

## **NBCRNA Policies & Procedures for Discipline & Appeals**

### **I. DISCIPLINARY POLICY**

Certified registered nurse anesthetists or candidates seeking certification may be subject to disciplinary review based on irregular behavior, fraudulent credentials, or legal, regulatory and credentialing actions, as described below.

#### **A. Irregular Behavior**

##### **1. During an Examination**

The performance of candidates for certification taking an examination will be monitored. Test center personnel will notify the NBCRNA of any candidate who appears to give or receive assistance, or otherwise engage in dishonest or other irregular behavior during an examination.

Any candidate for certification who engages in, or assists another individual to engage in, cheating or other dishonest or irregular behavior, or otherwise violates the security of an examination, may be subject to disciplinary action, including but not limited to denial or revocation of certification and/or eligibility for future certification. Any individual who engages in such improper behavior also may be subject to legal action.

##### **2. After an Examination**

Any candidate for certification who removes or attempts to remove materials from the test center, or reproduces, distributes, displays or otherwise misuses a test question or any part of a test question from an examination, or assists another individual to do any of the above, may be subject to disciplinary action, including but not limited to denial or revocation of certification or recertification and eligibility for future certification or recertification. Any individual who engages in such improper behavior also may be subject to legal action.

##### **3. At Any Time**

Any candidate for certification or certified registered nurse anesthetist who obtains, attempts to obtain, or assists another person to obtain or attempt to obtain, eligibility, certification, or recertification by deceptive means, including but not limited to submitting or assisting another person to submit to the NBCRNA any document which contains a material misstatement of fact or omits to state a material fact, may be subject to disciplinary action, including but not limited to denial or revocation of certification or recertification and/or eligibility for future certification or recertification. Any individual who engages in such improper behavior also may be subject to legal action.

#### **B. Fraudulent Credentials**

Any individual who manufactures, modifies, reproduces, distributes or uses a fraudulent or otherwise unauthorized NBCRNA designation, certificate or other document, or other health professional designation or document; otherwise falsely claims to be certified or recertified by NBCRNA; or assists another individual to do any of the above, may be subject to disciplinary action, including but not limited to denial or revocation of certification or recertification and/or eligibility for future certification or recertification. Any individual who engages in such irregular behavior also may be subject to legal action.

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**C. Legal, Regulatory, or Credentialing Action**

**1. Automatic Revocation**

The NBCRNA will automatically deny or revoke a nurse anesthetist's certification or recertification and/or eligibility for future certification or recertification if the NBCRNA determines that the nurse anesthetist is the subject of any of the following:

- Adjudication by a court that the nurse anesthetist is mentally incompetent.
- Conviction of or pleading no contest to a felony that is, in the view of the NBCRNA, related to nurse anesthetist practice.
- Loss or denial of the nurse anesthetist's license to practice nursing or authorization to practice as a nurse anesthetist in any jurisdiction, due to behavior that is, in the view of the NBCRNA, related to nurse anesthetist practice.
- Voluntary Surrender or Lapse of the nurse anesthetist's license to practice in lieu of further administrative or disciplinary action that is, in the view of the NBCRNA, related to nurse anesthetist practice.
- Changing residence to avoid prosecution, loss of license, or disciplinary action by a state licensing agency that is, in the view of the NBCRNA, related to nurse anesthetist practice.
- Violation of a regulatory or credentialing agency's order that is, in the view of the NBCRNA, related to nurse anesthetist practice.

**2. Discretionary Denial, Revocation, Censure or Concern**

The NBCRNA may, at its discretion, deny or revoke a nurse anesthetist's certification or recertification and/or eligibility for future certification or recertification; issue a Letter of Censure; issue a Letter of Concern; and/or take such other actions as may be deemed appropriate if the NBCRNA determines that the nurse anesthetist is the subject of any of the following:

- Conviction of or pleading no contest to a felony.
- Loss or denial of the nurse anesthetist's license to practice nursing or authorization to practice as a nurse anesthetist in any jurisdiction,
- Voluntary Surrender or Lapse of the nurse anesthetist's license to practice in lieu of further administrative or disciplinary action.
- Changing residence to avoid prosecution, loss of license, or disciplinary action by a state licensing agency.
- Violation of a regulatory or credentialing agency's order.
- Documented evidence of gross incompetence, or unprofessional or unethical conduct.

