

POLICY 327: Arbitration

This Arbitration Policy shall apply only to an adverse action by the ACEN and ARC-PA Board of Commissioners and ARC-PA Commission that has been fully and finally determined by a written decision of the Reexamination Committee pursuant to Policy #309.

- I. As a condition of seeking initial accreditation or continuing joint accreditation with the ACEN and ARC-PA and ARC-PA, each advanced practice provider program seeking initial accreditation and each advanced practice provider program seeking continuing accreditation consents to resolving disputes regarding a decision by the Reexamination Committee in accordance with the arbitration procedures set forth in this Policy.
 - a. **Governing Law**

The arbitration process in this Policy shall be governed by the Federal Arbitration Act, 9 U.S.C. §1-16 (Act), which shall be deemed to pre-empt any State arbitration provisions that may otherwise be applicable.
 - b. **Jurisdiction of the Arbitrators**

The arbitrators shall have jurisdiction to determine whether the final decision of the Reexamination Committee was rightly decided and to make all rulings necessary and incidental thereto. The arbitrators shall have no jurisdiction or authority to enter a recommendation for monetary damages. The recommendation of the arbitrators shall be limited to recommending affirmance or reversal of the decision of the Reexamination Committee and the reasons therefor.
 - c. **Recommendation by the Arbitrators**

All recommendations by the arbitrators shall be by majority vote.
2. **Arbitrators**
 - a. **Roster of Arbitrators**

The ACEN and ARC-PA shall jointly maintain a roster of arbitrators. An arbitrator may be nominated by any sponsoring organization/advanced practice provider program whether jointly accredited by the ACEN and ARC-PA or not, or by self-nomination. There shall be no limit to the number of persons who may be nominated by any entity, and there shall be no limit to the number of arbitrators on the roster, though the ACEN and ARC-PA will endeavor to have at least a total of 12 persons listed on the roster. Arbitrators will be composed of nurse practitioners, physicians, physician assistants, nurse educators, physician assistant educators, program administrators, program educators, and public members (see Policy #302 for further details). The term an arbitrator may remain on the roster is five years unless otherwise removed or resigned. The term of an arbitrator may be renewed, and there is no limit to the number of terms an arbitrator may serve.
 - b. **Qualifications of Arbitrators**

An arbitrator must be a nurse practitioner, physician, physician assistant, nurse

educator, physician assistant educator, program administrator, program educator, or public member (see Policy #302 for further details).

1. For an arbitrator serving as nurse practitioner, physician, physician assistant, nurse educator, physician assistant educator, the majority of the person's career experience must be in this role with a minimum of ten years' experience in the role.
 2. For an arbitrator serving as a nurse educators, physician assistant educators, program administrators, program educators, the majority of the person's career experience must be in this role with a minimum of five years' experience in the role.
 3. For an arbitrator serving as a representative of the public the person may have experience from inside or outside higher education. If a representative is from inside higher education, then the representative may be currently working at a sponsoring organization with an advanced practice provider program however, the representative may not be employed as a nurse (at any level of licensure) or not employed as a physician assistant.
 4. An arbitrator need not be a lawyer or have legal training, though both are considered desired qualifications.
 5. An arbitrator need not have any formal training in arbitration, though such training is considered a desired qualification.
 6. Arbitrators may not include current ACEN Board of Commissioners, ARC-PA Commissioners, current Reexamination Committee members, or current or former ACEN and ARC-PA employees.
 7. No person who is a current or previous employee affiliated or associated with any nursing accreditation agency such as Commission on Collegiate Nursing Education (CCNE), National League for Nursing Commission for Nursing Education Accreditation (NLN CNEA), or National Nurse Practitioner Residency & Fellowship Training Consortium (NNPRFTC) may serve as an arbitrator;
 8. No person who is a current or previous employee affiliated or associated with any nursing organization, such as the American Association of Colleges of Nursing (AACN), American Nurses Association (ANA), or National League for Nursing (NLN) may serve as an arbitrator;
- c. Acceptance of Arbitrators
Annually, there will be a public announcement seeking volunteers to serve as nurse educator/clinician arbitrators, nurse clinician/practitioner arbitrators, administrator arbitrators, and public arbitrators. All volunteers will be added to the list of arbitrators upon self-attestation that the volunteer meets the qualifications to serve as an arbitrator.

