



## APPEALS PROCEDURE

### NATIONAL NURSING ASSESSMENT SERVICE / SERVICE NATIONAL D'ÉVALUATION INFIRMIÈRE

This Procedure applies to all appeals from “Actions” (defined herein) by CGFNS International, Inc. (referred to as the “Commission” or “CGFNS”) on behalf of its client, National Nursing Assessment Service / Service National D’Évaluation Infirmière in Canada (“NNAS”).

#### A) RIGHT OF APPEAL.

- 1) An appeal may be brought to NNAS by an applicant dissatisfied with the outcome of an assessment performed by NNAS. NNAS has no jurisdiction with respect to appeals made based on decisions taken by individual provincial Regulatory Bodies.
- 2) All appeals are governed by and must be made in accordance with the procedures set forth in these rules. The Commission shall not be responsible for the payment of any expenses incurred by any individual in bringing an appeal.
- 3) The governing language of this Appeals Procedure will be English or French where applicable. All documents shall be submitted in English or French where applicable, accompanied by English translations. Oral and written hearings shall be conducted in English or French where applicable, and translations from any other language shall be arranged at the expense of the Appellant (defined in B(1), below).
- 4) The following persons are eligible to request an Appeal: A graduate of a foreign school (an “Applicant”) who has received an NNAS Advisory Report as part of the NNAS process.
- 5) "Action" is defined as one or more of the following events. Any event not included in the definition of "Action" below does not give rise to a right of appeal.
  - (a) Identifying an adverse finding in an NNAS Advisory Report;
  - (b) Amending in any way that is detrimental to the Applicant, an NNAS Advisory Report after it has already been issued;
  - (c) Withholding an NNAS Advisory Report;
  - (d) Revoking an NNAS Advisory Report that has already been issued;
  - (e) Receiving a referral from NNAS or a Regulatory Body which is a member of NNAS requesting that a right of appeal be granted with regard to an NNAS Advisory Report;

- (f) Identifying any other event determined by the Chief Executive Officer of the Commission to be an "Action; or
  - (g) Receiving a written communication from an Applicant objecting to a material aspect of the contents of an Advisory Report.
- 6) Within forty-five (45) calendar days after taking one or more of the Actions in Sections A(5)(a) through A(5)(f) above or receiving an Applicant's written objection under Section A(5)(g) above, the Commission shall send a Notification Letter to the person who is the subject of the action or objection, informing him or her: (A) of the Action taken or the objection received; (B) the reasons for the Action, if applicable, and (C) that a Notice of Appeal must be filed in conformity with Section B below and received by the Commission within sixty (60) calendar days after the date of the Notification Letter, or he or she shall waive any right to appeal; and (D) enclosing a copy of this Appeal Procedure.

B) NOTICE OF APPEAL.

- 1) To initiate an appeal, an Applicant or other person eligible to file an Appeal (all of whom shall be referred to hereafter as the "Appellant") must submit a written Notice of Appeal to the Commission within sixty (60) calendar days after the date of the Notification Letter in Section (A)(6). The Notice of Appeal must be in writing, and must specify the particular basis or bases for the appeal, and set forth each fact that supports the Appellant's appeal. The Notice of Appeal must also include copies of all documents that are pertinent to the appeal, and any other information, evidence or materials which explain or support the Appellant's appeal or upon which the Appellant intends to rely in the appeal.
- 2) The Appellant must send his or her Notice of Appeal by U.S. First Class mail, or its international airmail equivalent, and the Notice of Appeal must be received by the Commission within sixty (60) calendar days after the date of the Notification Letter in (A)(6).
- 3) If the Appellant does not send a written Notice of Appeal that is received by the Commission within sixty (60) calendar days after the date of the Notification Letter, he or she waives any right to appeal.

C) INITIAL REVIEW.

