



## **Appeals Policy and Policy Exceptions**

### **Section 1. Appeal Policy**

#### **1.1 Level 1 Appeal**

1. The candidate may initiate a Level 1 Appeal by filing the First Notice of Appeal form and the required fee through OEBC. The deadline for an appeal of exam results is within twenty-five days of issuing the results. This identifies the issues, grounds for the appeal, and the remedy that the candidate is seeking.
2. OEBC shall send the candidate an acknowledgment of the First Notice of Appeal receipt and fee within five days of receiving it.
3. The CEO shall determine the validity of the appeal solely based on Sections 1.1.1 and 1.2.2.
4. If required, the CEO shall, within ten days, request further information.
5. Within twenty-five days of 1.1.2, the CEO shall notify the candidate that the appeal has been approved or denied.
6. The candidate may appeal the Level 1 decision using the Level 2 Appeal process.

#### **1.2 Level 2 Appeal**

1. The candidate may appeal the Level 1 Appeal decision or an Application for a Policy Exception by submitting a Second Notice of Appeal form and the required fee to OEBC within ten days of issuing the decision in Section 0.0.5 or 1.1.5 to the candidate.
2. Within five days of receiving the Second Notice of Appeal, OEBC sends an acknowledgement to the candidate and advises the Appeal Panel Appointments Chair that an appeal has been filed.
3. Within fifteen days of receiving the Second Notice of Appeal, the CEO sends the candidate the response prepared for submission.
4. Within five days of receiving the CEO's response, the candidate may submit a response.
5. The CEO may respond to the candidate further within five days of receiving the candidate's response.
6. Within fifteen days of OEBC receiving the Second Notice of Appeal, the Appeal Panel Appointments Chair shall appoint a three-member panel and advise the Parties of their names to determine any potential conflict of interest. The panel will be composed of the Level 2 Chair, an Optometrist, and one member who may not be an Optometrist.
7. Within five days of notification of the proposed panel composition, the Parties will confirm or reject the panel's composition. If a panel member(s) is rejected, the Appeal Panel Appointments Chair shall appoint a replacement member(s) within ten days and

ask the Parties to confirm or reject the replacement member(s) with reasons. After the second round, the Appeal Panel Appointments Chair will appoint the panel members.

8. Within five days of finalizing the panel composition, OEBC sends submissions to the panel and the Parties as follows:
  1. the candidate's First Notice of Appeal to CEO;
  2. the decisions of the CEO and the reasons;
  3. the candidate's Second Notice of Appeal;
  4. the submission(s) of the CEO;
  5. the response, if any, of the candidate;
  6. copy of the Appeals Policy.
9. Within thirty days of the panel confirmation, the Chair holds the hearing.
10. Within ten days of the hearing, the Chair renders a written decision with reasons to the parties by email through the OEBC office.
11. The panel shall only consider appeals referred to it, pursuant to this Policy.
12. Meetings of the panel may be held in person, by telephone or video conference, as determined at the sole discretion of the Chair.
13. If any member cannot continue to sit on the panel, the appeal shall continue, with no less than two members. If the appeal hearing has not been held, the Appeal Panel Appointments Chair may appoint an alternative member.
14. A simple majority of the panel members, including the Chair, shall determine all issues within its authority.
15. The Level 2 Appeal panel, in making its decision, shall:
  1. take notice of facts that may be judicially noticed;
  2. take notice of any generally recognized, scientific or technical facts; information or opinions within its scientific or specialized knowledge;
  3. admit, upon the panel being satisfied as to its authenticity, any documentation or other thing.
16. The candidate or OEBC may appeal the decision of a Level 2 Appeal panel.

### **1.3 Level 3 Appeal**

1. The candidate or the CEO may appeal the Level 2 Appeal decision by submitting a Third Notice of Appeal form to OEBC and the required fee within ten days of issuing the Level 2 decision.
2. Within five days of receiving the Third Notice of Appeal, OEBC sends an acknowledgement to the candidate and advises the Appeal Panel Appointments Chair that an appeal has been filed.
3. Within fifteen days of receiving the Third Notice of Appeal, the CEO sends the candidate the response prepared for submission.
4. Within five days of receiving the CEO's response, the candidate may submit a response.
5. Within five days of receiving the candidate's response, the CEO may respond to the candidate further.

6. Within fifteen days of OEBC receiving the Third Notice of Appeal, the Appeal Panel Appointments Chair will appoint a five-person panel and advise the Parties of the names of the panel members to determine any potential conflict of interest. The panel will be composed of the Level 3 Chair, two Optometrists and two members who may not be Optometrists. No member of the Level 2 Appeal panel may sit on the Level 3 Appeal panel.
7. Within five days of receiving notification of the proposed panel composition, the Parties will confirm or reject the panel's composition. If a panel member(s) is rejected, the Appeal Panel Appointments Chair shall appoint a replacement member(s) within ten days and ask the Parties to confirm or reject a replacement member(s) with reasons. After the second round, the Appeal Panel Appointments Chair will appoint the panel members.
8. Within ten days of the panel finalization, the panel Chair set two hearing dates. OEBC notifies the candidate. The candidate may choose a date or request alternate dates. If alternative dates are requested, the Chair, within another seven days, selects two alternate hearing dates. If the candidate cannot agree to any of the second set of dates, the panel will hold the hearing on a date determined by the Chair.
9. Once the hearing date is set, the submissions are sent to the panel members and the Parties through the OBCE office. Submissions include:
  1. the candidate's First Notice of Appeal to CEO;
  2. the decisions of the CEO and the reasons;
  3. the candidate's Second Notice of Appeal;
  4. the submission(s) of the CEO;
  5. the response, if any, of the Candidate;
  6. the candidate's Third Notice of Appeal;
  7. the submission(s) of the CEO;
  8. the response, if any, of the candidate;
  9. copy of the Appeals Policy.
11. The Parties shall attend the hearing with such other persons as shall be required by them to provide evidence with respect to the Appeal. All persons who will be in attendance must confirm to the CEO in writing no later than five days before the hearing that they will be at the meeting.
12. Within fifteen days of the hearing, the Chair will render a written decision with reasons to the Parties by email.
13. The panel shall only consider appeals referred to it pursuant to this Policy.
14. Meetings of the panel may be held in person, by telephone or video conference at the sole discretion of the Chair.
15. If any member cannot continue to sit on the panel, the appeal shall continue, with no less than three members hearing the appeal. If the hearing has not been held, the Appeal Panel Appointments Chair may appoint an alternative member.
16. A simple majority of the panel members, including the Chair, shall determine all issues within its authority.
17. Testimony given at a hearing may, at the Chair's discretion, be given under oath, with the witness being sworn or affirmed, to tell the truth.