**II. DISCIPLINARY PROCEDURES**

**A. Notification and Investigation of Possible Disciplinary Matter**

1. If it comes to the attention of the NBCRNA that a nurse anesthetist may have engaged in irregular behavior, may have manufactured or utilized fraudulent credentials, or was the subject of a legal, regulatory or credentialing action that warrants review under NBCRNA's *Disciplinary Policy*, the NBCRNA shall make a reasonable effort to determine the facts of the matter.
2. If the NBCRNA determines that no action should be taken, the matter shall be closed. However, the NBCRNA will retain a record of the background information provided in the anesthetist's file and will refer to this record should any disciplinary matters arise in the future.

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3. If the NBCRNA determines that there is a reasonable basis to believe that the allegations are true, the NBCRNA shall take such actions as are described below in Section B (for allegations of irregular behavior or fraudulent credentials) or Section C (for legal, regulatory or credentialing action).

**B. Disciplinary Review and Action Based on Irregular Behavior or Fraudulent Credentials**

1. The NBCRNA shall issue a written notice to the nurse anesthetist about the allegations and about possible disciplinary actions which may be taken by the NBCRNA. The notice shall inform the nurse anesthetist that he or she has the right, within 30 calendar days, to submit a written response to the allegations.
2. Allegations of irregular behavior and fraudulent credentials shall be heard as an initial matter by the NBCRNA Review Panel.

**C. Disciplinary Review and Action Based on Legal, Regulatory or Credentialing Action**

1. The NBCRNA shall review information relating to any legal, regulatory, or credentialing action taken against a nurse anesthetist.
2. Based on the available facts, the NBCRNA shall determine what, if any, disciplinary action is warranted.
3. If the NBCRNA determines that no action should be taken, the matter shall be closed. However, the NBCRNA will retain a record of the background information provided in the anesthetist's file and will refer to this record should any disciplinary matters arise in the future.
4. If the NBCRNA recommends that a disciplinary action should be taken, the NBCRNA shall issue a written Notice of Recommended Adverse Decision to the nurse anesthetist. The Notice will describe (a) the basis for disciplinary review, (b) the applicable section of the NBCRNA's *Disciplinary Policy*, and (c) the disciplinary action recommended in the matter. In the case of a reportable disciplinary action (see Section II. E.), the Notice also shall inform the nurse anesthetist that he or she may accept the disciplinary action or, within 30 calendar days, may submit a written response to the disciplinary action with a Request for Review in accordance with Section IV.B below.
5. **If the nurse anesthetist does not submit a Request for Review within 30 calendar days, the recommended decision of the NBCRNA shall become the final decision of the NBCRNA on the matter.**

**D. Non-Reportable Actions**

If the circumstances do not require a reportable disciplinary action, the NBCRNA may issue a Letter of Concern. A Letter of Concern will not be reported to third parties, but will be retained in the individual's confidential NBCRNA file and may be revisited by the NBCRNA if any disciplinary matters arise in the future.

**E. Reportable Disciplinary Actions**

1. If the circumstances require automatic revocation, the nurse anesthetist's certification or recertification and/or eligibility for future certification or recertification shall be revoked.

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2. If circumstances do not require automatic revocation, one or more of the following disciplinary actions may be taken:
    - a. issue a Letter of Censure;
    - b. order the nurse anesthetist to retake an examination at a time and place and in a format to be determined by the NBCRNA;
    - c. refuse to release the score of the nurse anesthetist and, thereby, deny his or her current application for certification or recertification;
    - d. require the nurse anesthetist to wait a specified period of time before reapplying to take any NBCRNA examination;
    - e. deny or revoke the nurse anesthetist's certification or recertification and/or eligibility for future certification or recertification;
    - f. assess a disciplinary fine; or
    - g. take a combination of any of the above actions or such other action that the NBCRNA may deem appropriate in the particular circumstances before it.

The NBCRNA also may determine that legal action should be taken.

