



Postgraduate Medical Education

POLICIES FOR RESIDENT APPEALS

PREAMBLE

In the postgraduate education of residents, the Faculty of Medicine assumes two major responsibilities:

1. To provide a program that is adequate to meet residents' educational needs.
2. To evaluate residents to ensure that they have successfully acquired the knowledge, skills, professional behaviour, and ethical standards required to practice competently.

Policies for residents receiving unsatisfactory evaluations are outlined in "Policies for Evaluation and Promotion of Residents". Policies and guidelines for the handling of resident appeals are contained in "Policies for Resident Appeal".

INTRODUCTION

As described in the document "Evaluation and Promotion of Residents", unsatisfactory performance by a resident may result in the following:

- A resident's evaluation on an individual rotation may be deemed Unsatisfactory or Marginal on the In-Training Evaluation Report (ITER).
- A resident may be placed on probation.
- A resident's postgraduate training program may be extended or terminated.

These outcomes are subject to appeal under the policies and guidelines outlined below. An appeal of an ITER or decision for probation, extension of training, or dismissal shall be directed to the appropriate Residency Program Committee or, when indicated, an ad hoc Departmental Appeal Committee. Appeal decisions at this (Departmental) level are final in the case of ITERs and probation. In the case of extensions to training and dismissal, Departmental-level appeal decisions may be appealed further to the PGME Appeals Subcommittee.

Appeals conducted at the Departmental level may address both substantive and procedural claims as well as claims of bias. However, appeals conducted at the level of the PGME Appeals Subcommittee may only consider claims of procedural unfairness or bias.

I. APPEALS

Appeal of an ITER

A resident appealing an ITER must submit the appeal in writing within 14 days of receiving the ITER. The appeal notification should be sent to the Program Director of the program in which the rotation occurred. For appeals of ITERs of rotations provided by a residency program other than the resident's home program, a copy of the appeal notification should also be sent to the resident's home Program Director. The home Program Director must then notify the Associate Dean of the appeal, in writing.

The Program Director for the rotation under appeal should forward the letter of appeal to the preceptor who signed the ITER requesting a review of the evaluation. An informal meeting of the Program Director(s), preceptor, and resident is encouraged at this stage. Such informal review should be completed within 4 weeks of receiving the letter of appeal.

If the resident is not satisfied after informal review, the appeal must be heard formally by the Residency Program Committee of the program in which the rotation occurred, within 8 weeks of the informal review. If the original decision was made by the Residency Program Committee or a majority of its members, the formal appeal must instead be heard by an ad hoc Departmental Appeal Committee.

Note: It is the resident's home program that determines what action, if any, will result from an Unsatisfactory or Marginal ITER.

Appeal of Probation

The decision to place a resident on Probation may be appealed by the resident to their home Program Director, in writing, within 14 days of receiving the Probation decision. An appeal of a decision for Probation must be heard by an ad hoc Departmental Appeal Committee. The home Program Director must notify the Associate Dean of the appeal, in writing.

Appeal of Extensions or Dismissal

An appeal of a decision for extension of training or dismissal should be sent by the resident to the home Program Director for formal hearing. The letter of appeal must be received by the home Program Director within 14 days of the resident receiving notification of extension of training or dismissal. The appeal should be heard by an ad hoc Departmental Appeal Committee within 8 weeks of notification of appeal.

If the resident is unsatisfied with the decision of the ad hoc Departmental Appeal Committee, a request may be made to the Associate Dean, Post Graduate Medical Education that the appeal be heard by the PGME Appeals Subcommittee.

An appeal to the PGME Appeals Subcommittee must be submitted in writing within 14 days of receiving the results of the previous appeal. The hearing of appeals at the level of the PGME Appeals Subcommittee will be limited to consideration of whether the decision for extension of training or dismissal was unbiased and followed fair process. Substantive information regarding the resident's performance will be heard only to the extent necessary to understand the basis of the decision under appeal.

II. GUIDELINES FOR FORMAL HEARING OF APPEALS BY RESIDENCY PROGRAM COMMITTEES and AD HOC DEPARTMENTAL APPEAL COMMITTEES

Every Residency Program Committee will develop its own appeal mechanism describing the procedure for handling appeals as well as the composition of ad hoc Departmental Appeal Committees. Appeals of procedural unfairness, alleged bias, and the accuracy or validity of evaluations may be heard by Residency Program Committees and ad hoc Departmental Appeal Committees. However as the expertise for assessing the accuracy of evaluations for a given resident resides with the Department, substantive appeals (that is, challenges of the accuracy or validity of evaluations) may not proceed further.

