

POLICY 209

APPEAL PROCESS SUBSEQUENT TO ADVERSE ACTION FOR TRANSITION-TO-PRACTICE PROGRAMS

The appeal process allows a transition-to-practice program to appeal an adverse action taken by the ACEN Board of Commissioners.

DECISIONS ELIGIBLE FOR APPEAL

A transition-to-practice program may only appeal an adverse action taken by the ACEN Board of Commissioners. An adverse action is defined as a denial of initial accreditation or a denial of continuing accreditation.

GROUNDINGS FOR APPEAL

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

NOTICE OF APPEAL

An adverse action taken regarding the accreditation status of a transition-to-practice program may be appealed within 30 calendar days of the transition-to-practice program's receipt of notice of such adverse action. A transition-to-practice program shall initiate an appeal by filing a written notice of intent to appeal via hand delivery, certified/registered mail, or another means that provides written evidence of the delivery. The notice of appeal shall be sent by the chief nursing officer of the appellant transition-to-practice program's sponsoring organization (or chief executive officer if there is not a chief nursing officer) to the ACEN Chief Executive Officer. Upon receipt of the notice, the ACEN shall maintain the prior accreditation status of the transition-to-practice program until the disposition of the appeal.

The request of a transition-to-practice program for an appeal process must identify the specific alleged procedural failures or the specific manner in which the decision was arbitrary, that is, was unreasonable and not based on, or consistent with, the published Transition-to Practice Standards and Criteria or ACEN published transition-to practice 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 Appeal Hearing will be determined by the availability of Appeal Panel 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 after

consultation with the Appeal Panel members and the appellant transition-to-practice program. The ACEN will make every effort to honor the preference of the appellant transition-to-practice 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 transition-to-practice program fails to submit the appeal process fee within 45 calendar days of the submission of the notice of intent to appeal. The Appeal Hearing will not be scheduled until the appeal process fee has been paid in full. Additionally, the appellant transition-to-practice 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 exceed the cumulative total of the notice of intent to appeal fee and appeal process fee, the transition-to-practice 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 are less than the cumulative total of the notice of intent to appeal fee and appeal process fee, the transition-to-practice program will be refunded the difference. The appellant transition-to-practice program is responsible for all the travel, lodging, meal, legal, and other expenses directly related to the appeal process incurred by the ACEN regardless of the outcome, disposition, and/or cancellation of the Appeal Hearing.

APPOINTMENT OF AN APPEAL COMMITTEE

Three members from the Appeal Panel membership shall be appointed to an Appeal Committee to examine a specific appeal. One transition-to-practice program educator or one college/university nurse educator, one public member, and one nurse clinician/practitioner. Current members of the ACEN Board of Commissioners may not serve on the Appeal Panel.

The ACEN Chief Executive Officer shall appoint the Appeal Committee. A member of the Appeal Panel shall recuse him/herself from the Appeal Committee if there is a conflict of interest or an appearance of a conflict of interest. Appeal Panel and Appeal Committee members are subject to the requirements of ACEN Policy 201.

The ACEN Chief Executive Officer shall provide notice of the Appeal Committee membership to the appellant transition-to-practice program. The appellant transition-to-practice program will have the opportunity to review the proposed Appeal Committee members for any conflicts of interest. Within three business days of appellant transition-to-practice program's receipt of the names of the proposed Appeal Committee membership, the appellant transition-to-practice program shall provide written notice of any assertions that a proposed Appeal Committee member has a conflict of interest to the ACEN Chief Executive Officer. If the ACEN Chief Executive Officer determines a conflict of interest exists, another Appeal Committee member

shall be appointed within three business days with notification to appellant transition-to-practice program. The appellant transition-to-practice program shall have an opportunity to review the appointed Appeal Committee member for any conflict of interest. Within three business days of appellant transition-to-practice program's receipt of the name of the appointed panel member, the appellant transition-to-practice program shall provide written notice of any assertion that the substituted Appeal Committee member has a conflict of interest to the ACEN Chief Executive Officer. If the ACEN Chief Executive Officer determines that the panel member has a conflict of interest, the procedures of this paragraph shall be repeated until an Appeal Committee member is secured and the Appeal Panel is determined. The ACEN Chief Executive Officer'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 may, in consultation with the appellant transition-to-practice program, select individuals outside of the approved list maintained by the ACEN of persons qualified to serve as Appeal Panel members as long as such panel member otherwise meets the qualifications to be a panel member.

PROCEDURES FOR GOVERNING THE APPEAL PROCESS AND APPEAL HEARING

The Appeal Process and Appeal Hearing are collegial, and shall not be bound by technical or formal rules of evidence or pleading. The Appeal 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 Appeal Committee, the use of sidebars, or cross-examining those present, are prohibited.

