



## Dispute Resolution and Appeals Policy

The American Board of Plastic Surgery, Inc. (“ABPS”) hereby establishes the following **Mandatory Dispute Resolution Policy** relative to resolution of any and all questions or dissatisfactions with any Board action or program and or decisions made by ABPS concerning 1) prerequisite and requisite training; 2) admissibility to examination; 3) the conduct or administration of the examination or assessment process; 4) the conduct or administration of the Continuous Certification process; 5) certificate revocation, suspension, probation or other discipline and 6) the use of the ABPS website and or the use of the ABPS Certification logo.

**AT THE CONCLUSION OF THE MANDATORY DISPUTE RESOLUTION PROCESS ANY CLAIMS THAT CAN BE BROUGHT AGAINST ABPS MUST BE SUBMITTED TO FINAL AND BINDING ARBITRATION. THE CLAIM MUST BE SUBMITTED ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS, GROUP OR REPRESENTATIVE ACTION OR PROCEEDING. PARTICIPATING IN ANY ABPS PROCESS, ENTERING THE ABPS WEBSITE, USING THE INFORMATION OR SERVICES ON THE ABPS WEBSITE AND OR USING THE ABPS LOGO FOR DIPLOMATES SIGNIFIES AGREEMENT TO BE BOUND BY THIS CLASS ACTION WAIVER AND OTHER TERMS AND CONDITIONS IN THIS MANDATORY DISPUTE RESOLUTION AND ABPS APPEALS POLICY.**

The ABPS has established policies so that the ABPS certification process can be administered equally and fairly to all individuals. The ABPS understands however, that in certain situations the policies may not be clear or may not have addressed certain unique circumstances. To manage these unique situations, the ABPS established the Mandatory Dispute Resolution and Appeals Policy. For the purpose of this document only, Special Consideration shall mean consideration of unique, extraordinary or special circumstances that are not clearly presented in an ABPS policy or are not addressed in any ABPS policy. Special Consideration by the ABPS requires the provision of documentation of new information that the ABPS had not previously considered. Special Consideration in no way suggests that any individual is receiving special treatment above and beyond the standard established for all candidates and diplomates. All decisions by the ABPS are final. For the purposes of this document, Reconsideration shall mean that the ABPS will consider an additional review of a complaint only if there is new information provided that the ABPS had not previously considered.

## **A. CATEGORIES OF COMPLAINTS**

### **1. PREREQUISITE / REQUISITE TRAINING REQUIREMENTS**

Complaints regarding denial of approval of prerequisite/requisite training for any reason shall be made to the Board in writing. The Board will notify the complainant in writing of the specific reasons for the denial. Thereafter, upon written request of the complainant, the question will be referred to the Credentials and Requirements Committee of the Board for Special Consideration or Reconsideration only if the complainant provides additional information which the Committee has not previously considered. The complainant shall be notified in writing of the Committee's decision on Special Consideration or Reconsideration and the reasons for it within 60 days after its meeting. If no such additional information is provided, the complainant will be advised that the next step is an Informal Appeal pursuant to Section B. hereof.

### **2. ADMISSIBILITY TO EXAMINATION**

Complaints regarding the denial of admissibility to examination for any reason shall be made to the Board in writing. The Board shall notify the complainant in writing of the specific reasons for this denial. Thereafter, upon written request of the complainant, the question will be referred to the Credentials and Requirements Committee of the Board for Special Consideration or Reconsideration only if the complainant provides additional information which the Committee has not previously considered. The complainant shall be notified in writing of the Committee's decision on Special Consideration or Reconsideration and the reasons for the decision within 60 days after its meeting. If no such additional information is provided, the complainant will be advised that the next step is an Informal Appeal pursuant to Section B. hereof.

