



*Promoting Safety and Competence*

124 West Street South, Third Floor  
Alexandria, VA 22314  
703-299-3100 | [www.fsbpt.org](http://www.fsbpt.org)

**ARBITRATION POLICY**  
**OF THE FEDERATION OF STATE BOARDS OF PHYSICAL THERAPY**  
**TO RESOLVE CHALLENGES BY CANDIDATES**  
**TO THE NATIONAL PHYSICAL THERAPY EXAMINATION (NPTE)**  
**COMPRISED OF:**

- **NOTICE OF ARBITRATION  
AND IMPACT ON RIGHTS AND REMEDIES OF CANDIDATES  
REGARDING CHALLENGES BY CANDIDATES TO THE NPTE**
- **ARBITRATION AGREEMENT**
- **ARBITRATION RULES**

**NOTICE OF ARBITRATION  
AND  
IMPACT ON RIGHTS AND REMEDIES OF CANDIDATES  
REGARDING CHALLENGES TO THE NATIONAL PHYSICAL THERAPY EXAMINATION**

As a condition of registering for, and taking, the National Physical Therapy Examination including the jurisprudence examination, if applicable (the “NPTE”) of the Federation of State Boards of Physical Therapy (the “FSBPT”), each applicant (a “Candidate”) must agree to **initially** submit to a **PRE-ARBITRATION REVIEW BY THE FSBPT** of any and all challenges or other claims of the Candidate relating to the administration, questions, answers, scoring, release of scores, validity or any other aspect of the NPTE (the “Claims”). Claims shall include, but not be limited to, matters relating to (i) accommodation issues and/or eligibility issues which result in a Candidate being denied access to the NPTE or being denied access in the format requested by the Candidate, (ii) notice from the FSBPT that the Candidate has failed to pass a NPTE and (iii) notice from the FSBPT that it has withheld or invalidated a Candidate’s NPTE test results for any reason including, but not limited to, dishonesty, breach of security, violation of rules or any other improper conduct, and notice of sanctions, if any, which the FSBPT intends to impose.

If pursuant to the pre-arbitration review you and the FSBPT fail to resolve your Claims on terms acceptable to both you and the FSBPT, and if you desire to pursue your Claims, you must initiate an **ARBITRATION PROCEEDING** covering your Claims.

The procedures, consequences and other aspects of the pre-arbitration review by the FSBPT, and the arbitration, are specified in the Arbitration Agreement (which includes the Arbitration Rules) and are set forth in full following this Notice. By registering for the NPTE, you will have agreed to be bound by the terms and provisions of the Arbitration Agreement. All references in this Notice to the Arbitration Agreement include the Arbitration Rules.

Under the Arbitration Agreement, various rights and remedies which would otherwise be available to you will be limited or eliminated. All such limitations and eliminations are set forth in the Arbitration Agreement which you must read, and you will have acknowledged having read the Arbitration Agreement, and this Notice, by registering for the NPTE. You are urged to consult with such advisors as you deem appropriate, including legal counsel, as to the meaning and effect of the Arbitration Agreement. The following outlines certain terms and provisions of the Arbitration Agreement and related matters which significantly affect your rights and remedies.

**Binding, Final and Non-Appealable**

The provisions of the Arbitration Agreement provide the **sole and exclusive** method and forum for you to have your Claims addressed and the decision of the arbitrator shall be **binding, final and non-appealable**, except in very limited circumstances as may be provided by applicable law.



## **Pre-Arbitration Review/Initiation of Arbitration/Failure to Pursue Pre-Arbitration Review or Arbitration**

To commence a **pre-arbitration review** by the FSBPT, you must submit to the FSBPT a written request for review including a statement of your Claims specifying in reasonable detail the issues you want to have addressed. See Arbitration Rule 1. If you fail to deliver to the FSBPT a request for review within thirty (30) days after (i) you have taken, or have been denied access to, a NPTE or (ii) receipt by you of written notice from the FSBPT which relates to any Claim you may assert, then you will have **waived and abandoned**, and be **forever barred** from asserting, any Claim in any arbitration proceeding or otherwise.

As part of the pre-arbitration review, you and the FSBPT shall attempt to resolve the Claims on such terms as may be acceptable to both. If such resolution is not achieved and you desire to pursue your Claims, you must initiate an **arbitration proceeding** administered by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules (the "AAA Rules") by filing a demand for arbitration with the AAA within thirty (30) days after receipt of a written acknowledgement from the FSBPT that the Claims have not been resolved. Your failure to initiate the arbitration proceeding within such thirty (30) day period will result in the **waiver and abandonment** by you of any right to have the Claims arbitrated and you will be **forever barred** from asserting the Claims. Information about the AAA including its rules, forms, and fees, costs and expenses, is available at [adr.org](http://adr.org).