**F. Notice of Adverse Decision**

1. A nurse anesthetist who has received an Adverse Decision that is subject to review and appeal shall be sent a prompt written Notice of Adverse Decision. The Notice shall state the reason(s) for the Adverse Decision and shall inform the nurse anesthetist that he or she has the right to seek review of the Adverse Decision by filing a timely written Request for Review with the NBCRNA.
2. Allegations of irregular behavior and fraudulent credentials shall be heard as an initial matter by the NBCRNA Review Panel.

**III. DECISIONS SUBJECT TO REVIEW OR APPEAL**

The following Adverse Decisions by the National Board of Certification and Recertification for Nurse Anesthetists (the "NBCRNA") are subject to review or appeal:

**A. Adverse Administrative Decisions**

1. Denial of a request for extension of an established deadline or for exception to other administrative requirements.
2. Denial of a grievance regarding examination administration.

**B. Adverse Substantive Decisions**

1. Denial of eligibility, certification or recertification for non-disciplinary reasons.
2. Revocation of eligibility, certification or recertification for non-disciplinary reasons.

**C. Reportable Disciplinary Actions based on:**

1. Irregular behavior before, during or after an NBCRNA examination or at any time after certification is granted.
2. Manufacture or use of fraudulent NBCRNA credentials.
3. Legal, regulatory or credentialing action.

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**NO APPEAL may be taken from an adverse decision based on:**

1. An individual's failure to meet the eligibility requirements for certification.
2. Receipt of a failing score on any NBCRNA examination.
3. Imposition of a fee based on a final adverse decision.
4. Grant of an interim status of recertification – conditional and/or provisional.
5. Automatic denial or revocation of a nurse anesthetist's certification or recertification and/or eligibility for future certification or recertification unless the individual can show that the specific conditions required for automatic denial or revocation have not been met.

**IV. THE REVIEW PROCESS**

**A. Composition and Role of the Review Panel**

1. The Review Panel shall consist of three (3) current NBCRNA Directors. No member of the Review Panel shall be a member of the Executive Committee; and the majority of the members of the Review Panel shall be nurse anesthetists. NBCRNA Directors shall not participate in discussions of, or vote on, any review or appeal in which the Director has or has had a substantial personal or professional relationship with the nurse anesthetist at issue.
2. The Review Panel shall consider the Notice of Adverse Decision and the Request for Review, including any supporting documentation submitted by the nurse anesthetist or prepared by NBCRNA staff. The Review Panel also may, at its discretion, request or receive, and review, additional information. The foregoing shall constitute the Review Record. A copy of the Review Record shall be forwarded to the nurse anesthetist at least fourteen (14) calendar days before the meeting of the Review Panel.

*The review shall be conducted pursuant to the procedures set forth in Section IV.D. (for administrative decisions); Section IV.E. (for substantive and disciplinary decisions); or Section IV.F. (for allegations of irregular behavior or fraudulent credentials).*

**B. Request for Review**

1. To be valid, a Request for Review must be postmarked within thirty (30) calendar days after the date of the Notice of Adverse Decision. The Request must contain a statement of why the nurse anesthetist believes that the Adverse Decision was improper, must include any supporting documentation that the nurse anesthetist wishes to have considered as part of the review, and must be accompanied by a Review Fee in the form of a check for \$100.00 made payable to the NBCRNA.
2. If the nurse anesthetist requests a hearing before the Review Panel, as described more fully in Section IV.C, **the nurse anesthetist's intent to address the Review Panel by telephone must be expressed in the Request for Review.**

**If a Request for Review is not postmarked within thirty (30) calendar days, the Adverse Decision shall constitute the final decision of the NBCRNA on the matter and shall not be subject to appeal absent extraordinary circumstances, as determined solely by the NBCRNA.**

**C. Telephonic Hearings**

1. A nurse anesthetist requesting review of an Adverse Decision may submit a request for a hearing before the Review Panel by telephone. To be valid, a Request for Review must be postmarked within thirty (30) calendar days after the date of the Notice of Adverse Decision.