### **3. CONDUCT, ADMINISTRATION OR RESULTS OF THE EXAMINATION OR ASSESSMENT PROCESS**

Complaints regarding the form, contents, administration or results of the Written, Oral, Hand-Subspecialty, or Continuous Certification Examinations or Assessments shall be made in writing to the Board no more than 30 days following the date of the Examination Result Letter. With regard to the Oral Examination, complaints about denial of a case list, the content of the examination or assessment, the sufficiency or accuracy of the answers given, or the score will not be considered. Appropriate documentation should accompany the written complaints. Such complaints shall be forwarded to the appropriate committee of the Board for Special Consideration or Reconsideration only if the complainant provides additional information which the Committee has not previously considered. The complainant will be notified in writing of the Committee's decision and the reasons for the decision within 60 days after its meeting. If no such additional information is provided, the complainant will be advised that the next step is an Informal Appeal pursuant to Section B. hereof.

**NOTE: At no stage may a complainant or appellant be awarded a passing grade on an examination or assessment on which the original grade was Fail; the most that may be awarded is an opportunity to retake the examination or assessment when it is regularly scheduled.** At every stage of the dispute resolution/appeals process the complainant or appellant must prove that the Board's decision was arbitrary and capricious and that there was no material basis or that there was a complete absence of facts to support the Board's action.

#### 4. CONDUCT, ADMINISTRATION OR RESULTS OF THE CONTINUOUS CERTIFICATION PROCESS

Certification is a single lifelong process beginning with initial certification and continuing with Continuous Certification. The ABPS Continuous Certification process involves four components: 1. Professionalism, 2. Self-Assessment and Life Long Learning, 3. Knowledge Assessment and 4. Practice Improvement. Each of these components is considered when making a summative decision of compliance with the Continuous Certification process. Failure to satisfactorily complete all four components can lead to loss of ABPS certification.

Complaints regarding loss of certification, for any reason, shall be made to the Board in writing. Thereafter, upon written request of the complainant, the question will be referred to the Credentials and Requirements Committee of the Board for Special Consideration or Reconsideration only if the complainant provides additional information which the Committee has not previously considered. The complainant shall be notified in writing of the Committee's decision on Special Consideration or Reconsideration and the reasons for the decision within 60 days after its meeting. If no such additional information is provided, the complainant will be advised that the next step is an Informal Appeal pursuant to Section B. hereof.

#### 5. CERTIFICATE REVOCATION, SUSPENSION, PROBATION OR OTHER DISCIPLINE

The ABPS has established guidelines for the revocation, suspension and probation of certificates. To comply with the Board's mission to protect the public, these sanctions will be enacted immediately upon discovery of actions that meet the established guidelines. All sanctions will then be reviewed by the appropriate committee at its next meeting. The Diplomate will be notified in writing of the specific reason for the Committee's decision within 60 days.

Complaints regarding certificate revocation, suspension or probation, for any reason, shall be made to the Board in writing. Thereafter, upon written request of the complainant, the question will be referred to the Ethics Committee of the Board for Special Consideration or Reconsideration only if the complainant provides additional information which the Committee has not previously considered. The complainant shall be notified in writing of the Committee's decision on Special Consideration or

Reconsideration and the reasons for the decision within 60 days after its meeting. If no such additional information is provided, the complainant will be advised that the next step is an Informal Appeal pursuant to Section B. hereof.

## 6. USE OF THE ABPS WEBSITE AND OR USE OF THE ABPS CERTIFICATION LOGO

The ABPS website is the gateway to all of the Board's processes and activities. Use of the ABPS website indicates that you accept and agree to abide by the terms and conditions set forth by the American Board of Plastic Surgery and all ABPS policies including this Mandatory Dispute Resolution and Appeals Policy. Upon accessing the ABPS website you also agree that the Mandatory Dispute Resolution and Appeals Policy will govern all activities of the Board, even if they occur outside the website, in non-electronic communications, on applications, at testing centers for the Written Examination or on-site during the Oral Examination administration.