**Notwithstanding the foregoing**, if you establish to the reasonable satisfaction of the FSBPT that your failure to timely submit a review for request, or initiate an arbitration proceeding, resulted from events beyond your reasonable control (e.g. illness, disability, weather, etc.), you will have an additional period of fifteen (15) days after notice from the FSBPT permitting a submission of a review for request, or the initiation of an arbitration proceeding, to submit the request or initiate the proceeding.

### **Limited Remedies of Candidates**

**No Candidate will have a right to bring a lawsuit in court nor will any Candidate have a right to trial by jury or bring a class action in the arbitration proceedings or otherwise or to join the arbitration proceeding with any other proceeding.**

The **sole and exclusive** remedies available to a Candidate shall be to commence a pre-arbitration review by the FSBPT, and an arbitration proceeding, under the Arbitration Agreement and if successful:

- (a) To have the Candidate's score on the NPTE adjusted to the extent the Claims of the Candidate relating to questions, answers and scoring are upheld by the arbitrator;
- (b) To take the NPTE free of charge if it is decided by the arbitrator that the administration or validity of the NPTE was not fair or was defective; or
- (c) To have the score of the Candidate on the NPTE recognized as accurate if it is decided by the arbitrator that the Candidate was not dishonest, did not breach security, did not violate rules and did not engage in any other improper conduct.

- (d) In addition to the remedies set forth in items (a), (b) and (c), if the arbitrator determines it to be appropriate, the arbitrator may award to the Candidate compensation for damages suffered by the Candidate resulting from the acts or omissions of the FSBPT in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000). Such an award shall not include any punitive, exemplary, special, incidental, indirect or consequential damages. In the event that the arbitrator specifically finds that the damages suffered by the Candidate were the result of the FSBPT's malicious or intentional misconduct, the above limitation on damages shall not apply, and the arbitrator may award damages in an amount not to exceed Fifty Thousand Dollars (\$50,000).

### **Confidentiality Regarding Claims**

You and the FSBPT shall treat as confidential the Claims, and the pre-arbitration review and the arbitration proceedings including the resolution of the Claims by agreement between you and the FSBPT or by the award of the arbitrator.

### **Selection and Qualifications of Arbitrator**

The American Arbitration Association shall select a single arbitrator to conduct the arbitration proceedings. The arbitrator shall have no interest, or relationship, whatsoever which is adverse to the Candidate or the FSBPT.

### **Fees, Costs and Expenses**

#### **(a) Arbitrator**

Within ten (10) days after receipt of notice from the American Arbitration Association as to the person who has agreed to serve as the arbitrator, the Candidate and the FSBPT shall each make a payment of Five Hundred Dollars (\$500) to the arbitrator to be held by the arbitrator as an advance against the payment of the fees, costs and expenses of the arbitrator. The Candidate and the FSBPT shall each be responsible for the payment of one-half (1/2) of the remaining fees, costs and expenses of the arbitrator, provided, however, that if the arbitrator grants the Candidate any relief described under the heading Limited Remedies of Candidate above, the FSBPT shall reimburse the Candidate the Five Hundred Dollars (\$500) advanced by the Candidate and shall pay to the arbitrator all remaining fees, costs and expenses of the arbitrator.

#### **(b) Lawyers, Experts and Representatives of the Candidate and the FSBPT**

The Candidate and the FSBPT shall each be responsible for the payment of the fees, costs and expenses of each of their lawyers, experts, witnesses and other representatives in any and all events and regardless of the decision of the arbitrator as to the grant, or denial, of any relief to the Candidate.

#### **(c) American Arbitration Association (the "AAA")**

Notwithstanding that the Commercial Arbitration Rules of the AAA provide that the administrative fees of the AAA are to be paid by the party making a claim, which in this matter would be the Candidate and not the FSBPT, such fees, and all other costs and expenses of the

AAA, relating to the arbitration proceedings shall be borne equally by the Candidate and the FSBPT, each being responsible for the payment of one-half (1/2) of such fees, costs and expenses. With respect to payment of the administrative fees, the AAA may defer, or reduce, such fees in the event of extreme hardship on the part of the Candidate and if reduced, the Candidate and the FSBPT shall each be responsible for payment of one-half (1/2) of the reduced amount. Information about the AAA including its rules, forms, and fees, costs and expenses, is available at [adr.org](http://adr.org).

### **Incorporation of Rules of the American Arbitration Association**

The Commercial Arbitration Rules of the AAA (the "AAA Rules") are incorporated into the Arbitration Rules which are part of the Arbitration Agreement (the "Agreement Rules") subject to the modifications set forth in the Agreement Rules, which modifications and the Agreement Rules shall prevail in the event of any conflict between the Agreement Rules (and the modifications) and the AAA Rules. Information about the AAA including its rules, forms, and fees, costs and expenses, is available at [adr.org](http://adr.org).

