

NATIONAL BOARD FOR CERTIFICATION OF ORTHOPAEDIC TECHNOLOGISTS, INC.

CERTIFICATION APPEALS PROCEDURE

A. Introduction.

The National Board for Certification of Orthopaedic Technologists, Inc. (NBCOT), is a private, non-profit, professional credentialing organization that sponsors the development, maintenance, evaluation, promotion, and administration of a rigorous, clinical practice-related, examination-based, certification program in the field of Orthopaedic Technology. The purpose and goal of the NBCOT is to assess and measure objectively the professional knowledge and clinical understanding of practitioners engaged in the specialty of Orthopaedic Technology. The NBCOT shall promote the advancement of the Orthopaedic Technology practice by identifying to professionals and the public those Orthopaedic Technologists, who have voluntarily sought and obtained certification as Orthopaedic Technologist – Certified, and Orthopaedic Technologist-Surgery Certified practitioners.

In order to become certified as an Orthopaedic Technologist or Orthopaedic Technologist-Surgery Certified, a candidate must satisfy all educational, residency, clinical practice, and other eligibility and credentials requirements established by the NBCOT Board of Directors, and must pass all components of the examination process.

NBCOT certification requirements and eligibility standards are applied fairly, impartially, and consistent with applicable laws. The NBCOT will not discriminate against any candidate for an unlawful reason, and will grant certification without regard to a candidate's membership or non-membership in any organization, association, or other group.

NBCOT certificants and candidates seeking certification or recertification agree that: these procedures are a fair process for resolving certification complaint or appeal matters; they will be bound by decisions made pursuant to these procedures; these procedures are governed by the principles of the law of the State of New York; and, these procedures do not constitute a contract between the NBCOT and the candidate or certificant.

B. General Provisions.

- 1. Nature Of The Process.** The NBCOT is directed, administered, and supervised by the NBCOT Board of Directors. All challenges regarding actions of and by the NBCOT are governed by the comprehensive and exclusive rules contained in these procedures. This appeal process is the only way to resolve all NBCOT application, eligibility, examination, and other certification or recertification challenges, complaints, and/or claims of irregularities.

Because these informal procedures are not legal proceedings, they are designed to operate without the assistance of attorneys. While a party may choose to be represented by an attorney, candidates and certificants are encouraged to communicate directly with the NBCOT. If a party has retained an attorney, that

attorney will be directed to communicate with the NBCOT through the NBCOT Legal Counsel.

2. **Participants.** The NBCOT Executive Director, the Certification Appeals Committee, the NBCOT Board of Directors, and any other authorized representative of the NBCOT, may be involved in deciding matters to be resolved or arising under these procedures.
3. **Time Requirements.** The NBCOT will make every effort to follow the time requirements noted in these appeal procedures. However, the NBCOT's failure to meet a time requirement will not prohibit the handling or final resolution of any matter arising under these procedures. NBCOT candidates and certificants are required to comply with all time requirements specified in this document. Unless provided otherwise, time extensions or postponements may be granted by the NBCOT if a timely, written request explaining a reasonable cause is submitted.
4. **Litigation/Other Proceedings.** The NBCOT may accept and resolve a dispute arising under these proceedings when civil or criminal litigation, or other proceedings related to the dispute are also before a court, regulatory agency, or professional body. The NBCOT may also continue or delay the resolution of any appeal, complaint, or other matter.
5. **Confidentiality.** In order to protect the privacy of all parties involved in matters arising under these procedures, all material prepared by, or submitted to, the NBCOT will be confidential. Disclosure of material prepared by, or submitted to, the NBCOT is permitted only when specifically authorized by NBCOT policy, the Board of Directors, the Certification Appeals Committee, or the Executive Director.

Among other information, the NBCOT will not consider the following materials and documents to be confidential:

- a. Published certification and eligibility criteria;
- b. Records and materials which are disclosed as the result of a legal requirement;
- c. Upon the written request of a candidate or certificant, any certification information concerning certification status or application materials which the candidate or certificant would like made available to other credentialing agencies, professional organizations, or similar bodies; and,
- d. All final published decisions and orders of the Board of Directors, the Certification Appeals Committee, or the Executive Director.