3. Commencement of an Arbitration Proceeding

a. Notice of Arbitration, Deposit, and Payment of Expenses

The sponsoring organization of the advanced practice provider program shall submit a notice of arbitration in writing by its administrative officer of the advanced practice provider to the ACEN CEO and ARC-PA Executive Director

by email within ten business days of the sponsoring organization's/advanced practice provider program's receipt of the written final accreditation decision of the Reexamination Committee. The original notice of arbitration 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 original notice of arbitration shall be accompanied by a non-refundable check per the fee schedule as a deposit payable to the ACEN and ARC-PA for expenses such as the travel, lodging, meals, and venue charges incurred by the arbitrators and the ACEN and ARC-PA in convening and pursuing the arbitration; credit cards are not an acceptable form of payment. The sponsoring organization/advanced practice provider program submitting the matter to arbitration is responsible for all expenses of the arbitration, including ACEN and ARC-PA's representation/counsel fees. If the expenses incurred exceed the deposit, the sponsoring organization/advanced practice provider program will be assessed the additional amount. The arbitrators shall submit expense vouchers to the ACEN and ARC-PA in the form and manner prescribed by the ACEN and ARC-PA for the reimbursement of reasonable expenses incurred.

b. Contents of the Notice

The notice of arbitration need not be in any particular form but must clearly identify the decision of the Reexamination Committee and state that the sponsoring organization/advanced practice provider program submits the decision of the Reexamination Committee to arbitration in accordance with this policy. The notice need not specify the basis for the arbitration. The notice of arbitration is sufficient to challenge the decision of the Reexamination Committee on all legal grounds.

c. Effect of the Notice

A timely notice of arbitration in accordance with this policy shall have the immediate effect of continuing the advanced practice provider program in joint accreditation with the ACEN and ARC-PA in the same status as it was prior to the adverse action until the arbitration recommendation is rendered. The ACEN and ARC-PA shall provide notice to any constituencies previously notified of the result of the appeal that a timely notice of arbitration has been filed and the effect thereof.

4. Selection of the Arbitrators

a. Number and Method of Selection

An arbitration proceeding under this policy shall require a combination of three qualified arbitrators from any category, which represent three different categories. No arbitrator who resides in the same state as the main location of the advanced practice provider program or who has a conflict of interest with the sponsoring organization/advanced practice provider program per Policy #301 may be eligible for selection as an arbitrator.

b. Upon receipt of the Notice of Arbitration, the ACEN CEO and ARC-PA Executive Director shall provide to the administrative officer of the advanced practice provider program's sponsoring organization the names of eligible arbitrators from the current Roster of Arbitrators.

1. The administrative officer of the advanced practice provider program's sponsoring organization shall select one arbitrator from any category on the current Roster of Arbitrators within five business days of receipt of the Roster and shall so notify the ACEN CEO and ARC-PA Executive Director in writing within one business day of making a selection.
 2. The ACEN CEO and ARC-PA Executive Director shall select one arbitrator from any category on the current Roster of Arbitrators and shall so notify the administrative officer of the advanced practice provider program's sponsoring organization in writing within five business days of the advanced practice provider program's selection.
 3. The ACEN CEO and ARC-PA Executive Director shall so notify the selected arbitrators in writing with a copy of the selection letter to the administrative officer of the advanced practice provider program's sponsoring organization. These two arbitrators shall confer and select one additional arbitrator from any category on the current Roster of Arbitrators within five business days and shall so notify the ACEN CEO and ARC-PA Executive Director in writing within one business day of making a selection. The ACEN CEO and ARC-PA Executive Director shall so notify the selected arbitrator within five business days in writing with a copy of the selection letter to the administrative officer of the advanced practice provider program's sponsoring organization.
- b. **Conflict of Interest and Recusal**
The selected arbitrators shall be governed by the conflict-of-interest provisions of Policy #301. The ACEN CEO and ARC-PA Executive Director shall provide the selected arbitrators with a copy of Policy #301 and request that any selected arbitrator who has a conflict of interest recuse themselves and so notify the ACEN CEO and ARC-PA Executive Director. If a selected arbitrator discovers a conflict after the convening of the arbitration, such an arbitrator shall recuse themselves from further proceedings.

In the instance of a selected arbitrator being unable to serve or continue serving for any reason, the entity originally selecting such arbitrator shall select a replacement in accordance with this policy.

- c. **Challenge of an Arbitrator**
Either the ACEN, ARC-PA, or the sponsoring organization/advanced practice provider program may challenge the qualifications of any arbitrator, and unless the challenged arbitrator steps down, the remaining arbitrators must rule on the challenge.
- d. **Convening the Arbitration and Administrative Conference**
Once three qualified arbitrators without a conflict of interest have been selected, it is the responsibility of the arbitrators to convene within a reasonable period of time by conference call, video conference, or in person; to select a chair, who shall preside at all further proceedings and shall ensure this policy is complied with; and to establish the time and manner of the arbitration proceedings within

the procedures set forth in this policy. All dates for the taking of actions under this policy thereafter are calculated from the date the chair is selected. At the request of any party or upon the arbitrators' own initiative, the arbitrators may conduct an administrative conference with the parties to address timing and any other administrative matters which may coincide with the convening of the arbitration.

e. Communications with Arbitrators

No party and no one acting on behalf of any party shall communicate ex parte with any arbitrator. All communications with the arbitrators shall be with all three and shall simultaneously be provided to the other party. It shall not be deemed an ex parte communication forbidden by this policy for ACEN and ARC-PA staff to discuss logistical and procedural matters with arbitrators, including but not limited to such things as the venue of proceedings, travel, lodging, meals, and expense reimbursement.

f. Confidentiality

The arbitrators shall maintain as confidential all information provided to them by either party. After the conclusion of the arbitration the arbitrators shall destroy and not retain any documents, in whatever form, provided to them in the course of the arbitration.