### **Arbitration Procedure in General**

The arbitration shall be conducted by recorded video conference call, or if agreed to by the parties, a recorded telephonic conference call, in which the parties and their lawyers, witnesses, experts and other representatives may all participate.

The parties shall have the right to conduct such discovery as the arbitrator shall allow, to be represented by lawyers and experts, to call and cross-examine witnesses and experts as the arbitrator shall allow and to present such evidence as the arbitrator shall allow without adhering to strict rules of evidence. The standard for the burden of proof shall be the preponderance of the evidence.

Within thirty (30) days after the conclusion of the arbitration proceedings, the arbitrator shall issue the decision of the arbitrator which shall be in writing and provided to the parties and need not be supported by the reasons for such decision.

### **Confidential and Proprietary Information of the FSBPT**

Although your lawyers and experts shall have the right to review, and present in the arbitration proceedings, confidential and proprietary information of the FSBPT relating to the NPTE (including, but not limited to, questions and answers) which is relevant to the issues under consideration and which the arbitrator decides should be made available to your lawyers and experts, neither you nor any of your witnesses or any of your other representatives shall have any right to receive, review or be provided with any such information. Notwithstanding the foregoing, no confidential or proprietary information of the FSBPT shall be made available to any of your lawyers or experts having any interest or relationship whatsoever which is adverse to the FSBPT other than providing services to you in the arbitration proceedings.

No decision or award of, or other communication from, the arbitrator shall contain any confidential or propriety information of the FSBPT.

Each of your lawyers and experts must sign the Arbitration Confidentiality Agreement which provides to the FSBPT remedies and injunctive and other relief for the unauthorized disclosure,



or use, of confidential or proprietary information of the FSBPT. You must execute the Joinder to the Arbitration Confidentiality Agreement and by doing so, you shall be responsible for any breach by your lawyers and experts of their obligations under the Arbitration Confidentiality Agreement and you shall be responsible for any unauthorized disclosure, or use, of any confidential or proprietary information of the FSBPT notwithstanding that you have no right whatsoever to be provided with, or otherwise obtain, any such information.

The Arbitration Confidentiality Agreement is not part of, and is independent from, the Arbitration Agreement. To enforce the Arbitration Confidentiality Agreement, the FSBPT has the right to commence an action against you, and each of the other parties to the Arbitration Confidentiality Agreement, in the appropriate state court located in the City of Alexandria, Virginia or the federal court in the Eastern District of Virginia. A copy of the form of the Arbitration Confidentiality Agreement may be obtained upon request submitted to [NPTE@fsbpt.org](mailto:NPTE@fsbpt.org).

One of the purposes of restricting the disclosure, and use, of confidential and proprietary information of the FSBPT is to protect the integrity of the NPTE and to protect those members of the public accessing physical therapy services.

### **Governing Law**

The Arbitration Agreement shall be governed by applicable federal law including the Federal Arbitration Act, and to the extent not pre-empted by federal law, the laws of the Commonwealth of Virginia, including the Uniform Arbitration Act of Virginia, shall apply except for its conflicts of law provisions which shall not apply. If under applicable law, a party may appeal to court, such appeal shall be to the appropriate state court located in the City of Alexandria, Virginia or the federal court in the Eastern District of Virginia and judgment on any award of the arbitrator may be entered in any such court or any other court having jurisdiction.

### **No Restrictions on Right of FSBPT to Commence Other Proceedings**

Nothing contained in the Arbitration Agreement or otherwise shall limit or otherwise restrict in any way whatsoever the right of the FSBPT to commence, and pursue, against the Candidate any action or proceeding in any forum (judicial, administrative or otherwise) for any damages or other relief, except with respect to any matter (i) which, at the time, is being arbitrated in a proceeding pending under the Arbitration Agreement or (ii) which has been decided adversely to the FSBPT in a proceeding under the Arbitration Agreement, provided, however, that the first exception in clause (i) shall not apply with respect to any action or proceeding for injunctive relief relating to the disclosure, or use, of any confidential or proprietary information of the FSBPT including the protection of any intellectual property rights of the FSBPT .



## ARBITRATION AGREEMENT

In order to register for, and to take, the National Physical Therapy Examination including a jurisprudence examination, if applicable (the "NPTE"), you (the "Candidate") agree to be a party to, and be legally bound by, this Arbitration Agreement with the Federation of State Boards of Physical Therapy (the "FSBPT").

You agree to **initially** submit to **PRE-ARBITRATION REVIEW BY THE FSBPT**, and then to **ARBITRATION**, any and all challenges or other claims you may have relating to the administration, questions, answers, scoring, release of scores, validity or any other aspect of a NPTE taken by you (the "Claims"). Claims shall include, but not be limited to, matters relating to (i) accommodation issues and/or eligibility issues which result in a Candidate being denied access to the NPTE or being denied access in the format requested by the Candidate, (ii) notice from the FSBPT that the Candidate has failed to pass a NPTE and (iii) notice from the FSBPT that it has withheld or invalidated a Candidate's NPTE test results for any reason including, but not limited to, dishonesty, breach of security, violation of rules or any other improper conduct and notice of sanctions, if any, which the FSBPT intends to impose.