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- Not less than thirty (30) calendar days prior to the scheduled date of the hearing, the NBCRNA shall notify the nurse anesthetist in writing of the date, time, and place of the hearing.
2. If the nurse anesthetist will be accompanied by legal counsel, NBCRNA must be so notified in writing no less than thirty (30) calendar days prior to the date of the hearing.
  3. A nurse anesthetist who chooses to appear before the Review Panel by telephone shall be given the opportunity to make a presentation summarizing the nurse anesthetist's position. The nurse anesthetist's legal counsel may make an opening or closing statement. The total time for the presentation of the nurse anesthetist and/or his or her legal counsel shall not exceed twenty (20) minutes.
  4. At the conclusion of the presentation, members of the Review Panel and NBCRNA legal counsel may ask the nurse anesthetist to respond to questions. The Review Panel shall not be bound by technical rules of evidence usually employed in legal proceedings, but may consider any evidence it deems appropriate.
  5. All expenses incurred by the nurse anesthetist in connection with the hearing shall be borne by the nurse anesthetist. If the nurse anesthetist makes a timely request that the hearing be transcribed, he or she shall bear all costs for such services.
  6. If the nurse anesthetist schedules a hearing and, without good cause, fails to appear or fails to notify the NBCRNA in writing more than seven (7) calendar days before the scheduled date of the hearing that he or she will not appear at the hearing, the nurse anesthetist shall forfeit his or her opportunity for a hearing, the review fee, and the Review Panel may proceed with its deliberations in the matter.
  7. If the nurse anesthetist schedules a hearing, but timely notifies the NBCRNA that he or she cannot appear at the hearing, the nurse anesthetist will be advised that he or she may appear at the next regularly scheduled Review Panel meeting. Should the nurse anesthetist not appear at that hearing, the nurse anesthetist shall forfeit his or her opportunity for a hearing, and the Review Panel may proceed with its deliberations in the matter.
  8. Following the hearing, the Review Panel shall determine, by majority vote of those members present, whether to affirm, reverse, or modify the Adverse Decision. The nurse anesthetist shall be notified in writing of the decision, including the reasons therefore within thirty (30) calendar days after the Review Panel reaches its decision.

**D. Final Review of Administrative Decisions**

1. If a written Request for Review of a denial of an extension of an established deadline, an exception to any other administrative requirement, or a denial of remedy requested based on a grievance regarding the administration of an NBCRNA examination, along with the required Review fee, is received within thirty (30) calendar days after the date of the notice of adverse decision, it will be finally reviewed by the NBCRNA Review Panel at its next meeting occurring at least thirty (30) calendar days after receipt of the Request for Review.
2. Based on its review of the Review Record, and consideration of testimony provided during a hearing, if any, the Review Panel may, at its discretion, take one of the following actions:

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- (1) Affirm the Adverse Decision,
  - (2) Modify the Adverse Decision, or
  - (3) Reverse the Adverse Decision.

3. The nurse anesthetist shall be notified in writing of the Review Panel's action, including the reasons therefore, within thirty (30) calendar days after the Review Panel reaches its decision.

**THE REVIEW PANEL'S DECISION ON ADMINISTRATIVE MATTERS SHALL CONSTITUTE THE FINAL DECISION OF THE NBCRNA ON THE MATTER AND SHALL NOT BE SUBJECT TO APPEAL ABSENT EXTRAORDINARY CIRCUMSTANCES, AS DETERMINED SOLELY BY THE NBCRNA.**

**E. Review of Adverse Substantive or Disciplinary Decisions**

1. A timely Request for Review of an adverse substantive or disciplinary decision shall be considered by the NBCRNA Review Panel at its next meeting occurring at least thirty (30) calendar days after receipt of the Request for Review. Based on its review of the Review Record and consideration of testimony provided during a hearing, if any, the Review Panel may, at its discretion, take one of the following actions:

- (1) Affirm the Adverse Decision,
- (2) Modify the Adverse Decision, or
- (3) Reverse the Adverse Decision, in which event the decision of the Review Panel shall constitute the final decision of the NBCRNA on the matter.

2. The nurse anesthetist shall be notified in writing of the Review Panel's action, including the reasons therefore, within thirty (30) calendar days after the Review Panel reaches its decision. The notice shall state the reason(s) for the Review Panel's decision and shall inform the nurse anesthetist that he or she has the right to seek a discretionary appeal of the Review Panel's decision by filing a timely written Request for Appeal to the NBCRNA Executive Committee.