The ABPS Certification Logo, representing certification by the American Board of Plastic Surgery Inc. is registered with the U.S. Patent and Trademark office. Use of the ABPS Certification Logo is limited to ABPS Board Certified Diplomates who have the permission of the ABPS. Permission is conditioned, at a minimum, upon Initial certification and Continuous Certification. Misuse of the ABPS Certification Logo may lead to denial or restrictions on an individual's use of the logo.

Complaints regarding the use of the ABPS website and or ABPS Certification Logo, for any reason, shall be made to the Board in writing. Thereafter, upon written request of the complainant, the question will be referred to the Credentials and Requirements Committee of the Board for Special Consideration or Reconsideration only if the complainant provides additional information which the Committee has not previously considered. The complainant shall be notified in writing of the Committee's decision on Special Consideration or Reconsideration and the reasons for the decision within 60 days after its meeting. If no such additional information is provided, the complainant will be advised that the next step is an Informal Appeal pursuant to Section B. hereof.

## **B. THE APPEAL PROCESS**

### 1. INITIAL INQUIRIES AS TO STATUS OR REQUIREMENTS

Complaints or requests for clarification of a communication or requirement of the Board shall be made to the Board in writing. The Executive Director, Secretary-Treasurer, Chair or Committee Chair shall provide a written response based on published requirements.

### 2. REQUEST FOR SPECIAL CONSIDERATION BY THE BOARD

Requests for Special Consideration by the Board shall be made in writing clearly stating

the request and documenting how the situation is not clearly covered in the Board's current policies. Requests must be submitted by February 1 for the Annual Meeting of the Directors and September 1 for the Semi-Annual Meeting of the Directors. A review fee is required for Special Consideration Requests.

Special Consideration Requests shall be scheduled by the Board for the appropriate committee. The majority of special consideration requests shall be scheduled for the Credentials and Requirements Committee, or other appropriate committee such as the Oral Examination Committee. The Chair of the Committee shall provide a written response within 60 days of the meeting.

### 3. REQUEST FOR RECONSIDERATION BY THE BOARD

Requests for Reconsideration of a previous decision by the Board shall be made in writing clearly stating the request and providing additional supporting documentation which the Committee has not previously considered. Requests must be submitted by February 1 for the Annual Meeting of the Directors and September 1 for the Semi-Annual Meeting of the Directors. A review fee is required for Reconsideration Requests. Reconsideration Requests shall be scheduled by the Board for the appropriate committee, such as the Credentials and Requirements Committee, or the Oral Examination Committee. The Chair of the Committee shall provide a written response within 60 days of the meeting.

### 4. INFORMAL APPEAL

- a) Special Consideration and Reconsideration decisions shall be considered binding on both the complainant and the Board unless the complainant, within 30 days after the date of the letter of notification thereof, makes an informal appeal to the Board in writing, requesting a hearing, setting forth the reasons for disagreement with the decision, and submitting the informal appeal fee.
- b) When a request for an informal appeal hearing and payment of the appeal fee is received, the hearing shall be scheduled at the next regular meeting of the appropriate committee determined by the Board. The appellant shall be notified in writing at least 30 days prior to the meeting of the time and location at which to appear. The appellant shall be afforded the opportunity to appear in person without counsel and present oral and printed evidence. The appellant may not have anyone else present during the hearing. The appellant may not record the hearing and must prior to the hearing surrender any cell phone or other device capable of recording the hearing. The members of the Committee shall have the right to question the appellant concerning anything in the record or presented by the appellant. The appellant shall be notified in writing of the Committee's decision and the reasons for it within 60 days after the hearing.