- 1) Each Notice of Appeal shall be reviewed by Commission staff to determine whether it has been submitted in accordance with the procedures set forth herein, specifically by the Director of Governmental Affairs and Professional Standards, or designate (an "Initial Reviewer").
- 2) If the Initial Reviewer finds the Notice of Appeal to be incomplete or otherwise deficient, he or she shall so advise the Appellant in writing within forty-five (45) calendar days after the receipt of the Notice of Appeal, stating the reason(s) for such a finding. The Appellant may resubmit the Notice of Appeal which must be received by the Commission within forty-five (45) calendar days after the date of the letter containing the findings of the Initial Reviewer in an effort to correct the

- deficiencies noted. The resubmission shall be reviewed by the Initial Reviewer in accordance with the standards set forth above for reviewing the original Notice of Appeal. The resubmission will then be forwarded to the Chief Executive Officer of the Commission. If an Appellant fails to send the resubmission so that it is received by the Commission within the forty-five (45) calendar days set out above, the original Notice of Appeal will be forwarded to the Chief Executive Officer within twenty-one (21) calendar days from the date on which the resubmission should have been received by the Commission.
- 3) The Chief Executive Officer shall independently review all Notices of Appeal. If the Chief Executive Officer decides that the initial submission or resubmission is deficient under the standards set forth above for reviewing the original Notice of Appeal, or that the appeal has no merit, he or she shall dismiss the appeal or shall take whatever administrative action he or she finds appropriate under the circumstances with regard to the appeal. The Chief Executive Officer shall communicate his or her decision to the Appellant in a letter mailed within forty-five (45) calendar days after the Commission's receipt of the original Notice of Appeal or the resubmitted Notice of Appeal, whichever is later. If the Chief Executive Officer concludes that the Notice of Appeal, upon initial submission or resubmission, complies with the standards set forth above for Notices of Appeal, or concludes that the appeal may have merit, the Chief Executive Officer shall set the appeal for a hearing before the Appeals Committee of the Commission. The date of hearing shall be within ninety (90) calendar days after the later of the date of the letter in which the Chief Executive Officer communicates his or her decision and the date the Commission receives payment in full of the Appeal Request service fee under C(5), below.
  - 4) An Applicant who is dissatisfied with the decision of the Chief Executive Officer to dismiss an appeal or to take other administrative action under Section C(3) above may request in writing a review by the Appeals Committee within thirty (30) calendar days after the Commission sends written notice of such decision by the Chief Executive Officer. Upon receipt of such request from an Appellant, the Appeals Committee may confirm the decision of the Chief Executive Officer or set the matter for a hearing before the Appeals Committee in accordance with Sections C(3) and C(5).
  - 5) Appellant Notices of Appeal that have been initially reviewed and granted to have a hearing scheduled before the Appeals Committee will then be charged an Appeal Request service fee of CDN \$500.00. This decision will be communicated in writing to the Appellant with instructions that full payment of the Appeal Request service fee is to be submitted online only through the NNAS website in the Appellant's NNAS account. If the Appeal Request service fee of CDN \$500.00 is not submitted within sixty (60) calendar days after the date of written communication in response to the notice of appeal, the Appellant shall forfeit his or her right to an appeal. After full payment of the Appeal Request service fee has been submitted online, the Appeals Committee hearing will be scheduled. If the final findings and conclusions of the Appeals Committee amend the Actions by the Commission, the full Appeal Request service fee will be refunded to the Appellant (excluding any Additional Costs, as defined below). In addition to the Appeal Request service fee, an Appellant must also pay or reimburse the Commission for actual expenses incurred in connection with the

Appeal, such as courier charges and translation costs, to the extent permitted under this Procedure (“Additional Costs”).

- 6) At least forty-five (45) calendar days prior to the hearing (as described in Section D, below), the Commission shall mail to the Appellant a written Notice of Hearing. It shall be within the discretion of the Chief Executive Officer to determine whether the hearing shall be written or oral, and the hearing shall be so designated in the Notice of Hearing. The Chief Executive Officer shall consider, without limitation, such factors as the need to judge the credibility of testimony, the convenience of the Appellant and the Appeals Committee, travel costs, and transcription and translation costs in determining whether the hearing shall be written or oral. If the hearing is designated as oral, the Notice shall state the time and place of the hearing, and shall specifically advise the Appellant that if he or she fails to appear at the hearing without good cause, he or she shall forfeit the right to an appeal. If the hearing is designated as oral, the Commission at its sole discretion may permit all or part of the proceedings to be conducted, or all or some of the participants to appear, by videoconference in which all participants can hear and see each other and be heard and seen by all, with such further rules for the proceedings as the Commission may issue from time to time at its sole discretion. If the hearing is designated as oral, the Appellant shall be entitled to request that it be conducted as a written hearing instead, so long as the request is received by the Commission no later than fifteen (15) calendar days before the hearing. Whether the hearing is designated oral or written, the Notice of Hearing shall state that the Appellant may submit any additional materials in written form and that such additional materials must be received by the Commission no later than ten (10) calendar days before the hearing, which may be submitted electronically as long as they are received by the Commission within such period of time.
- 7) The Chief Executive Officer shall have discretion to grant any appeal at any time for good cause and without complying with the provisions of these rules. Such appeals shall have no value as precedent, however, and shall not be cited as precedent in any future case.

