



## **MODULE 5 APPEALS PROCESS**

### **5.1 RIGHT TO APPEAL**

A laboratory has the right to appeal the decision of the Analytical Accreditation Board (AAB) to deny, suspend or withdraw accreditation and the decision of AIHA-LAP, LLC staff to suspend accreditation. If the laboratory chooses to appeal, it shall be responsible for fifty percent (50%) of the costs associated with the appeals process. The expenses of any witnesses for either party shall be paid by the party producing such witnesses. All other expenses shall be borne by the party incurring those expenses. The appeals process is outlined in Figure 5-1.

### **5.2 NOTICE OF APPEAL**

If the laboratory wishes to appeal the AAB decision, it must notify the Managing Director of AIHA-LAP, LLC in writing within ten (10) business days of the date of receipt of the letter from the AIHA-LAP, LLC outlining the AAB decision to deny, suspend or withdraw the laboratory's accreditation. If the laboratory wishes to appeal the AIHA-LAP, LLC staff decision to suspend, it must notify the Managing Director of AIHA-LAP, LLC in writing within five (5) business days of the date of receipt of the letter from the AIHA-LAP, LLC outlining the decision to suspend the laboratory's accreditation. This notification shall include the reason for the appeal and a statement accepting responsibility for monetary expenses as described in Section 5.1. The denial, suspension or withdrawal decision is final if the laboratory fails to submit an appeals request within the specified time frame.

If the laboratory notifies the AIHA-LAP, LLC within ten (10) business days of its desire to appeal the AAB or AIHA-LAP, LLC staff decision, then the AIHA-LAP, LLC management shall contact the AAB Chairperson within five (5) business days.

### **5.3 APPEALS COMMITTEE**

Within ten (10) business days of notification, the AAB Chairperson shall have the responsibility to formally appoint an appeals committee and designate a chairperson to hear the appeal.

The committee shall consist of at least three (3) persons not involved in the accreditation decision. At least two (2) of these individuals must have experience in laboratory accreditation. A signed Conflict of Interest (COI)/Confidentiality form is required for all appeals committee members.

### **5.4 DETERMINATION OF VALIDITY**

- 5.4.1** After the appeals committee has been selected, the committee shall meet, either in person or via conference call, to review the written notification of appeal and determine the validity of the appeal. If the appeal is determined to be invalid, AIHA-LAP, LLC shall respond to the laboratory in writing (including email), to explain the basis of the decision. If the appeal is valid, then AIHA-LAP, LLC shall contact the laboratory to schedule the appeals hearing.

If the appeal is determined to be valid by the committee and the laboratory is in conformance, the AAB may reconsider voting on the laboratory's status.



**5.4.2** An appeal is valid if it is filed within the time allotted for appeal by Section 5.2 above, and the laboratory is able to provide conclusive evidence that they are in conformance with the policy cited for denial or suspension of accreditation.

**5.4.3** If an appeal is determined to be invalid by the committee, the laboratory shall be granted five (5) business days from receipt of the letter notifying them of the decision to modify the appeal to make it valid and resubmit the appeal. Only one opportunity for modification shall be granted.

## **5.5 APPEALS HEARING**

### **5.5.1 Site of Hearing**

The chairperson of the appeals committee shall designate a time and place for the hearing that does not represent an undue burden for the laboratory or required participants, including conference calls or virtual meetings. Attempts shall be made to reduce costs to all parties. The time shall be no later than thirty (30) business days after the formation of the appeals committee.

The hearing shall commence at that time unless the chairperson grants a continuance for good cause shown by the party requesting the continuance. The AIHA LAP, LLC shall give at least twenty (20) business days written notice to the laboratory of the reasons for the denial, suspension or withdrawal action against it, the time and place of the hearing, the opportunity to examine evidence submitted against it, and present evidence on its behalf. In addition, notice shall be provided to the AAB Chairperson.

### **5.5.2 Representation by Counsel**

Counsel at the hearing may represent each party, at its own cost.

### **5.5.3 Record**

A record of the hearing shall be made.

### **5.5.4 Attendance at Hearing**

In the event the laboratory fails to attend the hearing without good cause, the laboratory shall be deemed to have waived its rights to appeal and the appeals committee shall find that the adverse action be affirmed.

### **5.5.5 Parties**

The parties of the hearing shall be the laboratory and the AAB. The AAB may be assisted in the presentation of its case by AIHA-LAP, LLC staff members. Either party may choose to have witnesses; however, the chairperson may require the exclusion of witnesses during presentation of evidence.