Pre-arbitration review, and arbitration, will be conducted in accordance with the rules (the "Arbitration Rules") attached hereto and made a part hereof which incorporate the Commercial Arbitration Rules of the American Arbitration Association ([adr.org](http://adr.org)) as modified by the Arbitration Rules which shall prevail in the event of any conflict between the Arbitration Rules and the Commercial Arbitration Rules of the American Arbitration Association. All references in this agreement to this Arbitration Agreement shall include the Arbitration Rules.

The single arbitrator selected by the American Arbitration Association shall be the sole decision maker with respect to any controversy as to whether any matter is subject to arbitration under this Arbitration Agreement.

The **sole and exclusive** method and forum for resolution of your Claims is through pre-arbitration review, and arbitration, as set forth in this Arbitration Agreement and the decision of the arbitrator shall be **binding, final and non-appealable**. **You will not have any right to bring a lawsuit in court nor will you have any right to trial by jury or to bring a class action in the arbitration proceedings or otherwise or to join this arbitration proceeding with any other proceeding.**

The **sole and exclusive** remedies available to you will be:

- (a) To have your score on the NPTE adjusted to the extent your Claims relating to questions, answers and scoring are upheld by the arbitrator;
- (b) To take the NPTE free of charge if it is decided by the arbitrator that the administration or validity of the NPTE was not fair or was defective; or
- (c) To have your score on the NPTE recognized as accurate if it is decided by the arbitrator that you were not dishonest, did not breach security, did not violate rules and did not engage in any other improper conduct.





- (d) In addition to the remedies set forth in items (a), (b) and (c), if the arbitrator determines it to be appropriate, the arbitrator may award to you compensation for damages suffered by you resulting from the acts or omissions of the FSBPT in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000). Such an award shall not include any punitive, exemplary, special, incidental, indirect or consequential damages. In the event that the arbitrator specifically finds that the damages suffered by you were the result of the FSBPT's malicious or intentional misconduct, the above limitation on damages shall not apply, and the arbitrator may award damages in an amount no to exceed Fifty Thousand Dollars (\$50,000).

Except as part of the pre-arbitration review, and the arbitration proceedings, and except in connection with the enforcement of rights of a party relating to the resolution of Claims by agreement of the parties or the award of the arbitrator, no matter relating to any Claims or the pre-arbitration review, or arbitration proceedings, including but not limited to the resolution of the Claims, will be revealed, or disclosed, to any person, corporation or entity or otherwise, other than to lawyers, experts, witnesses and other representatives of the party pursuing, or defending, Claims and to officers, directors and employees of the FSBPT and to providers of services and/or products to the FSBPT relating to the Claims.

This Arbitration Agreement shall be binding upon, and inure to the benefit of, you and the FSBPT and the respective heirs, successors, assigns and legal representatives of you and the FSBPT. This Arbitration Agreement shall also inure to the benefit of providers of services and/or products to the FSBPT relating to the Claims, each such provider being a third-party beneficiary of this Arbitration Agreement.

Nothing contained in this Arbitration Agreement or otherwise shall limit or otherwise restrict in any way whatsoever the right of the FSBPT to commence, and pursue, against you, any action or proceeding in any forum (judicial, administrative or otherwise) for any damage or other relief, except with respect to any matter (i) which, at the time, is being arbitrated in a proceeding pending under this Arbitration Agreement or (ii) which has been decided adversely to the FSBPT in a proceeding under this Arbitration Agreement. The first exception in clause (i) above shall not apply with respect to any action or proceeding for injunctive relief relating to the disclosure, or use, of any confidential and/or proprietary information of the FSBPT or relating to the protection of any intellectual property rights of the FSBPT.

This Arbitration Agreement shall be governed by, and enforced in accordance with, applicable federal law including the Federal Arbitration Act, and to the extent not pre-empted by federal law, the laws of Virginia, including the Uniform Arbitration Act of Virginia, shall apply except for its conflicts of law provisions which shall not apply. If under applicable law, a party may appeal to court, such appeal shall be to the appropriate state court located in the City of Alexandria, Virginia or the federal court in the Eastern District of Virginia and judgment on any award of the arbitrator may be entered in any such court or any other court having jurisdiction.

In the event that any term or provision of this Arbitration Agreement is lawfully held or declared to be invalid, illegal or unenforceable, it shall be deemed amended or deleted only to the extent necessary to make it enforceable under applicable law and the validity of the other terms and provisions shall not be affected thereby and shall continue in full force and effect. Application of the foregoing to any provision hereof shall not prevent such provision from being enforced in any other jurisdiction.