Throughout the Appeal Process and Appeal Hearing, the appellant transition-to-practice program will bear the burden of proof.

The ACEN is responsible for sending all material concerning the appeal to members of the Appeal Committee; for providing support services, including lodging, transportation and meeting space for the Appeal Committee members; for confirming the date of the Appeal Hearing; and for securing the services of a court reporter.

The following procedures must be adhered to in an appeal.

DOCUMENTS FOR THE HEARING

- A. At least 30 calendar days before the date of the Appeal Hearing, the ACEN must submit to the appellant transition-to-practice program and the Appeal Committee documents (administrative record) used by the ACEN Board of Commissioners leading to and arriving at the decision regarding the transition-to-practice program. The administrative record includes the following: (a) minutes of the ACEN Board of Commissioners as pertain exclusively to the appellant transition-to-practice program's case, (b) a historical summary of the actions taken by the ACEN involving the appellant transition-to-practice program, (c)

the official ACEN correspondence leading to the adverse action and also related to the appeal, and (d) other documents bearing on the substance of the appeal.

- A. At least 14 calendar days before the date of the Appeal Hearing, the appellant transition-to-practice program must submit to the ACEN Chief Executive Officer the brief it intends to present at the Appeal Hearing. The brief must specifically direct Appeal Committee members to citations in the administrative record which justify the appellant transition-to-practice program's grounds for appeal. The appellant transition-to-practice program must cite page numbers of the text supporting its position. The appellant transition-to-practice program is required to submit five copies of its brief. Failure of the appellant transition-to-practice program to provide a brief within the specified period time shall be cause for case dismissal by the Appeal Committee.
- A. At least 10 calendar days before the date of the Appeal Hearing, the ACEN is required to submit copies of the administrative record and the appellant transition-to-practice program's brief to the Appeal Committee.
- A. At least seven calendar days before the date of the Appeal Hearing, the ACEN must submit to the appellant transition-to-practice program and Appeal Committee its response to the appellant transition-to-practice program's brief.
- A. Neither the appellant transition-to-practice program nor the ACEN may submit additional briefs or any other materials during or following the Appeal Hearing.

THE HEARING

1. The appeal hearing shall be held in the Atlanta, Georgia Metropolitan Area. The ACEN Chief Executive Officer shall decide the specific location of the appeal hearing; hearing location shall not be disputable by the sponsoring organization/transition-to-practice program.
2. The Appeal Committee will select a Chair who will be responsible for ensuring effective implementation of the appeal process and for filing the Appeal Committee's decision with the ACEN Chief Executive Officer.
3. The Chair of the Appeal 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.
4. At least 14 calendar days before the date of the Appeal Hearing, the appellant transition-to-practice program and the ACEN 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 Nurse Administrator. Once the names are submitted to each other there may be no substitutions, except as may be approved by the Chair.

5. The ACEN Board of Commissioners bases its adverse action on reports, sponsoring organization responses, documentation, and evidence presented by the sponsoring organization at the time of its review. **The Appeal Committee bases its decision on the published Standards and Criteria or the ACEN published policies and/or procedures in effect at the time of the ACEN Board of Commissioners' review.**
6. If the appellant transition-to-practice program failed to present documentation and evidence available at the time the ACEN Board of Commissioners took adverse action, it cannot make that information available for consideration by the Appeal Committee under any circumstances. In addition, neither the ACEN nor the appellant transition-to-practice program may include new information/materials as part of their briefs presented to the Appeal Committee nor may they introduce new evidence during the Appeal Hearing.
7. It is incumbent upon all parties to ensure that all evidence to be presented at the Appeal Hearing is submitted as required by ACEN Policy 210 Appeal Process for Review of Adverse Action.
8. The Appeal Hearing is closed to the public and shall include only those persons who can speak to the grounds for appeal.
9. Both parties are present during the Appeal Hearing. **If the sponsoring organization/transition-to-practice program or the ACEN does not attend the Appeal Hearing after receiving proper notice of the date, time, and location, the Appeal Committee shall proceed with the Appeal Hearing in the absence of all/some representatives of the party. The Appeal Committee will consider an emergency or other unforeseen relevant circumstance (e.g., natural disaster, public health crisis) that prevents a representative(s) from a party from attending the Appeal Hearing face-to-face as scheduled; only in these cases, technology may be used to allow a party to present its case. If a party fails to present its case, the Appeal Committee shall make a decision without the party's presentation of its case.**
10. No more than five persons and one **attorney counsel** shall appear for each of the parties. The nurse administrator of the appellant transition-to-practice program shall appear before the Appeal Committee.
11. Attendees will be seated with counsel and may testify from where they sit. There will be no sequestration of witnesses.
12. The Appeal Committee may ask questions of the attendees, and their questions shall not count against the time allowed either side.
13. **Legal Counsel** may not cross-examine witnesses for the other party and may not voice objections.
14. The presentation of the parties, including any questions of the Appeal Committee, shall be transcribed by a court reporter provided by the ACEN.