6. **Failure To Disclose/Improper, False, Or Misleading Representations.** The Executive Director or Certification Appeals Committee may temporarily or permanently prevent and bar an individual from being certified or recertified, or may issue any other appropriate directive(s), where an NBCOT candidate or certificant fails to disclose information related to certification or recertification requested by the NBCOT, or where the candidate or certificant makes an improper, false, or misleading representation to the NBCOT.

Where a penalty, discipline, order, or other directive is issued by the NBCOT under this Section, the candidate or certificant involved may seek review and appeal under these procedures.

7. **Failure To Cooperate.** Where a candidate or certificant fails or refuses to cooperate fully with the NBCOT concerning matters arising under, or related to, these procedures, and it is determined that the lack of cooperation is without good cause, the Executive Director, or other authorized representative, may penalize or discipline the individual. Among other penalties or disciplines, the Board may temporarily or permanently prevent and bar an individual from being certified or recertified, or may issue any other appropriate directive(s).

Where a penalty, discipline, order, or other directive is issued under this Section, the candidate or certificant involved may seek review and appeal under these procedures.

8. **Professional Complaint Matters.** Following notice, and a reasonable opportunity to present a response to the Board of Directors, the Executive Director, Certification Appeals Committee, or Board of Directors may temporarily or permanently prevent an individual from being certified or recertified, or may issue any other appropriate directive(s), where the candidate or certificant has been the subject of any complaint or similar matter relating to his/her professional orthopaedic technologist activities, or where the candidate or certificant is the subject of matters or proceedings involving criminal charges, lesser offenses, or similar matters regardless of: when the alleged violation occurred; and, whether the professional license of the candidate or certificant was in good standing at the time of the NBCOT decision or action.

Where a penalty, discipline, order, or other directive is issued under this Section, the candidate or certificant involved may seek review and appeal under these procedures.

C. Actions And Decisions Concerning The Certification Process.

- 1. Certification Application Actions.** Under the supervision of the Executive Director or other authorized representative, the NBCOT will make one of the following determinations and decisions with regard to a candidate's application for the Orthopaedic Technologist or Orthopaedic Technologist-Surgery Certified certification and examination eligibility: (a) accept the application; (b) request additional or supplemental information; or, (c) reject the application on the ground(s) that the candidate does not meet the necessary and specific certification eligibility requirements, or the candidate has violated, or acted contrary to, an NBCOT policy or rule.
- 2. Certification Examination(s) Actions.** The NBCOT will notify each candidate whether he/she has achieved a passing or failing score on each Certification Examination. Where a candidate acts contrary to NBCOT policies during the administration of any Certification Examination(s) or section, the candidate may be prevented from taking or completing the Examination(s).
- 3. Recertification Application Actions.** The NBCOT will make one of the following decisions with regard to a certificant's Recertification Application: (a) grant recertification; (b) conditionally accept the Recertification Application, pending satisfactory completion of all recertification requirements; (c) request additional information; or, (d) reject the application on the ground(s) that the certificant does not meet the necessary criteria for recertification, or the certificant has violated, or acted contrary to, an NBCOT policy or rule.

D. Circumstances For Review Or Appeal Of An Adverse Decision.

- 1. Appeal Limitations.** A candidate, or certificant may submit an appeal of an adverse NBCOT action, decision, or determination under the following circumstances where certification or recertification has been denied:
 - a. The candidate was found to be ineligible to take or complete the Certification Examination(s);
 - b. The candidate did not pass and successfully complete the Certification Examination(s); or,
 - c. The candidate or certificant failed to satisfy a certification or recertification requirement, including those requirements related to qualifications, education, and experience, or was otherwise ineligible for certification or recertification.

E. Initial Request For Review/Content And Time Period For Submitting A Request For Review To The Executive Director.

A candidate or certificant may submit a written Request for Review of an adverse action or decision within thirty (30) days of the date of the action by notifying the Executive Director in writing and stating with particularity: the nature of the requests, and, the specific facts and circumstances supporting the request, including all reasons why the action or decision should be changed or modified. The candidate or certificant must also provide accurate copies of all supporting documents. A Request for Review may be in letter or other, clear written form, and must state that the document is a Request for Review by the Executive Director.