This Arbitration Agreement contains the entire agreement of the parties with respect to its subject matter and supersedes any other prior or contemporaneous oral or written representation or agreement, and its terms and provisions may only be modified or waived by a written document executed by both you and the FSBPT. Notwithstanding the foregoing, the FSBPT shall have the right to unilaterally amend, modify, replace or otherwise change the provisions of this Arbitration Agreement but only with respect to Claims submitted after such amendments, modifications, replacements or changes.

## **ARBITRATION RULES**

### **Rule 1 - Pre-Arbitration Review**

1.(a) Prior to, and as a condition to, instituting an arbitration proceeding, the Candidate and the Federation of State Boards of Physical Therapy (the "FSBPT") will endeavor to resolve Claims (as such term is hereinafter defined) of the Candidate on terms mutually acceptable to the Candidate and the FSBPT pursuant to the following pre-arbitration review procedure.

For purposes of these Arbitration Rules, "Claims" shall mean any challenges or other claims the Candidate may have relating to the administration, questions, answers, scoring, release of scores, validity or any other aspect of a National Physical Therapy Examination including a jurisprudence examination, if applicable (the "NPTE"). Without limiting the Claims which the Candidate may assert, the Candidate may raise matters relating to (i) accommodation issues and/or eligibility issues which result in a Candidate being denied access to a NPTE or being denied access in the format requested by the Candidate, (ii) notice from the FSBPT that the Candidate has failed to pass a NPTE and (iii) notice from the FSBPT that it has withheld or invalidated a Candidate's NPTE test results for any reason including, but not limited to, dishonesty, breach of security, violation of rules or any other improper conduct, and notice of sanctions, if any, which the FSBPT intends to impose.

(b) Within thirty (30) days after (x) the Candidate has taken, or has been denied access to, an NPTE or (y) receipt by the Candidate of written notice from the FSBPT which relates to any Claim which the Candidate may assert, the Candidate must deliver to the FSBPT a written request for a pre-arbitration review (the "Review Request") which shall set forth the following:

- (i) The name of the Candidate;
- (ii) The Candidate's FSBPT ID, exam date and exam level (Physical Therapist/Physical Therapist Assistant); and
- (iii) The Claims of the Candidate specifying in reasonable detail the nature of the Claims and the issues to be addressed.

(c) The Review Request shall be delivered to the FSBPT by (i) e-mail to the following e-mail address, such delivery to be effective as of the time receipt is confirmed or (ii) Federal Express or other delivery service, or U.S. Mail, to the following street address, such delivery to be effective as of the time receipt is acknowledged by the FSBPT in writing:



Federation of State Boards of Physical Therapy  
124 West Street South, 3<sup>rd</sup> Floor  
Alexandria, VA 22134  
E-mail: [NPTE@fsbpt.org](mailto:NPTE@fsbpt.org)

(d) (A) Within fifteen (15) days after receipt of the Review Request, the FSBPT shall respond in writing to the Claims of the Candidate set forth in the Review Request. If not previously set forth in the notice from the FSBPT described in clause (y) of Rule 1.(b) above, the response shall set forth the reasons for the denial by the FSBPT of the Claims and any sanctions the FSBPT intends to impose. Within thirty (30) days after receipt of the FSBPT's response, the Candidate (i) may initiate an arbitration proceeding as set forth in Rule 2 below or (ii) may request in writing delivered to the FSBPT that a telephonic conference call, or if agreed to by the Candidate and the FSBPT, a video conference call, be held for the purpose of attempting to resolve the Claims of the Candidate on terms acceptable to both the Candidate and the FSBPT.

(B) The telephonic or video conference shall be held within twenty (20) days (or such additional time as the Candidate and the FSBPT may agree in writing) after receipt by the FSBPT of the Candidate's request for the conference and shall be held at such time(s) as shall be agreed to in writing by the Candidate and the FSBPT. The telephonic or video conference call arrangements shall permit all participants to hear and/or see each other in real time but shall not be recorded. To encourage the non-adversarial tenor of the pre-arbitration review and to reduce costs and expenses borne by the Candidate and the FSBPT, no lawyers or experts shall be permitted to participate in the conference. However, witnesses having knowledge as to the Claims of the Candidate (e.g. other candidates, proctors and service providers) shall be permitted to participate. If the Candidate or the FSBPT intends to have witnesses participate in the conference and/or intends to submit documents, the Candidate or the FSBPT, as the case may be, shall notify the other in writing of the identity of such witnesses by name and address and a brief summary of the knowledge of the witnesses as to the Claims, and shall provide the other with copies of the documents to be submitted, such notice, and documents, to be given, and provided, no later than ten (10) days prior to the time the conference is to be held.