18. The Level 3 Appeal panel, in making its decision, shall:
  - I. take notice of facts that may be judicially noticed;
  - II. take notice of any generally recognized, scientific or technical facts; information or opinions within its scientific or specialized knowledge;
  - III. admit, upon the panel being satisfied as to its authenticity, any documentation or other thing.

## **Section 2: Application for a Policy Exception**

1. The candidate may proactively seek an exception from OEBC policy by filing the Notice of Application for a Policy Exception and the required fee through OEBC.
2. Within five days of receiving the Notice of Application for a Policy Exception, OEBC shall send the candidate an acknowledgement of the Notice of Application for a Policy Exception receipt and fee.
3. The CEO shall determine if the grounds for the Application for a Policy Exception by having regard solely to Sections 2.1 and 2.2.
4. If required, the CEO shall, within ten days, request further information.
5. Within twenty-five days of 3.01.2, the CEO shall notify the candidate that their Application for a Policy Exception has been approved or denied.
6. The candidate may appeal the decision provided in section 3.01.6 using the Level 2 Appeal process.

## **Section 3: General Matters**

1. An appeal or application for policy exception must be set out in writing, using the appropriate form. It must detail the nature of the appeal, grounds for the appeal and all particulars necessary to sufficiently allow the appeal to be decided, together with the applicable fee.
2. Under no circumstances shall an appeal or any process, information or communication relating thereto be done verbally or other than in writing.
3. OEBC Board shall appoint the Appeal Panel Appointments Chair. If they are not available to perform their duties as set out in the Policy, the OEBC Board Chair may appoint a director to be the acting Appeal Panel Appointments Chair for the matter at hand.
4. The CEO, the Appeal Panel Appointments Chair, the Level 2 Chair and the Level 3 Chair shall be entitled to obtain such legal advice *from OEBC legal counsel and other such representation* as they deem appropriate, from time to time, provided that OEBC legal counsel, in the case of the Level 2 Chair and/or Level 3 Chair shall not in any manner whatsoever participate in a decision-making capacity and shall be limited to providing advice relating solely to process.
5. The candidate may obtain legal counsel or representation as they may desire at their own expense. OEBC is not responsible for any costs related to the appeal that the

candidate may incur. A failure by the candidate to seek or obtain legal advice or representation for any portion or portions of an appeal shall not be grounds for further appeal.

6. Any waiver of procedure by the CEO or any member of the panels shall not be deemed to be a waiver of any further procedural requirements.
7. The panels shall not be required to keep a detailed account of testimony or its proceedings. Still, they shall compile a record of proceedings in which adjudication has been determined, which shall include:
  - a. any notice of appeal;
  - b. any documentary evidence filed with the CEO or panels;
  - c. the decisions, and the reasons therefor, of the CEO or panels.
8. OEBC may destroy the record required to be compiled herein after the expiration of two years from the date of issuance of the decision and reasons to the Parties for the Application for Policy Exception, Level 1, 2 or 3 appeals.
9. Any notice or notices required to be given pursuant to this Policy shall be sent by email, in which case delivery shall be deemed to have taken place at the time of transmission. It is the candidate's responsibility to ensure that the email address provided to OEBC is correct and that there is no delay in receipt of transmissions by voluntary or involuntary controls.
10. No action, or proceeding whatsoever, shall be commenced against any member of OEBC panel, staff, or OEBC agent, for their having participated in the process governed hereby, and it shall be an express undertaking by a candidate that the instituting of an Appeal shall be based upon the candidate's acknowledgement of this undertaking, and agreement to be bound by same, which shall be a complete defence to any action by the candidate in contravention thereof.
11. The CEO shall represent the interests of OEBC concerning the appeal and shall be empowered to undertake such investigations as may be necessary for the purposes of presenting evidence and documentation to a panel.
12. No decision of a panel shall be set aside because of any irregularities which occur pursuant to and under this procedure.
13. No decision, order, direction, declaration or ruling of the CEO or a panel shall be questioned, appealed, or reviewed in any court; and no order shall be made, or process entered, or proceedings taken in any court, whether by way of injunction, declaratory judgment, judicial review, or otherwise; to question, review, prohibit or restrain the CEO or a panel or any of its proceedings.
14. All Appeals shall take place within the Province of Ontario, at a place and time as determined by OEBC, unless consented to by the Parties.
15. All decisions made under this Policy are strictly confidential to the Parties and will not be revealed to any other party except for regulatory authorities, policing bodies, or as required by law.

## Appendix A (Revised)

