

Postgraduate Medical Education (PGME)

Title:	Postgraduate Medical Education Resident Appeal Policy	Number:	023
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Definitions

“Appeal Committee” means the committee constituted under this policy to hear Resident appeals related to dismissals and unsuccessful FSA resulting in delays in transitioning to practice or in writing of exams.

“Assessment Policy” means the Residents Assessment Policy Faculty of Medicine UBC

“Associate Dean” is the Associate Dean of Postgraduate Medical Education of the Faculty of Medicine at the University.

“Final Summative Assessment” or “FSA” is the summative evaluation completed by the Program Director at the completion of the residency program attesting that the Resident has attained the competencies outlined in the objectives of training required of a physician in practice.

“Formal Remediation” – is a period of more frequent and formal assessments and supervision developed to address situations in which a Resident is at risk of failing and has been identified as requiring an adjusted Learning Plan to remedy persistent or egregious performance deficits.

“Probation” is a status imposed on a Resident when the Resident has demonstrated deficits in performance and/or conduct of such nature that there can be no tolerance of recurrence and the Resident requires formal monitoring of performance or conduct for the duration of training.

“Program” means the CFPC or RCPSC accredited postgraduate education training program leading to certification in family medicine or specialty medicine which is sponsored by the University and administered through Postgraduate Medical Education in the Faculty of Medicine.

“Program Director” is the member of the Faculty of Medicine responsible for the overall conduct of a postgraduate training program within a specific discipline and who is responsible to the Associate Dean, Postgraduate Medical Education and the Department Head of the Department.

“Resident” is a physician in a postgraduate medical training program that:

- a) Leads to RCPSC or CFPC certification; and
- b) Is administered by the University.

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“Summative Assessment for Exam Eligibility”- is the summative evaluation required by the CFPC or the RCPS attesting that the Resident has attained the competencies required to sit the exam. In some cases these will be separate from the FSA.

Policy

1. Appeal

1.1. A Resident may appeal decisions by the Program in the following situations

- a) When a decision has been made to dismiss the resident
- b) When a decision has been made that the FSA was unsuccessful and the resident will not be eligible to sit their exams
- c) When a decision has been made that the FSA was unsuccessful and the resident will not be able to transition into practice

1.2. A Resident must communicate an intention to appeal to the Associate Dean, in writing, within ten (10) calendar days of the notice of dismissal, or notice of failed FSA resulting in ineligibility to write exams or to transition to practice.

1.3. Within ten (10) calendar days of giving notice of intention to appeal the Resident must submit a written appeal brief (“Appeal Brief”) to the Associate Dean. The Appeal Brief must contain the following:

- a) A copy of the notice of dismissal or notice of the failed FSA
- b) A statement of the grounds of appeal and of the substance of the appeal;
- c) Copies of any documents or materials which support the appeal and which the Resident wishes the Appeal Committee to consider; and
- d) The names of any witnesses whom the Resident intends to call to give information relevant to the appeal to the Appeal Committee

1.4. The Associate Dean will review the Appeal Brief and will determine whether the request for appeal is based on one of the grounds of appeal set out in this Policy. If the request for appeal is not based on a ground of appeal set out in this Policy the Associate Dean may dismiss the appeal without a hearing. There is no appeal of the decision of the Associate Dean to dismiss the appeal without a hearing.

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- 1.5. If the Associate Dean determines that the appeal is based on one of the grounds of appeal in this Policy then the Associate Dean will forward the Appeal Brief to the Program Director for response.
- 1.6. Within ten (10) calendar days of receipt of the Appeal Brief the Program Director must submit a written response to the appeal ("Program Brief") to the Associate Dean. The Program Brief must contain the following:
 - a) The Program Director's response to the substance of the appeal;
 - b) Copies of any documents or materials which support the decision taken by the Program Director and which the Program Director wishes the Appeal Committee to consider; and
 - c) The names of any witnesses the Program Director intends to call to give information relevant to the appeal to the Appeal Committee.
- 1.7. The Associate Dean will provide a copy of the Program Brief to the Resident.
- 1.8. Once the Associate Dean receives the Appeal and Program Briefs the Associate Dean will constitute an Appeal Committee as provided in Section 3 of this policy.