(C) If pursuant to the conference the parties resolve the Claims of the Candidate on terms acceptable to the FSBPT and the Candidate, the FSBPT shall acknowledge such resolution in a writing promptly sent to the Candidate and as a consequence of such resolution, the Candidate will have released, and be forever barred from asserting, any Claims.

If on the other hand, the parties fail to resolve the Claims of the Candidate on terms acceptable to the FSBPT and the Candidate, the FSBPT shall acknowledge such failure in a writing promptly sent to the Candidate. If the Candidate desires to continue to pursue a resolution of the Claims, the Candidate must initiate an arbitration proceeding by filing a Demand for Arbitration pursuant to Rule 2 below within thirty (30) days after receipt of the acknowledgement of such failure.

(e) If the Candidate:

- (1) Fails to deliver to the FSBPT a Review for Request within the thirty (30) day period set forth in Rule 1.(b) above, or

- (2) Fails to either (i) initiate an arbitration proceeding or (ii) request a conference within the thirty (30) day period set forth in Rule 1.(d)(A) above, or
- (3) Fails to initiate an arbitration proceeding within the thirty (30) day period set forth in Rule 1.(d)(C) above,

then, the Candidate will have waived and abandoned, and be forever barred from asserting, any Claim in any arbitration proceeding or otherwise.

Notwithstanding the foregoing, if the Candidate establishes to the reasonable satisfaction of the FSBPT that the Candidate's failure to timely submit the Review Request or a request for a conference, or to initiate an arbitration proceeding, resulted from events beyond the Candidate's reasonable control (e.g. illness, disability, weather, etc.), the Candidate will have an additional period of fifteen (15) days after notice from the FSBPT permitting a submission of a Review Request or a request for a conference, or the initiation of an arbitration proceeding, to do so.

### **Rule 2 - Initiation of Arbitration Proceedings**

2. To initiate an arbitration proceeding under the Arbitration Agreement (including these Arbitration Rules which are attached to, and made a part of, the Arbitration Agreement) between the Candidate and the FSBPT, the Candidate must submit to the American Arbitration Association (the "AAA") a Demand for Arbitration under the Commercial Arbitration Rules of the AAA, a form of such demand being currently available at the website of the AAA at [adr.org](http://adr.org). At the same time the demand is submitted to the AAA, the Candidate shall send a copy of the demand to the FSBPT as well as copies of any documents submitted to the AAA with the demand.

### **Rule 3 - Incorporation of Rules of the American Arbitration Association (the "AAA") and Payment of Fees, Costs and Expenses of the AAA**

3.(a) The Commercial Arbitration Rules of the AAA (the "AAA Rules") are incorporated into these Arbitration Rules subject to the modifications set forth in these Arbitration Rules, which modifications and these Arbitration Rules shall prevail in the event of any conflict between these Arbitration Rules (and the modifications) and the AAA Rules. Information about the AAA including its rules, forms, and fees, costs and expenses is available at [adr.org](http://adr.org).

(b) Notwithstanding that the AAA Rules provide that the administrative fees of the AAA are to be paid by the party making a claim, which would be the Candidate and not the FSBPT, such fees, and all other costs and expenses of the AAA, relating to the arbitration proceedings shall be borne equally by the Candidate and the FSBPT, each being responsible for the payment of one-half (1/2) of such fees, costs and expenses.

With respect to payment of administrative fees, the AAA may defer or reduce such fees in the event of extreme hardship on the part of a party. If the Candidate believes it is entitled to a deferral or reduction of the administrative fees of the AAA, the Candidate may submit to the AAA such information as required by the AAA to support a deferral, or reduction, of such fees including an affidavit in the form then currently available on the website of the AAA at [adr.org](http://adr.org). At the same time such information is submitted to the AAA, the Candidate shall send a copy of the information to the FSBPT. If the administrative fees of the AAA are reduced, the Candidate

and the FSBPT shall each be responsible for the payment of one-half (1/2) of the reduced amount.

#### **Rule 4 - Selection and Qualification of Arbitrator**

4.(a) The AAA shall select, and appoint, from its National Register a single person to serve as the arbitrator in the arbitration proceedings.

(b) The person selected as the arbitrator shall not be subject to disqualification pursuant to the AAA Rules, and additionally, to qualify as the arbitrator, the person must not have any interest, or relationship, adverse to either the Candidate or the FSBPT and without limiting the foregoing, the person:

must not be related (by blood or marriage or otherwise) to, employed by, affiliated with, have any interest in, or otherwise associated in any way whatsoever with:

- (1) either the Candidate or the FSBPT; or
- (2) a NPTE or health care test preparation provider or a physical therapy or other health care continuing education course provider; or
- (3) a competitor of the FSBPT; or
- (4) any lawyer, expert, witness or other representative of either the Candidate or the FSBPT.

(c) Promptly after selecting the arbitrator, and receiving the agreement of the arbitrator to serve in the arbitration proceedings, the AAA shall inform the Candidate and the FSBPT in writing of the name, street and/or business address, e-mail address, phone number and business affiliation, if any, of the arbitrator.