15. Since the appellant transition-to-practice program bears the burden of proof, the appellant transition-to-practice program will be the first party to present its case during the Appeal Hearing.
16. The Chair of the Appeal Committee will limit the presentation of the appellant transition-to-practice program and the ACEN to one hour each, and shall notify both before the Appeal Hearing of such time limit. The one hour does not include a time period for questioning from the members of the Appeal Committee. At the request of the appellant transition-to-practice program or the ACEN, the Chair may allow time for final response by either party, not to exceed one half-hour. These time limits can be extended only by the Chair. Since the sponsoring organization bears the burden of proof, the sponsoring organization will be the first party to present a final response and may reserve some time to conclude.
17. Within seven calendar days of the ~~date~~ conclusion of the Appeal Hearing, the Chair of the Appeal Committee shall inform the ACEN Chief Executive Officer and Chair of the ACEN Board of Commissioners in writing of the Appeal Committee's decision. This notification must include specific reasons for the decision, must address each of the grounds for appeal identified by the appellant transition-to-practice program, and must address the findings with regard to the Transition-to Practice Standards and Criteria on which the ACEN Board of 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 chief nursing officer of the appellant transition-to-practice program's sponsoring organization (or chief executive officer if there is not a chief nursing officer) and to the ACEN Chief Executive Officer.
18. Within 30 business days of receiving the decision from the chair of the Appeal Committee, the ACEN will notify the sponsoring organization and transition-to-practice program of the final decision.

CONDITIONS

- I. The appellant transition-to-practice program bears the burden of proof.
 - a. To gain an **AMENDMENT REVERSAL** of the ACEN Board of Commissioners' decision, the appellant transition-to-practice program must present evidence which, in the judgment of the Appeal Committee, demonstrates that the ACEN Board of Commissioners' decision was arbitrary, that is, was unreasonable and not based on, or consistent with, the published Transition-to-Practice Standards and Criteria or ACEN published transition-to-practice policies and/or procedures.
 - b. In order to gain a REMAND, the appellant transition-to-practice program must present evidence which, in the judgment of the Appeal Committee, demonstrates that the ACEN Board of Commissioners failed to follow its published transition-to-practice policies and/or procedures and that this failure was significant in leading to its decision.

- c. If the appellant transition-to-practice program fails to provide evidence adequate to gain an **AMENDMENT REVERSAL** or a **REMAND**, the initial decision of the ACEN Board of Commissioners must be **AFFIRMED**.
2. The accreditation status of an appellant transition-to-practice program for which an appealable action has been taken shall remain as it was before such action until the **10-30** calendar day period for filing an appeal has expired. Receipt of a notification of an appeal from an appellant transition-to-practice program by the ACEN Chief Executive Officer during this **10-30** 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 ACEN Board of Commissioners' decision, the original effective end date of the transition-to-practice program's accreditation is also affirmed. See Final Accreditation Decision section below.**

RIGHTS AND LIMITATIONS

1. The appellant transition-to-practice program and the ACEN have the following rights in an appeal:
 - a. To have available **legal** counsel or a representative of their choice to advise them at the Appeal Hearing. **Legal c** Counsel representing each of the parties will be permitted to present or assist in the presentation of the case during the Appeal Hearing. Legal counsel will not be permitted to conduct a cross-examination of representatives from the opposing party.
 - b. If the Chair of the Appeal Committee, the appellant transition-to-practice program, or the ACEN 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 ACEN Policy 210 Appeal Process for Review of Adverse Action. Only the Appeal Committee has the right to question individuals present at the Appeal 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 Appeal Hearing, upon payment of the costs of reproduction.
 - e. The Appeal 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 transition-to-practice program and the ACEN, questions asked of these representatives by the Appeal Committee, and responses to such questions are to be recorded and transcribed. Transcripts are a matter of record of the proceedings.