**F. Review of Allegations of Irregular Behavior or Fraudulent Credentials**

1. Allegations of irregular behavior or fraudulent credentials shall be heard by the NBCRNA Review Panel in a timely manner. The Review Panel shall review all of the documentation submitted concerning the matter, and may, at its discretion, request or receive, and review, additional information.

2. Based on its review of the Review Record and consideration of testimony provided during a hearing, if any, the Review Panel shall determine whether sufficient evidence exists to support the allegations of irregular behavior or fraudulent credentials and, if so, may, at its discretion take such action(s) as it may deem appropriate.

3. The nurse anesthetist shall be notified in writing of the Review Panel's action, including the reasons therefore, within thirty (30) calendar days after the Review Panel reaches its decision. The notice shall state the reason(s) for the Review Panel's decision and shall inform the nurse anesthetist that he or she has the right to seek a discretionary appeal of the

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Review Panel's decision by filing a timely written Request for Appeal to the NBCRNA Executive Committee.

## V. THE APPEAL PROCESS

### A. Request for Discretionary Appeal of Adverse Substantive or Disciplinary Decisions

1. A nurse anesthetist who has received notice that an adverse substantive or disciplinary decision has been affirmed or taken by the Review Panel may appeal to the NBCRNA Executive Committee by filing a written Request for Appeal to the NBCRNA Executive Committee. To be valid, the Request for Appeal must be postmarked within thirty (30) calendar days after the date of the notice of decision and must state with specificity the grounds on which the nurse anesthetist is requesting the appeal.
2. The information submitted in the Request for Appeal must be limited to that submitted to the Review Panel. New information shall not be considered on appeal. If such information was not available at the time of the Review Panel's review, but becomes available within thirty (30) calendar days after the date of the notice of the Review Panel's decision ("Valid New Information"), the nurse anesthetist may submit such Valid New Information for consideration by the Review Panel.

**If a Request for Appeal is not postmarked within thirty (30) calendar days, the Review Panel's decision shall constitute the final decision of the NBCRNA on the matter and shall not be subject to appeal absent extraordinary circumstances, as determined solely by the NBCRNA.**

### B. Standard of Review

1. The Executive Committee's review shall be limited to a determination of whether (1) a procedural error may have contributed to the Review Panel's decision or (2) the Review Panel's decision was arbitrary and capricious.
2. Any member of the Executive Committee who was a member of the Review Panel and participated in prior consideration of the Adverse Decision shall not participate in deliberations regarding, or vote on, the matter.

### C. Consideration of a Discretionary Appeal

1. A timely Request for Appeal from the Review Panel's decision shall be considered by the President of the NBCRNA. To be valid, the Request for Appeal must be postmarked within thirty (30) calendar days after the date of the notice of decision and must state with specificity the grounds on which the nurse anesthetist is requesting the appeal. The decision to grant an Appeal is at the sole discretion of the President of the NBCRNA, who shall seek advice of counsel.
2. If the President determines that the specific grounds on which the nurse anesthetist has requested an appeal do not raise a question of a procedural error or an arbitrary and capricious decision, he or she shall deny the Appeal. **IF A REQUEST FOR APPEAL IS DENIED, THE REVIEW PANEL'S DECISION SHALL CONSTITUTE THE FINAL DECISION OF THE NBCRNA ON THE MATTER AND SHALL NOT BE SUBJECT TO FURTHER APPEAL.**

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3. The nurse anesthetist shall be notified in writing of the final decision, including the reasons therefore, within thirty (30) calendar days after the President reaches his or her decision.
  4. If the President determines that the specific grounds on which the nurse anesthetist has requested an appeal raise a question of a procedural error or an arbitrary and capricious decision, he or she may grant the Appeal. In such event, the appeal will be heard by the Executive Committee at its next meeting occurring at least thirty (30) calendar days after receipt of the Request for Appeal.