(d) For purposes of determining if the arbitrator is subject to disqualification pursuant to the AAA Rules and to these Arbitration Rules, no later than ten (10) days (or such other period agreed to in writing by the parties and the arbitrator) after receiving notice from the AAA as to the identity of the arbitrator, the Candidate and the FSBPT shall each provide to the other, and to the arbitrator, a listing identifying the lawyers, experts, witnesses and other representatives of each of them which each expects to participate in the arbitration proceedings, such listing (i) to include the name, position (lawyer, expert, etc.), street and/or business address, e-mail address and phone number and if affiliated with any business, the name, street address and e-mail address of such business and (ii) to be updated from time to time for changes and/or additions.

#### **Rule 5 - Fees, Costs and Expenses of the Arbitrator and of Representatives of the Candidate and the FSBPT**

- 5.(a) (i) Within ten (10) days after receipt by the Candidate and the FSBPT of written notice from the AAA of the person who has been selected, and has agreed to serve in the arbitration proceedings, as the arbitrator, the Candidate and the FSBPT shall each make a payment of Five Hundred Dollars (\$500) to the arbitrator to be held by the arbitrator as an advance

against the payment of the fees, costs and expenses of the arbitrator. Payment of any additional fees, costs and expenses of the arbitrator shall be made as set forth in clauses (ii) and (iii) below, provided, however, that if requested by the arbitrator in writing, the FSBPT shall deposit with the arbitrator an additional advance (the "Additional Advance") in an amount not to exceed a reasonable estimate of such additional fees, costs and expenses.

- (ii) If the arbitrator awards to the Candidate relief under Rule 7 below, the FSBPT shall reimburse the Candidate the amount advanced by the Candidate pursuant to clause (i) above and shall pay to the arbitrator all remaining fees, costs and expenses of the arbitrator.
  - (iii) If the arbitrator does not award to the Candidate any relief under Rule 7 below, the Candidate and the FSBPT shall each be responsible for payment of one-half (1/2) of the fees, costs and expenses of the arbitrator including reimbursement to the FSBPT of one-half (1/2) of the Additional Advance and one-half (1/2) of any additional payment (the "Additional Payment") made by the FSBPT as set forth below in this clause (iii). If the Candidate does not pay the Candidate's share of any remaining unpaid fees, costs and expenses of the arbitrator within thirty (30) days after being requested in writing by the arbitrator to do so, the FSBPT shall make such payment within thirty (30) days of being informed in writing by the arbitrator of the failure of the Candidate to pay. The FSBPT shall have the right to recover from the Candidate one-half (1/2) of the Additional Payment, as well as one-half (1/2) of the Additional Advance, and such right shall include, but not be limited to, requiring the Candidate to make a payment to the FSBPT of one-half (1/2) of the Additional Payment, as well as one-half (1/2) of the Additional Advance, as a condition to subsequently registering for, or taking, the NPTE or receiving any other services from the FSBPT.
- (b) The Candidate and the FSBPT shall each be responsible for the payment of the fees, costs and expenses of each of their lawyers, experts, witnesses and other representatives in any and all events and regardless of the decision of the arbitrator as to the grant or denial of any relief under Rule 7.

#### **Rule 6 - Confidential Information of the FSBPT**

- 6.(a) If the Candidate requests that the FSBPT provide documents, testimony or other materials or responses containing Confidential Information, the Candidate must establish with reasonable certainty that such information is relevant to, and may facilitate the resolution of, the Claims.

For purposes of these Arbitration Rules, Confidential Information shall mean such information as the FSBPT deems proprietary and/or confidential and designates in writing as Confidential.

To the extent that the arbitrator decides that the information requested by the Candidate is relevant to, and may facilitate the resolution of, the Claims, the

FSBPT shall provide such information to the lawyers and experts of the Candidate, subject to the terms and conditions of these Arbitration Rules. No such information will be provided to the Candidate by the FSBPT, the arbitrator or the lawyers or experts of the Candidate or otherwise.

Prior to Confidential Information being provided to lawyers or experts of the Candidate, the lawyers and experts shall deliver to the FSBPT a written confirmation that they are not disqualified as set forth below to receive such information and a written attestation that they are truly independent from the Candidate. For purposes of these Arbitration Rules, lawyers and experts of the Candidate will NOT qualify to receive Confidential Information if they have any interest, or relationship, adverse to the FSBPT other than providing services to the Candidate in the arbitration proceedings, and without limiting the foregoing, lawyers and experts of the Candidate will NOT qualify if they are:

related (by blood or marriage or otherwise) to, employed by, affiliated with, have any interest in, or otherwise associated in any way whatsoever with:

- (1) the Candidate;
- (2) a NPTE or health care test preparation provider or a physical therapy or other health care continuing education course provider; or
- (3) a competitor of the FSBPT.