2. The decision of the ACEN Board of 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 ACEN Board of Commissioners' adverse action shall be presented at or before the Appeal Hearing under any circumstances. The Appeal Committee is prohibited from considering such evidence in reaching its decision. No new evidence made available since the time of the ACEN Board of Commissioners' adverse action shall be presented at or before the Appeal Hearing. The Appeal Committee is prohibited from considering such evidence in reaching its decision.
 - b. The Appeal Committee shall not, in its decision or otherwise, instruct the ACEN staff or the ACEN Board of Commissioners to consider evidence concerning the remedying of deficiencies since the date of the ACEN Board of Commissioners' original decision.
3. The Chair of the Appeal Committee **must disallow** evidence presented by the appellant transition-to-practice program or the ACEN:
 - a. Which is not pertinent to the grounds for appeal;
 - b. Which concerns the remedying of deficiencies since the time of the ACEN Board of Commissioners' decision;
 - c. Which was not available to the ACEN Board of Commissioners at the time of its decision.
4. Members of the Appeal Committee may not disclose the content of confidential discussions or deliberations leading to its decision.
5. Members of the Appeal Committee may not disclose its decision prior to the Chair's notification to the ACEN Chief Executive Officer and the Chair of the ACEN Board of Commissioners.

ACTIONS

- I. The Appeal Committee, after the presentation of oral and/or written testimony, must determine whether the appellant transition-to-practice program has demonstrated either of the following:
 - a. That the ACEN Board of Commissioners failed to follow its published transition-to-practice policies and/or procedures and that this failure was significant in leading to the Board of Commissioners' decision; or

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

If the appellant transition-to-practice program demonstrated that the ACEN failed to follow its published transition-to-practice policies and/or procedures, the Appeal Committee shall remand to the specific group where the failure occurred.

 - i. The Appeal Committee shall REMAND the decision of the ACEN Board of Commissioners if it finds that the appellant transition-to-practice program has demonstrated that the ACEN failed to follow its published transition-to-practice

policies and/or procedures, that the failure was significant in leading to the ACEN Board of Commissioners' decision, and that the failure was significant in leading to the adverse action.

- ii. The Appeal Committee shall REMAND the case to the specific group (i.e., peer evaluators on site visit team or Board of Commissioners) where the failure occurred. ~~with specific instructions to review the case taking into consideration any findings of the Appeal Committee.~~ The Appeal Committee will explain its basis for a ruling that differs from that specific group. The ~~specific group where the failure occurred~~ peer evaluators on the site visit team and/or the members of the Board of Commissioners will reconsider the case and forward its recommendation to the next level of review.
- iii. The Appeal Committee must act in a manner consistent with the Committee's decision(s) or instruction(s).
- iv. When remanded to the site visit team, to the extent reasonably possible, all the original peer evaluators on the site visit team will reconsider the case. The peer evaluators will reconsider the case and make a second accreditation recommendation, which may or may not be the same as the first recommendation.

When remanded to the Board of Commissioners Transition-to-Practice Committee, there is no guarantee that the Board of Commissioners Transition-to-Practice Committee will be any of the original peer evaluators that made the previous recommendation. The Board of Commissioners Transition-to-Practice Committee will reconsider the case and make a second accreditation recommendation, which may or may not be the same as the first recommendation.

When remanded to the Board of Commissioners, there is no guarantee that the Board of Commissioners will be the exact same peer evaluators that made the original decision. The Board of Commissioners will reconsider the case and make a second accreditation decision, which may or may not be the same as the first decision.

- v. If the Appeal Committee REMANDS the case, the reconsideration shall occur at the next realistic accreditation timeframe following the decision of the Appeal Committee.

If the ACEN Board of Commissioners affirms its original decision, the appellant transition-to-practice program may again appeal based on the Grounds for Appeal. The case will be heard again by an Appeal Committee composed of different members, which will then make a final decision to affirm or ~~amend~~ reverse. The Appeal Committee cannot remand again.

FINAL ACCREDITATION DECISION

1. The ACEN Board of Commissioners decision is the final accreditation decision if the sponsoring organization/transition-to-practice program does not appear the adverse action.
2. The ACEN Board of Commissioners decision is the final accreditation decision if the sponsoring organization/transition-to-practice program withdraws its appeal before the Appeal Committee renders a decision.
3. The ACEN Board of Commissioners decision is the final accreditation decision if the sponsoring organization/transition-to-practice program fails to meet any deadline.
4. If the sponsoring organization/transition-to-practice program does appeal, the decision of the Appeal Committee is the final accreditation decision. If the result of an appeal is to affirm the ACEN Board of Commissioners' decision, the original effective end date of the transition-to-practice program's accreditation is also affirmed.

Within 60 calendar days of a final accreditation decision to deny initial accreditation or deny continuing accreditation, the ACEN will make available to the nurse administrator, chief executive officer of the sponsoring organization, state regulatory agencies as applicable, and the public, a brief statement summarizing the reasons for the decision and the official comments that the affected sponsoring organization/transition-to-practice program may wish to make with regard to the decision, if any. The ACEN will also provide evidence that the affected institution was offered the opportunity to provide official comment.

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