5. Arbitration Procedures

a. Time for Completion of the Arbitration

The arbitration proceedings shall be completed within 90 business days of the date of the convening of the arbitration. The completion of the proceedings shall be evidenced by the written recommendation of the arbitrators.

b. Record on Review

The review of the decision of the Reexamination Committee by the arbitrators shall be on the record presented to the Reexamination Committee, including the Administrative Record, the Briefs of the Parties, the Transcripts of the Appeal Hearing and any pre-hearing proceedings, any additional evidence submitted to the Reexamination Committee, any rulings thereon, and the decision of the Reexamination Committee. It shall be the duty of the ACEN CEO and ARC-PA Executive Director, assisted by the Chair of the Reexamination Committee, to assemble the Record on Review and submit it to the arbitrators and to the representatives of the parties within 30 business days of the convening of the arbitration. The Record on Review shall be submitted electronically.

c. Discovery and the Submission of Additional Evidence

There shall be no discovery in the arbitration proceeding. There shall not be any additional evidence/information submitted to the arbitrators beyond the Record on Review.

- d. **Standard of Review**
The sponsoring organization/advanced practice provider program shall bear the burden of persuading the arbitrators that the decision of the Reexamination Committee is clearly erroneous in accordance with the Advanced Practice Provider Accreditation Standards, Policy #309, and in accordance with applicable law.
- e. **Location and Manner of the Proceedings**
The arbitration proceedings shall take place in the Atlanta, Georgia Metropolitan Area at a venue arranged for by the ACEN and ARC-PA in consultation with the arbitrators and the parties. With the unanimous consent of the parties and the arbitrators, the proceedings may take place at another venue within or outside the Atlanta, Georgia Metropolitan Area; however, financial arrangements must be made and agreed to in advance. With the unanimous consent of the parties and the arbitrators, some or all the proceedings may take place remotely, by telephonic or other electronic means, so long as all parties and all arbitrators can participate equally.
- f. **Representation**
Any party may participate pro se without representation or by counsel or any other representative of the party's choosing unless such choice is prohibited by applicable law. A party intending to be so represented shall notify the other party and the arbitrators of the name, telephone number, physical address, and email address of the representative at least seven business days prior to the date set for the hearing at which that person is first to appear. When such a representative responds for a party, notice is deemed to have been given.
- g. **Preliminary Hearing**
At the discretion of the arbitrators a preliminary hearing may be scheduled, and if deemed necessary, it should be scheduled as soon as practicable. The parties should be invited to attend along with their representatives. The parties and the arbitrators should be prepared to discuss and establish a procedure for the conduct of the arbitration proceedings within the procedures set forth in this policy.
- h. **Briefs**
The sponsoring organization/advanced practice provider program initiating the arbitration shall submit its principal brief within 14 business days of receipt of the Record on Review. The ACEN and ARC-PA shall submit its response brief within 14 business days of receipt of the brief of the sponsoring organization/advanced practice provider program. The arbitrators may request briefs of the parties on such other matters and at such times as they may determine. All briefs shall be submitted electronically as determined by the ACEN CEO and ARC-PA Executive Director (e.g., email, flash drive, cloud access).

- i. Hearing
The hearing shall take place per the arrangements outlined in Section 5e. The hearing on the issues raised by the parties to the arbitration shall be heard by the arbitrators at a date scheduled by the arbitrators. The arbitrators may request argument of the parties on such other matters and at such times as they may determine.
- j. Attendance at the Proceedings
All arbitration proceedings are private and are not open to the public.
- k. Stenographic and Other Recordings
Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three business days in advance of the hearing. The requesting party or parties shall pay the cost of the record. No other means of recording the proceedings are permitted absent the agreement of the parties or the direction of the arbitrators.
- l. Waiver
Any party who proceeds with the arbitration after knowledge that any provision or requirement of this policy has not been complied with and fails to object in writing shall be deemed to have waived the objection.
- m. Form and Delivery of the Recommendation
The recommendation shall be signed by a majority of the arbitrators and shall be executed in the form and manner required by the Federal Arbitration Act. The recommendation shall state the reasons for the recommendation and shall rule on the substantial claims of the parties. The recommendation of the arbitrators shall be limited to recommending affirmance or reversal of the decision of the Reexamination Committee, stating the reasons therefor. The recommendation shall be delivered electronically to the email addresses of the parties and to their representatives.
- n. Acceptance of the Recommendation

The recommendation of the arbitrators shall be deemed accepted if neither party notifies the other in writing by 5 pm Eastern Time ten calendar days from delivery of the recommendation as provided in 5.m. above. If the recommendation is accepted by ACEN, ARC-PA, and the sponsoring organization/advanced practice provider program, the ACEN Board of Commissioners and ARC-PA Commission shall make the recommendation of the arbitrators its final decision.

Policy 327 History
Initial Approval: ____ 2023