## 5. FORMAL APPEAL

- a) The decision of a Committee on an informal appeal shall be considered binding on both the appellant and the Board unless the appellant, within 30 days after the date of the letter of notification thereof, makes a formal appeal to the Board in writing, requesting a hearing, setting forth the reasons for disagreement with the decision, and submitting the formal appeal fee (payable in United States funds).
- b) Upon receipt of a request for a formal appeal hearing and payment of the appeal fee, the Chair of the Board will, within 60 days, appoint an Appeals Panel consisting of not fewer than three former Directors of the Board, none of whom shall have previously participated in the consideration of, or in any decision on, the matter which is the subject of the appeal.
- c) The appellant shall be notified in writing of the identity of the members of the Appeals Panel and shall have the privilege of challenge for cause only. Such challenges must be made in writing within 30 days following the date of the notice of appointment of the Appeals Panel. The Executive Committee of the Board, with the advice of Legal Counsel, shall rule upon any such challenges, and its ruling shall be final.
- d) The appellant shall be notified in writing of the action of the Executive Committee of the Board on any challenges to the membership of the Appeals Panel and of the time and place of the hearing at least 30 days prior to the date set for the hearing. At the hearing the appellant may appear and be heard in person, either with or without counsel, and may present witnesses and other evidence.
- e) The ABPS will be represented by the ABPS Executive Director unless otherwise agreed upon by all parties. The Executive Director may appear with or without counsel and may present witnesses and other evidence.
- f) The Appeals Panel may call such other witnesses and consider such other evidence as it deems appropriate provided that appellant and appellant's counsel shall have the opportunity to examine all documents and physical evidence considered by the Panel and to question all witnesses heard by it. The Legal Counsel of the Board may also participate. The Appeals Panel must uphold the decision unless the appellant establishes both that the decision lacked any material basis and that it was arbitrary and capricious.
- g) Each decision by the Appeals Panel shall be forwarded to the appellant in writing within 60 days of the close of the hearing.
- h) If a scheduled hearing is cancelled or postponed by an appellant less than 60 days prior to the date scheduled for that hearing, no portion of the appeal fee shall be refunded. An additional appeal fee (payable in United States funds) shall be paid

by the appellant for any hearing that is rescheduled.

Requests for Special Consideration or Reconsideration, an Informal Appeal or Formal Appeal pursuant to this mandatory dispute resolution policy must be submitted in writing along with any applicable documentation and the appropriate fee. All fees must be submitted in United States funds and made payable to The American Board of Plastic Surgery, Inc. These requests must be received in the Board Office by February 1 for the spring Annual Meeting and by September 1 for the fall Semi-Annual Meeting.

**ALL OFFERS, PROMISES, CONDUCT AND STATEMENTS, WHETHER ORAL OR WRITTEN, MADE IN THE COURSE OF THE DISPUTE RESOLUTION/APPEALS PROCESS AND MANDATORY COMPULSORY AND BINDING ARBITRATION BY ANY OF THE PARTIES, THEIR AGENTS, EMPLOYEES, EXPERTS, AND ATTORNEYS ARE CONFIDENTIAL, PRIVILEGED AND INADMISSIBLE FOR ANY PURPOSE, INCLUDING IMPEACHMENT, IN ARBITRATION OR OTHER PROCEEDING INVOLVING THE PARTIES, PROVIDED THAT EVIDENCE THAT IS OTHERWISE ADMISSIBLE OR DISCOVERABLE SHALL NOT BE RENDERED INADMISSIBLE OR NON-DISCOVERABLE AS A RESULT OF ITS USE IN THE DISPUTE RESOLUTION/APPEALS POLICY.**

#### **ARBITRATION PROVISION**

Any dispute, claim or controversy arising out of the ABPS certification examinations; access or use of the ABPS website and the services or information contained therein; use of the ABPS diplomate certification logo or relating to the decision of the Appeals Panel or the enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Philadelphia, Pennsylvania before one arbitrator, who must be either a retired judge from the Third Circuit Court of Appeals, the Federal Court for the Eastern District of Pennsylvania, or a lawyer with ten (10) years of active practice in the medical specialty board area. The arbitration shall be administered by JAMS pursuant to JAMS' Streamlined Arbitration Rules and Procedures, including Rules 16.1 and 16.2 of the JAMS' Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

