination hearing.
 5. The reexamination hearing is closed to the public and shall include only those persons who can speak to the grounds for appeal.
 6. The ACEN and ARC-PA representatives and appellant advanced practice provider representatives are present during the reexamination hearing.
 7. No more than five persons and one attorney shall appear for each of the parties (ACEN, ARC-PA, appellant program). The program administrator of the appellant program shall appear before the Reexamination Committee.
 8. Attendees will be seated with counsel and may testify from where they sit. There will be no sequestration of witnesses.
 9. The Reexamination Committee may ask questions of the attendees, and their questions shall not count against the time allowed either side.
 10. Legal counsel may not cross-examine witnesses for the other party and may not voice objections.

11. The presentation of the parties, including any questions of the Reexamination Committee, shall be transcribed by a court reporter provided by the ACEN and ARC-PA.
12. Since the appellant program bears the burden of proof, the appellant program will be the first party to present its case during the reexamination hearing.
13. The Chair of the Reexamination Committee will limit the presentation of the appellant program and the ACEN and ARC-PA to one hour each and shall notify both before the reexamination hearing of such time limit. The one hour does not include time for questioning from the members of the Reexamination Committee. At the request of the appellant program, ACEN, or ARC-PA, the Chair may allow time for final response by either party, not to exceed one half-hour. The Chair can only extend these time limits. Since the appellant program bears the burden of proof, the sponsoring organization will be the first party to present a final response and may reserve time to conclude.
14. Within seven calendar days of the date of the reexamination hearing, the Chair of the Reexamination Committee shall inform the ACEN Chief Executive Officer, Chair of the ACEN Board of Commissioners, ARC-PA Executive Director, and Chair of the ARC-PA Commissioners in writing of the Reexamination Committee's decision. This notification must include specific reasons for the decision, must address each of the grounds for appeal identified by the appellant program, and must address the findings regarding the Advanced Practice Provider Standards and Criteria on which the Commissioners' decision was based. A PDF version of the letter of notification will be emailed and will be deemed acceptable by transmission. The original letter will be next-day express mailed to the designated administrative officer of the appellant program's sponsoring organization, program administrator, ACEN Chief Executive Officer, and ARC-PA Executive Director.

Conditions

- I. The appellant program bears the burden of proof.
 - a. To gain a REVERSAL of the Commissioners decision, the appellant program must present evidence which, in the judgment of the Reexamination Committee, demonstrates that the Commissioners' decision was arbitrary, that is, was unreasonable and not based on, or consistent with, the published Advanced Practice Provider Standards and Criteria or published advanced practice provider policies and/or procedures.
 - b. To gain an AMENDMENT of the ACEN Board of Commissioners and the ARC-PA Commissioners decision, the appellant program must present evidence which, in the judgment of the Reexamination Committee, demonstrates that the Commissioners' decision was arbitrary, that is, was unreasonable and not based

on, or consistent with, the published Standards and Criteria or ACEN and ARC-PA published policies and/or procedures.

- c. If the appellant program fails to provide evidence adequate to gain an AMENDMENT or a REVERSAL, the initial decision of the Commissioners must be AFFIRMED.
2. The accreditation status of an appellant program for which an appealable action has been taken shall remain as it was before such action until the 10-calendar day period for filing an appeal has expired. Receipt of a notification of an appeal from an appellant program by the ACEN Chief Executive Officer and ARC-PA Executive Director during this 10-calendar day period will cause the previous status to be continued until a final decision is made on the appeal. If the result of an appeal is to affirm the Commissioners' decision, the original effective end date of the advanced practice provider program's joint accreditation is also affirmed.