For guidance, Residency Program Committees and ad hoc Departmental Appeal Committees may refer to Section III, Policies for Appeals to the PGME Appeals Subcommittee. In addition some general guidelines follow:

- Attention must be given to the resident's right to be heard. The resident should be given adequate notice and encouraged to be accompanied by an advocate. The advocate should be given an opportunity to speak on the resident's behalf. The individual Residency Program Committee or Department will decide whether a resident may also be accompanied by legal counsel and, if so, any limits on the conduct of legal counsel at the appeal hearing. The resident must be aware of the information to be presented at the appeal hearing. If new documents are introduced at the time of the hearing, both the resident and Committee have the right to a postponement in order to consider their response. New information may NOT be introduced after the resident leaves the room.

- Ad hoc Departmental Appeal Committees should be struck and chaired by the Academic Department Head or a designate. Representation should be similar to that of the Residency Program Committee and include faculty with experience in postgraduate education (for example, previous Residency Program Committee members and previous Program Directors). Individuals holding a bias against the resident should not participate. There should be resident representation. If the Program Director was involved in the decision being appealed, the Program Director should make a statement that includes the background information and rationale for the decision at the appeal hearing, but should not be present for the discussion and decision. A resident may object to any individual scheduled to hear the appeal, however the validity of the challenge should be judged by the Chair.
- A designate should take minutes of the hearing. Once the resident (and if appropriate, the Program Director) has left the meeting, a thorough discussion of all information presented should occur, followed by voting by closed ballot. Minutes for the discussion period itself should only include motions made, the final decision, and a brief rationale.

Note: The Students' Union employs a Student Rights Advisor (SRA) who will provide advice and support to students who may have a problem understanding the University of Calgary Appeals system. They will provide confidential advice, assistance preparing documents, liaison with faculty and referral to other resources.

The **SRA** is located at the MacEwan Student Center room 251, phone 220-3909, website www.su.ucalgary.ca/academic/help.html, email sra@su.ucalgary.ca

III. POLICIES FOR APPEALS TO THE PGME APPEALS SUBCOMMITTEE

The PGME Appeals Subcommittee will consist of 7 randomly selected PGME Committee Members resulting in the following membership: 1 student (non-voting), 2 residents, and 5 sitting Program Directors. A member may be excused if in his/her own opinion or that of the Associate Dean there is a conflict of interest. The appeal will be chaired by the Associate Dean unless in his/her own or the Dean's opinion this constitutes a conflict of interest. In that case, an alternate Chair will be chosen.

The resident and the Program Director each have the right to challenge any member of the PGME Appeals Subcommittee from hearing the appeal. The validity of the challenge shall be judged by the Associate Dean or alternate Chair. The resident must inform the Associate Dean or alternate Chair of any such challenge at least 4 days prior to the appeal hearing. A successful challenge may result in rescheduling of the hearing.

A resident appealing a decision to the PGME Appeals Subcommittee shall notify the Associate Dean in writing within 14 days of receiving the results of the Departmental-level appeal. The written notice shall contain:

1. a description of the matter under appeal and the remedy sought and;
2. the resident's arguments in regard to any alleged bias or procedural unfairness in the making of the decision under appeal.

The Associate Dean or alternate Chair will endeavor to respond to a request for an appeal within 14 days of its receipt and the PGME Appeals Subcommittee will endeavor to hear an appeal within 8 weeks of the PGME Office receiving all required documents from the resident. The Associate Dean or alternate Chair will provide at least 14 days' written notice of the date of the appeal hearing to all parties.

Residents who have been dismissed will not be allowed to continue clinical activities and will not receive a salary during an appeal.

Preparation of the Appeal File

The Associate Dean or alternate Chair will ask the resident and Program Director to submit copies of all written material relevant to the appeal as soon as possible, and no later than 10 days prior to the hearing date. Such material shall form part of the Appeal Record. The Associate Dean or alternate Chair may also include in the Appeal Record any other documentation he or she deems relevant.