F. Informal Review By The Executive Director.

- 1. Executive Director Actions.** Upon receipt, all Requests for Review will be considered informally by the Executive Director or other authorized NBCOT representative. Following review of the candidate's or certificant's appeal and Request for Review, the Executive Director will acknowledge receipt of the request within thirty (30) days, and may take one of the following actions:
 - a. Uphold or modify the adverse action or decision, or take other appropriate action, in writing with the approval of the Board of Directors; or,
 - b. Refer the matter to the Certification Appeals Committee for review and resolution as an appeal.
- 2. Referral Of Request/First Appeal.** In the event that a Request for Review is referred to the Certification Appeals Committee for resolution, the Executive Director will provide the Certification Appeals Committee with all relevant materials, including the documents and materials submitted by the candidate or certificant.

G. First Appeal/Certification Appeals Committee.

- 1. Circumstances And Limitations Of First Appeal.** Subject to the limitations below, in the following circumstances a first appeal will be heard and resolved by the Certification Appeals Committee where: the matter has been referred by the Executive Director; or, a candidate or certificant is dissatisfied with the final informal review and action of the Executive Director, and requests an appeal consistent with these procedures.

Only the following actions and decisions of the Executive Director may be appealed by the candidate or certificant:

- a. The candidate was found to be ineligible to sit for the Certification Examination(s);
- b. The candidate was barred or otherwise prohibited from taking or completing the Certification Examination(s);
- c. The candidate's Certification Examination(s) was re-scored and he/she has failed to pass the examination(s);
- d. The candidate was found to be ineligible for certification due to his/her failure to satisfy a certification requirement, including those requirements related to qualifications, education, and experience, or was otherwise ineligible for certification; or,
- e. The certificant was denied recertification based upon his/her Recertification Application or failure to satisfy one or more recertification requirements, or was otherwise ineligible for recertification.

H. Time Period For Submitting First Appeal.

A candidate or certificant seeking to present a first appeal to the Certification Appeals Committee must submit a written appeal consistent with the requirements of these procedures to the NBCOT within thirty (30) days of the date of the final action and decision of the Executive Director. The time for filing the appeal may be enlarged by the Certification Appeals Committee upon written request by the candidate or certificant received at least fifteen (15) days prior to the appeal deadline.

I. Contents Of And Grounds For First Appeal.

1. **Required Information For First Appeal.** In order for an appeal to be considered by the Certification Appeals Committee, the appeal submission must contain the following information:
 - a. The identity and signature of the individual candidate or certificant submitting the appeal;
 - b. All objections, corrections, and factual information the candidate or certificant believes to be relevant to the appeal;
 - c. The names, addresses, and telephone numbers of any persons with factual information relevant to the appeal, and a clear description of the factual information available from these persons; and,
 - d. Copies of any and all relevant documents, exhibits, or other information the candidate or certificant wants to submit in support of the appeal.

2. **Grounds For First Appeal.** In order for an appeal to be considered by the Certification Appeals Committee, the appeal submission must contain substantial information supporting at least one of the following grounds, and a detailed explanation of the reasons for the appeal:
 - a. The candidate's eligibility to sit for the Certification Examination(s), or other eligibility for certification, was denied incorrectly;
 - b. The candidate's Certification Examination(s) was scored incorrectly, or was not credited with an appropriate response to particular questions, and as a direct result of the incorrect scoring the candidate is entitled to receive a passing score on the examination(s);
 - c. The candidate was barred or otherwise prohibited incorrectly from taking the Certification Examination(s); or,
 - d. The certificant Recertification Application was incorrectly rejected under the relevant recertification standards, and the certificant would have qualified for recertification if the correct standards had been applied, or the certificant was otherwise incorrectly found ineligible for recertification.

J. First Appeal Hearings.

1. **Certification Appeals Committee.** With the approval of the Board of Directors, the Chairman will appoint authorized certificant in good standing to serve as members of the Certification Appeals Committee to resolve each certification appeal.
2. **Scheduling Of Appeal/Telephone And In-Person Hearings.** Within forty-five (45) days of receipt of a complete, proper, and written appeal, the Certification Appeals Committee will schedule a date and time for consideration of the appeal, generally not later than one-hundred twenty (120) days after receipt of the appeal, and notify the candidate or certificant of the appeal date and time. Where the candidate or certificant has requested a telephone or in-person hearing, a designated member of the Certification Appeals Committee will convene, preside over, and conduct an appeal hearing.
3. **First Appeal Determination/Decision Of The Certification Appeals Committee.** Following the close of the appeal record, the Certification Appeals Committee will review the record of the appeal, including the action or decision of the Executive Director and the information and materials received from the candidate or certificant. The Certification Appeals Committee will resolve and decide the appeal based on the record, including relevant and credible information