### **5.5.6 Order of Proceedings**

The appeals hearing shall proceed in the following order:

**5.5.6.1** The hearing shall be opened by the chairperson of the appeals committee, who



shall note the time, place and date, the presence and identity of the members of the appeals committee, the laboratory, AAB representative, and witnesses to the hearing.

- 5.5.6.2** At the commencement of the hearing, the chairperson shall offer each party an opportunity to make an opening statement to clarify the issues involved.
- 5.5.6.3** The appellant laboratory and the AAB Chairperson or representative shall each present its case. Any documentation or presentations by witnesses may be subject to review and questions by the other party to the appeal.
- 5.5.6.4** The chairperson shall have the discretion to vary this procedure but shall provide full and equal opportunity to each party for the presentation of all materials or relevant facts.
- 5.5.6.5** Information offered by any party may be received as evidence by the chairperson.
- 5.5.6.6** The names and addresses of all witnesses and the identification of each exhibit in the order received shall be made a part of the record, which shall be maintained by the chairperson.
- 5.5.6.7** On conclusion of the presentation of evidence, the chairperson shall permit each party an opportunity to make a brief closing statement.

#### **5.5.7** Evidence

The parties to the hearing may offer any evidence that is material, relevant and bears on the issues before the appeals committee. The chairperson and the appeals committee will give weight to the evidence presented as they see appropriate. In addition to the evidence taken in the presence of the hearing tribunal, a party may, subject to the approval of the chairperson, submit evidence of witnesses by affidavit. The appeals committee shall give such weight to affidavits, as it deems appropriate, after considering any objections made to the admission of such affidavits. The proponent of an issue or proposition has the burden of proof on the matter.

#### **5.5.8** Adjournment

The chairperson, for good cause, may adjourn the hearing upon request or upon his/her own initiative, subject to reconvening at a specific future date.

#### **5.5.9** Closing the Appeals Hearing

The chairperson shall declare the hearing closed at the conclusion of closing statements or at a later date if he/she decides to permit the parties to file briefs or other documents subsequent to the hearing.

#### **5.5.10** Reopening the Appeals Hearing

The chairperson may reopen the hearing, for good cause, upon application by any party thereto or upon his/her own initiative.



#### **5.5.11 Report of the Appeals Committee**

The appeals committee chairperson shall render a final written report, approved by a majority of the members of the appeals committee, no later than twenty (20) business days after the close of the hearing. The chairperson shall submit a copy of the report to the AAB Chairperson, the AIHA-LAP, LLC management, and to all participants of the appeals hearing. The report shall include the appeals committee findings, conclusions and final decision concerning the action that had been the subject of the appeal. The appeals committee shall recommend that the adverse action be affirmed unless it determines such adverse action was arbitrary, capricious, an abuse of discretion, not in accordance with the required procedures, or not based upon substantial evidence. If follow-up actions are recommended, a description of such actions shall be included in the report.

### **5.6 FINAL DECISION**

The appeals committee shall possess exclusive authority to render a final decision in any matter appealed in accordance with this appeal procedure. Within thirty (30) business days of issuance of the report of the appeals committee, the AIHA-LAP, LLC (on behalf of the AAB) shall give written notice of its final accreditation decision to all parties to the appeal hearing.

**5.6.1** If the appeals committee renders a decision to uphold the withdrawal, suspension or denial of accreditation, the AIHA-LAP, LLC staff shall:

**5.6.1.1** Inform the laboratory, in writing, of the decision and request the return of the accreditation certificate, as appropriate; and

**5.6.1.2** Delete the laboratory name from all official AIHA-LAP, LLC listings in accordance with the decision.

**5.6.2** If the appeals committee renders a decision to grant or reinstate accreditation, the AIHA-LAP, LLC staff shall:

**5.6.2.1** Inform the laboratory of the decision and issue the accreditation certificate, if applicable; and

**5.6.2.2** Reinstate accreditation status or add the laboratory name to any of the lists of AIHA-LAP, LLC accredited laboratories (including the National Lead Laboratory Accreditation Program [NLLAP]), in accordance with the decision.

### **5.7 APPEALS RECORDS**

AIHA-LAP, LLC shall keep all records of appeals, both valid and invalid, records of final decisions relating to those appeals and records of any follow-up actions.

**FIGURE 5-1 APPEALS PROCESS**