Documentation that should be provided by the Program Director for the Appeal Record includes:

1. A description of the program's evaluation procedure;
2. The steps taken in this particular instance to inform the resident that performance was unsatisfactory, counsel the resident regarding deficiencies, provide an opportunity for remedial activity, and convey the results of the remedial activity to the resident;
3. Evaluations and other relevant materials regarding the resident;
4. Information regarding the process used in making the decision under appeal;
5. Minutes of the Departmental-level appeal;
6. Other information that the Associate Dean or alternate Chair requests.

Either party may request any individual to provide written statements to the PGME Appeals Subcommittee for consideration at the hearing.

The PGME Office will deliver the Appeal Record to all parties at least 7 days prior to the hearing.

PGME Appeal Hearing Procedures

1. The resident and Program Director may, with the leave of the Chair of the hearing, present at the hearing copies of relevant documents, not previously distributed. However, in order to consider such documents, either party may request a postponement.
2. The resident will present his/her position first. The resident's presentation will be followed by a question period, then a presentation by the Program Director, followed by another question period.
3. The resident may elect to be accompanied by an advocate and/or legal counsel. Notification of the resident's intent to be accompanied should be submitted in writing to the Associate Dean at least 1 week prior to the hearing.
4. If the resident elects to be accompanied by an advocate, the advocate should be given the opportunity to speak on behalf of the resident. If the resident elects to be accompanied by legal counsel, then legal counsel's role will be restricted to acting as an advisor to the resident. Legal counsel will not be allowed to participate in the meeting, beyond acting as an advisor. More specifically, legal counsel will not be permitted to present a statement to the Committee or question participants on the resident's behalf.
5. The Program Director and the PGME Appeals Subcommittee may also choose to be attended by legal counsel. Other persons with knowledge of the circumstances, or experts in particular areas, may be invited by the Chair to appear at the meeting. The resident will be notified of the names of any such individuals at least 5 days prior to the hearing.
6. Persons other than legal counsel who are granted the right to appear before the PGME Appeals Subcommittee will be allowed to make oral presentations, and may be subject to questioning but will not be permitted to question persons present at the hearing.
7. Presentations to the PGME Appeals Subcommittee shall be limited to 20 minutes duration for each party.
8. After the resident and Program Director have finished presenting their views, and PGME Appeals Subcommittee members have voiced all of their questions, the resident, any advisors, the Program

Director, and any other additional persons invited to the hearing will be required to withdraw for the final deliberations and decision of the Committee.

9. The decision of the PGME Appeals Subcommittee will be based upon all written and oral submissions presented at the hearing. The PGME Appeals Subcommittee will not assess the accuracy of clinical assessments; but rather whether the decision was made by means of a fair process and without bias.
10. For an appeal to be upheld, the PGME Appeals Subcommittee members must vote in support of upholding the appeal. In the event of a tie, the Chair will vote. The Chair may vote for or against the motion.
11. Proceedings of the PGME Appeals Subcommittee will be held in strict confidence. Voting will be done by closed ballot. Ballots will be counted by the Chair and one other delegated committee member. Vote counts will not be announced or recorded in the Minutes of the hearing, nor in its written decision. The Chair will announce only that the appeal is upheld or denied.
12. The Chair will be responsible for writing a decision letter including a summary of reasons for the PGME Appeals Subcommittee' decision. The decision letter will be sent without undue delay to the resident, Program Director, and Dean of the Faculty of Medicine.
13. If the resident is unsatisfied with the PGME decision, further appeal may be made to the Medical Student and Resident Appeals Committee of the Faculty of Medicine and then to General Faculties Council.
14. The appeal of a decision that postgraduate training be extended may be upheld in 2 ways. The length of time of the extension may be reduced, or the requirement for extended training may be overturned completely.
15. If an appeal of a decision for dismissal is upheld, the resident will resume his or her residency and will be subject to all PGME Evaluation and Promotion policies. As such, if the resident receives 2 Unsatisfactory or Borderline ITERs after reinstatement, the Residency Program Committee will consider Probation for the resident. If, as a result of the PGME Appeals Subcommittee upholding an appeal of a dismissal, a resident is reinstated within 4 months of completion of training, the PGME Appeals Subcommittee may require an extension to training in order that the resident may be fully evaluated after reinstatement.
16. In its decision to uphold an appeal the PGME Appeals Subcommittee may make recommendations regarding evaluation or remedial activities.

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