presented by the candidate or certificant. The appeal decision will include the findings of the Certification Appeals Committee and a summary of the relevant facts upon which the decision is based. The appeal decision will be prepared and issued under the direction of the Certification Appeals Committee, or other authorized representative, within thirty (30) days of the closing of the first appeal record, or as soon thereafter as is practical.

K. Final Appeal/Final Appeal To The Board Of Directors.

1. Grounds For Final Appeal. If a candidate or certificant chooses to challenge and appeal the first appeal decision, a final appeal may be submitted to the Board of Directors. The grounds to appeal a first appeal decision are strictly limited to the following grounds:

- a. Procedural error: The first appeal decision misapplied a procedural rule contained in these rules, and the rule misapplication significantly prejudiced the candidate or certificant with respect to the outcome of the appeal decision;
- b. New or previously undiscovered information: Following the issuance of the first appeal decision, the candidate or certificant located relevant information and facts that were not previously available and that would have significantly affected the outcome of the first appeal decision in the candidate's, or certificant's favor;
- c. Misapplication of certification standards: The first appeal decision misapplied the relevant certification or recertification standards, and the misapplication significantly prejudiced the candidate or certificant and the outcome of the appeal decision; or,
- d. Contrary to the information presented: The first appeal decision is clearly contrary to the most substantial information in the record.

With respect to the grounds listed in Sections 1.a. and 1.c., above, the Board of Directors will consider only arguments that were previously presented to the Certification Appeals Committee in the first appeal.

L. Time Period For Submitting Final Appeal/Content Of Final Appeal.

1. Time Period For Submitting Appeal. A candidate or certificant may submit a written appeal, signed by the candidate or certificant, to the Board of Directors within thirty (30) days of the date of the first appeal decision of the Certification Appeals Committee. Any appeals received beyond this date will not be reviewed or considered by the Board of Directors, unless special permission is granted by the Chair of the Board of Directors.

2. **Contents Of Final Appeal.** Consistent with all other requirements, a final appeal to the Board of Directors must state and include the following information:
 - a. The identity and signature of the individual candidate or certificant submitting the appeal;
 - b. A detailed explanation of the reasons and basis for the appeal, as defined and limited by Section K, above;
 - c. All objections, corrections, and factual information the candidate or certificant believes to be relevant to the appeal, including all documents and exhibits in support of the appeal; and,
 - d. The names, addresses, and telephone numbers of any persons not previously identified with factual information relevant to the appeal, and a clear description of the factual information available from these persons.

M. Board Of Directors Final Appeal Process.

1. **Scheduling Of Final Appeal.** Within sixty (60) days of receipt of a complete and proper written appeal, the Board of Directors will schedule a date on which to consider the appeal, usually not later than the next or second regular scheduled Board meeting. The NBCOT will notify the candidate or certificant of the date the appeal will be considered.
2. **Appeal Review.** The Board of Directors will conduct an informal hearing designed to review and consider all of the available proof and information, including the record of the first appeal and the materials submitted by the candidate or certificant.

N. Final Decision Of The Board Of Directors.

Following the review of a final appeal, the Board of Directors will review the record of the appeal and, thereafter, resolve and decide the appeal based on the record. The Board will consider all relevant information and include a summary of its findings in the appeal decision. The Board may affirm, modify, or reverse the decision of the Certification Appeals Committee based on its findings. The Board will issue its final appeal decision within thirty (30) days of the end of the review of the appeal, or as soon thereafter as is practical.

O. Finalizing And Closing Appeals.

- 1. Conditions For Closing The Appeal.** An appeal will be closed, and all proceedings ended, when any of the following occurs:
 - a. An appeal has been resolved and decided by the Executive Director, the Certification Appeals Committee, or the Board of Directors, and the allowable time period for the filing of an appeal under these procedures and rules has passed or lapsed; or,
 - b. The appeal has been withdrawn or terminated by the candidate or certificant.