Rights and Limitations

- I. The appellant program and the ACEN/ARC-PA have the following rights in an appeal:
 - a. To have available legal counsel or a representative of their choice to advise them at the reexamination hearing. Legal counsel representing each of the parties will be permitted to present or assist in the presentation of the case during the reexamination hearing. Legal counsel will not be permitted to conduct a cross-examination of representatives from the opposing party.
 - b. If the Chair of the Reexamination Committee, the appellant program, or the ACEN/ARC-PA requests a pre-hearing conference, the conference will be conducted by the Chair with representatives from both parties in attendance.
 - c. To present written or oral testimony and/or evidence pertinent to the grounds for the appeal consistent with this policy. Only the Reexamination Committee has the right to question individuals present at the reexamination hearing. All individuals who testify will testify under oath as administered by the court reporter.
 - d. To receive a transcript and any other related records of the appeal process and reexamination hearing, upon payment of the costs of reproduction.
 - e. The Reexamination Committee's discussions and deliberations, all votes taken, and the discussion on the final decision itself are not conducted on the record.
 - f. Presentations by the appellant program and the ACEN/ARC-PA, questions asked of these representatives by the Reexamination Committee, and

responses to such questions are to be recorded and transcribed. Transcripts are a matter of record of the proceedings.

3. The decision of the Commissioners shall be reviewed based exclusively upon the conditions existing at the time of that decision and shall be subject to the following limitations:
 - a. No evidence concerning the remedying of deficiencies since the time of the Commissioners' adverse action shall be presented at or before the reexamination hearing under any circumstances. The Reexamination Committee is prohibited from considering such evidence in reaching its decision.
 - b. No new evidence made available since the time of the Commissioners' adverse action shall be presented at or before the reexamination hearing. The Reexamination Committee is prohibited from considering such evidence in reaching its decision.
 - c. The Reexamination Committee shall not, in its decision or otherwise, instruct the ACEN/ARC-PA staff or the Commissioners to consider evidence concerning the remedying of deficiencies since the date of the Commissioners' original decision.
4. The Chair of the Reexamination Committee **must disallow** evidence presented by the appellant program or the ACEN/ARC-PA:
 - a. Which is not pertinent to the grounds for appeal;
 - b. Which concerns the remedying of deficiencies since the time of the Commissioners' decision;
 - c. Which was not available to the Commissioners at the time of its decision.
5. Members of the Reexamination Committee may not disclose the content of confidential discussions or deliberations leading to its decision.
6. Members of the Reexamination Committee may not disclose its decision prior to the Chair's notification to the ACEN Chief Executive Officer, Chair of the ACEN Board of Commissioners, the ARC-PA Executive Director and Chair of the ARC-PA Commissioners.

Actions

- I. The Reexamination Committee, after the presentation of oral and/or written testimony, must determine whether the appellant program has demonstrated either of the following:

- a. That the Commissioners failed to follow published policies and/or procedures and that this failure was significant in leading to the Commissioners' decision; or
 - b. That the Commissioners' decision was arbitrary, that is, was unreasonable and not based on, or consistent with, the published Advanced Practice Provider Standards and Criteria or published policies and/or procedures.
2. The Reexamination Committee shall act within the following limitations:
- a. **AFFIRM** the Commissioners' decision
 - i. The Reexamination Committee shall AFFIRM the Commissioners' decision, unless it finds that the appellant program:
 - 1. Demonstrated that the Commissioners failed to follow published policies and/or procedures and that this failure was significant in leading to the Commissioners' decision;
 - 2. Demonstrated that the Commissioners' decision was arbitrary, that is, was unreasonable and not based on, or consistent with, the published Advanced Practice Provider Standards and Criteria or published policies and/or procedures;
 - ii. The decision by the Reexamination Committee to AFFIRM the Commissioners' decision is final and is not subject to further appeal.
 - b. **AMEND** the Commissioners' decision
 - i. The Reexamination Committee shall AMEND the decision of the Commissioners if it finds that the appellant program has demonstrated that:
 - 1. The Commissioners' decision was arbitrary, that is, was unreasonable and not based on, or consistent with, the published Advanced Practice Provider Standards and Criteria or published policies and/or procedures.
 - ii. The decision by the Reexamination Committee to AMEND the ACEN Commissioners' decision is final and is not subject to further appeal.
 - c. **REVERSE** the Commissioners' decision
 - i. The Reexamination Committee shall REVERSE the decision of the Commissioners if it finds that the appellant program has demonstrated that:
 - 1. The Commissioners' decision was arbitrary, that is, was unreasonable and not based on, or consistent with, the published Advanced Practice Provider

Standards and Criteria or published policies and/or procedures.

- ii. The decision by the Reexamination Committee to REVERSE the Commissioners' decision is final and is not subject to further appeal.

Policy 309 History

Initial Approval: ____ 2023