**D. Appeal Procedure**

1. The Executive Committee shall consider the Review Record, the Review Panel's Notice of Affirmation or Modification of Adverse Decision, the nurse anesthetist's Request for Appeal and the record of the hearing if one was conducted before the Review Panel. The Executive Committee also shall receive and review a statement from the Review Panel that took the adverse action. The foregoing shall constitute the Appeal Record.
2. The Executive Committee shall base its review solely on the Appeal Record and shall determine by majority vote of those members present whether to (1) ratify, reverse or modify the Adverse Decision; or (2) remand the matter back to the Review Panel for correction of a procedural error. If during the course of its review, the Executive Committee finds Valid New Information, it shall discontinue the review and remand the matter back to the Review Panel for consideration.

**A DECISION BY THE EXECUTIVE COMMITTEE TO RATIFY, REVERSE, OR MODIFY AN ADVERSE DECISION SHALL CONSTITUTE THE FINAL DECISION OF THE NBCRNA ON THE MATTER AND SHALL NOT BE SUBJECT TO FURTHER APPEAL.**

**IF THE REVIEW PANEL, ON REMAND, CORRECTS THE PROCEDURAL ERROR BUT REACHES THE SAME DECISION, THAT DECISION SHALL CONSTITUTE THE FINAL DECISION OF THE NBCRNA ON THE MATTER AND SHALL NOT BE SUBJECT TO FURTHER APPEAL.**

3. The nurse anesthetist shall be notified in writing of the final decision, including the reasons therefore, within thirty (30) calendar days after the Executive Committee or the Review Panel reaches its decision.

**The procedures set forth above for the review and appeal of Adverse Decisions may be subject to an expedited schedule when deemed necessary by the NBCRNA.**

**VI. PUBLIC NOTICE OF DECISIONS**

After a final reportable disciplinary decision has been reached, NBCRNA may notify interested parties of the disciplinary decision and the underlying facts thereof, as deemed appropriate by NBCRNA. Such notification may be published on the NBCRNA's web site and provided to the National Practitioner Data Bank, any state licensing authority with which the nurse anesthetist holds a license to practice as a nurse anesthetist, the federal government, the nurse anesthetist's employer and other interested parties, including individuals seeking information about the subject's certification or recertification status, as solely determined by the NBCRNA.

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## VII. APPLICATION FOR REINSTATEMENT FOLLOWING DISCIPLINARY ACTION

### A. Sanctions for Irregular Behavior or Fraudulent Credentials

A nurse anesthetist whose certification or recertification and/or eligibility for future certification or recertification has been denied or revoked by the NBCRNA for a specified time period based on irregular behavior or fraudulent credentials may reapply to the NBCRNA following expiration of such time period.

### B. Sanctions for Legal, Regulatory or Credentialing Action

A nurse anesthetist whose certification or recertification and/or eligibility for future certification or recertification has been denied or revoked by the NBCRNA based on a legal, regulatory or credentialing action may reapply to the NBCRNA when the situation underlying the NBCRNA's decision has been remedied. If the decision was based on conviction of or pleading no contest to a felony, the individual may not apply for certification until all sentences have been served and, unless the Review Panel grants an exception, all judgments have been satisfied. If the decision was based on revocation of licensure or authorization to practice, the individual may not reapply to the NBCRNA until the license or authorization has been restored.

**Except in such cases where the period of revocation is expressly limited to a specific period of time – all applications following denial or revocation shall be considered and acted upon at the sole discretion of the NBCRNA.**

## VIII. RESPONSIBILITY FOR NOTIFICATION OF NAME OR ADDRESS CHANGE

Nurse anesthetists are solely responsible for providing timely notification to NBCRNA of changes of address. If the nurse anesthetist does not receive notice(s) from NBCRNA related to disciplinary review or action due to his or her failure to timely notify NBCRNA of a change of address, that lack of notification shall not be considered as the basis for an appeal or review of any decision in the matter.

## IX. SUBMISSIONS TO THE NBCRNA

Whenever there is a requirement for a written notice, request or other writing to be submitted to the NBCRNA, such writing shall be addressed to the following:

Karen Plaus, PhD, CRNA, FAAN  
Executive Director  
National Board of Certification and Recertification for Nurse Anesthetists  
222 South Prospect Avenue  
Park Ridge, IL 60068  
Tel: (847) 655-1109  
Fax: (847) 825-2762