Prior to such information being provided to the lawyers and experts of the Candidate, they shall each execute, and deliver to the FSBPT, the Arbitration Confidentiality Agreement and the Candidate shall execute, and deliver to the FSBPT, the Joinder to the Arbitration Confidentiality Agreements executed, and delivered, by the lawyers and experts of the Candidate. The Arbitration Confidentiality Agreement is not part of, and is independent from, these Arbitration Rules. A copy of the form of the Arbitration Confidentiality Agreement may be obtained upon request submitted to [NPTE@fsbpt.org](mailto:NPTE@fsbpt.org).

- (b) Confidential Information will be provided, and held, in the arbitration proceedings as set forth in these Arbitration Rules including as set forth below.
- (i) Confidential Information shall be used by the person to whom it is provided by the FSBPT solely for the purposes of the arbitration proceedings, and not for any other purpose, and shall not be disclosed to, or used by, in the arbitration proceedings or otherwise, any person other than:
    - (x) the arbitrator;
    - (y) lawyers for the Candidate; and
    - (z) experts of the Candidate.



Notwithstanding the foregoing or any other provision of these Arbitration Rules to the contrary, the FSBPT reserves the right to disclose to, and permit the use by, any person of any Confidential Information, in the arbitration proceedings or otherwise, on such terms and conditions as it in its sole discretion deems appropriate.

- (ii) Confidential Information (including but not limited to NPTE test questions and answer choices) contained in any writing or other document, or any voice or video recording, whether in hard copy, stored electronically or maintained in any other manner or form, shall be made available to the lawyers and experts of the Candidate only via in-person review at the principal office and place of business of the FSBPT in Alexandria, Virginia [or at another location [requested by the Candidate] and acceptable to the FSBPT [in its sole discretion] and in the presence of a representative of the FSBPT. Neither the lawyers nor the experts of the Candidates will be permitted to make, or receive, any copies, photographs or other reproductions of the Confidential Information. Any notes concerning the Confidential Information made by the lawyers and experts of the Candidate shall not contain any transcription of any Confidential Information and for purposes of these Arbitration Rules, all such notes shall be deemed Confidential Information. All such notes shall be delivered to the FSBPT no later than ten (10) days after the conclusion of the arbitration proceedings whether by award of the arbitrator, settlement, or otherwise and neither the lawyers nor experts of the Candidate shall retain any copies, photographs or reproductions of such notes.
- (iii) No decision or award of, or any other communication from, the arbitrator shall contain any Confidential Information.

#### **Rule 7 - Limited Remedies of Candidates**

7. No Candidate will have a right to bring a lawsuit in court nor will any candidate have a right to trial by jury or bring a class action in the arbitration proceedings or otherwise or to join the arbitration proceeding with any other proceeding.

The sole and exclusive remedies available to a Candidate shall be to commence a pre-arbitration review by the FSBPT, and an arbitration proceeding, under the Arbitration Agreement and if successful:

- (a) To have the Candidate's score on the NPTE adjusted to the extent the Claims of the Candidate relating to questions, answers and scoring are upheld by the arbitrator;
- (b) To take the NPTE free of charge if it is decided by the arbitrator that the administration or validity of the NPTE was not fair or was defective; or
- (c) To have the score of the Candidate on the NPTE recognized as accurate if it is decided by the arbitrator that the Candidate was not dishonest, did not breach security, did not violate rules and did not engage in any other improper conduct.



- (d) In addition to the remedies set forth in items (a), (b) and (c), if the arbitrator determines it to be appropriate, the arbitrator may award to the Candidate compensation for damages suffered by the Candidate resulting from the acts or omissions of the FSBPT in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000). Such an award shall not include any punitive, exemplary, special, incidental, indirect or consequential damages. In the event that the arbitrator specifically finds that the damages suffered by the Candidate were the result of the FSBPT's malicious or intentional misconduct, the above limitation on damages shall not apply, and the arbitrator may award damages in an amount not to exceed Fifty Thousand Dollars (\$50,000).

### **Rule 8 - Arbitration Procedure in General**

8. The arbitration shall be conducted by recorded video conference call, or if agreed to by the Candidate and the FSBPT, a recorded telephonic conference call, in which the parties and their lawyers, witnesses, experts and other representatives may all participate.

The parties shall have the right to conduct such discovery as the arbitrator shall allow, to be represented by lawyers and experts, to call and cross-examine witnesses and experts as the arbitrator shall allow and to present such evidence as the arbitrator shall allow without adhering to strict rules of evidence. The standard for the burden of proof shall be the preponderance of the evidence.

Within thirty (30) days after the conclusion of the arbitration proceedings, the arbitrator shall issue the decision of the arbitrator which shall be in writing and provided to the parties and need not be supported by the reasons for such decision.

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