#### **RIGHT TO OPT OUT**

**IF YOU DO NOT WISH TO PARTICIPATE IN THE MANDATORY DISPUTE RESOLUTION AND APPEALS PROCESS OR TO ARBITRATE DISPUTES AFTER COMPLETING THE MANDATORY DISPUTE RESOLUTION PROCESS, YOU MAY NOT PARTICIPATE IN THE ABPS CERTIFICATION EXAMINATIONS; ACCESS OR USE THE ABPS WEBSITE, THE SERVICES OR INFORMATION CONTAINED THEREIN, OR USE THE ABPS DIPLOMATE CERTIFICATION LOGO.**

#### **CONFIDENTIALITY**

The parties shall maintain the confidential nature of the Dispute Resolution process and the arbitration proceeding and the Award, including the Hearing except as may be necessary to

prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an Award or its enforcement, or unless otherwise required by law or judicial decision.

## **GOVERNING LAW**

This Agreement and the rights of the parties hereunder shall be governed and construed in accordance with the laws of the State of Pennsylvania, exclusive of conflict or choice of law rules.

Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).

## **WAIVER OF CLASS ACTION AND COLLECTIVE RELIEF**

**THE PARTIES ACKNOWLEDGE AND AGREE THAT CLASS ACTION AND REPRESENTATIVE ACTION PROCEDURES SHALL NOT BE ASSERTED AND WILL NOT APPLY IN ANY ARBITRATION. THE DIPLOMATE/CANDIDATE WILL NOT ASSERT CLASS ACTION OR REPRESENTATIVE ACTION CLAIMS AGAINST ABPS IN ARBITRATION, COURT, OR ANY OTHER FORUM. THE DIPLOMATE/CANDIDATE AGREES TO SUBMIT THEIR OWN INDIVIDUAL CLAIM AND WILL NOT SEEK TO REPRESENT THE INTERESTS OF ANY OTHER PERSON AND ANY CLAIMS BY THE DIPLOMATE/CANDIDATE WILL NOT BE JOINED, CONSOLIDATED OR HEARD TOGETHER WITH CLAIMS OF ANY OTHER DIPLOMATE OR CANDIDATE OF ABPS OR OF ANY OF THE MEMBER BOARDS OF THE AMERICAN BOARD OF MEDICAL SPECIALTIES, INC. ("ABMS"). THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT INDIVIDUAL PARTY'S CLAIM. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT, OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING.**

## **MODIFICATION OF THE TERMS OF THIS COMPULSORY ARBITRATION AGREEMENT**

**The parties acknowledge and agree that the restrictions and remedies contained in this agreement and that it is the parties' intention that such restrictions and remedies shall be enforceable to the fullest extent permissible by law. If a court of competent jurisdiction shall find that any such restriction or remedy is unenforceable, but would be enforceable if some part were deleted or modified, then such restriction or remedy shall apply with the deletion or modification necessary to make it enforceable and shall in no way affect any other provision of this Agreement or the validity or enforceability of this Agreement.**

## **SEVERABILITY OF THE TERMS OF THIS COMPULSORY ARBITRATION AGREEMENT**

**In the event any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement shall be inoperative.**



## **PUNITIVE DAMAGES**

In any arbitration, the arbitrator(s) are not empowered to award punitive or exemplary damages, and the parties waive any right to recover any such damages.

## **LIMITATION OF LIABILITY**

In any arbitration, the arbitrator(s) may not award any incidental, indirect or consequential damages.

## **FEES AND COSTS TO PREVAILING PARTY**

In any arbitration, the arbitrator shall award to the prevailing party, if any, costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration.

If the arbitrator determines a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the arbitrator may award the prevailing party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration.

## **APPEAL**

An arbitration award may not be set aside or vacated unless it is established that the decision was the result of "evident partiality", "fraud", "corruption", refusing to hear "pertinent and material" evidence, or acts exceeding the powers of the arbitrator.