D) HEARINGS.

- 1) All hearings within the scope of these rules shall be conducted by a quorum of the Appeals Committee. The Appeals Committee may be convened when necessary but need not meet more than twice yearly to conduct hearings.
- 2) At a hearing, the Appeals Committee shall consider all materials, data, evidence, exhibits or other information submitted by the Appellant that is relevant to the appeal.
- 3) The Appeals Committee may have legal counsel present at any stage of the proceedings to assist it.
- 4) The Chair of the Appeals Committee shall preside over the hearing and shall rule on all procedural issues.

- 5) The Appellant shall not have the right to be present or to attend any hearing designated as a written hearing in the Notice of Hearing, but the Appellant shall have the right at the Appellant's own cost to be represented by and assisted by legal counsel in all correspondence to the Appeals Committee or the Commission.
- 6) The Appellant must attend throughout an oral hearing and may at the Appellant's own cost also have legal counsel present at an oral hearing, and such counsel may participate in and assist the Appellant during the hearing, including making opening or closing statements, submitting evidence for the record and examining or cross-examining witnesses testifying at the hearing.
- 7) If the Appellant who is granted an oral hearing fails to appear, without good cause, the Appellant forfeits the right of appeal. Determination of whether the Appellant has "good cause" for failing to appear at a hearing shall be made at the Appeals Committee's discretion and without any further right of appeal.
- 8) At any oral hearing, the testimony of any witnesses shall be taken under oath or affirmation. A tape recording or a transcript of the tape recording of the hearing shall be made at the Appellant's request upon payment in advance of the cost. If the Appellant desires a court reporter to be present to transcribe the hearing, the Appellant will bear the expense.
- 9) The Chief Executive Officer and/or appropriate Commission staff shall be present at the hearing, and at any oral hearing, may present information as requested by the Appeals Committee. At any written hearing, only information previously provided by or to the Appellant may be presented and considered by the Appeals Committee in rendering its decision.
- 10) Legal counsel for the Commission may be present at any oral or written hearing and may bring such matters to the attention of the Appeals Committee as it may deem appropriate, subject to the provisions of Section C(9) above. The Commission's legal counsel may examine or cross-examine any witness testifying at any oral hearing, but shall not participate in any vote on any matter before the Appeals Committee.
- 11) The Appellant shall have the burden of proof regarding any amendment to the Action which is the subject of the Appeal or any other relief requested by the Appellant.
- 12) At an oral hearing, the Appeals Committee and the Appellant shall follow the procedures and sequence of presentations as prescribed by the Commission and provided to the Appellant prior to the hearing.
- 13) No formal rules of evidence apply, and the Appeals Committee shall have discretion to exclude evidence if it is irrelevant or cumulative. At an oral hearing, the Appeals Committee may limit the examination or cross-examination of any witness or of any opening or closing statements of counsel.

E) FINDINGS.

- 1) If a majority of the Appeals Committee members present at the time of its deliberations are satisfied that the appeal should be granted, it shall be granted. If less than a majority of the Appeals Committee members are so satisfied, the appeal shall be denied.
- 2) The decision of the Appeals Committee shall be set forth in writing, along with a summary of the rationale for its decision, and mailed to the Appellant and to NNAS within twenty-one (21) calendar days after the hearing.

F) RELIEF.

If the appeal is granted, the Appeals Committee shall enter an order directing such relief as it may deem appropriate, including without limitation, any refund of the Appeal Request service fee.

G) FINALITY OF FINDINGS.

Decisions of the Appeals Committee are final and binding on both the Appellant and the Commission with no further right of reconsideration or appeal.

February 26, 2016