2. Composition of the Committee

- 2.1. The Appeal Committee will be composed of the following three individuals:
 - a) The Associate Dean, or delegate appointed by the Dean of the Faculty of Medicine, who will chair the Appeals Committee;
 - b) Two Program Directors, or senior faculty if two Program Directors are not available, appointed by the Associate Dean.

3. Grounds for Appeal

A decision as to whether a Resident has met the standards of the Program or is suitable for continued postgraduate training is a decision determined through the exercise of academic judgment in the process set out in the Resident Assessment Policy

- 3.1. An appeal of a decision to dismiss a Resident from a Program may only be brought on the grounds set out below:
 - a) The Program failed to follow the procedures set out in the Residents Assessment Policy in reaching the decision to dismiss the Resident; or
 - b) The decision to dismiss the Resident did not take into account relevant evidence or relied on irrelevant evidence; or
 - c) The academic judgment of the faculty and/or Program Director was exercised in an arbitrary or discriminatory manner.

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4. Terms of Reference of the Appeal Committee

- 4.1. The Appeal Committee may consider any relevant evidence and the Chair may make procedural decisions necessary to ensure a fair and transparent hearing process. The Chair will seek submissions, either written or oral, from the Resident and the Program before deciding any procedural matter arising either before or during the hearing.
- 4.2. The Chair of the Appeal Committee may seek a legal opinion on any matter arising from the Appeal or Program Brief, or during the hearing, or during the deliberations of the members of the Appeal Committee.

5. Procedures for a Hearing Before the Appeal Committee

- 5.1. The hearing of the appeal should be scheduled at the earliest opportunity and no later than 60 days after the briefs have been submitted to the Appeal Committee. The Chair of the Appeal Committee will set a date for the hearing after consulting with the Resident and the Program Director.
- 5.2. The Resident may be represented by an advocate during the hearing. If the Resident intends to be represented by legal counsel then notice must be given to the Chair of the Appeal Committee at least fourteen (14) days prior to any hearing before the Appeal Committee.
- 5.3. The Resident, or advocate, presents the case on appeal and the Resident bears the onus of establishing the grounds of appeal. The Program Director, or a representative who may be legal counsel, will present the case on behalf of the Program.
- 5.4. Subject to the rule of the Chair, the following procedure will be followed in the conduct of the hearing:
 - a) The Resident, or advocate, may make an opening statement;
 - b) The Resident, or advocate, may call and examine any witnesses named in the Appeal Brief;
 - c) The Program Director, or representative, may cross-examine the Resident or any witness called by the Resident;
 - d) The Program Director, or representative, may make an opening statement;
 - e) The Program Director, or representative, may call and examine any witnesses named in the Program Brief and may call and examine any additional witnesses required to respond to the case presented by the Resident;
 - f) The Resident, or advocate, may cross-examine the Program Director or any witness called by the Program Director;
 - g) Any member of the Appeal Committee may question any witness, the Program Director, or the Resident, at any time. Either the Resident, or advocate, or, the Program Director, or representative, may ask further questions of the witness that arise directly from the

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- questions posed to the witness by the member of the Appeal Committee;
- h) Once all of the evidence has been presented the Resident, or advocate, may make a closing statement;
 - i) The Program Director, or representative, may make a closing statement.
- 5.5. Before reaching a decision the Appeal Committee may request that it be provided with additional information from either the Resident or Program Director. If such additional information is requested, both the Program Director and the Resident must have an opportunity to consider this additional information and make submissions in writing or in person, at the discretion of the Chair, to the Appeal Committee prior to a final decision being made.
- 5.6. During the course of the hearing the Appeal Committee may adjourn and reconvene at the discretion of the Chair.
- 5.7. Absent a request from the Appeal Committee for additional information the hearing will conclude at the end of the closing statements and the Appeal Committee will not accept any further evidence related to the appeal.

6. Decision of the Appeal Committee

- 6.1. The Appeal Committee will arrive at a decision regarding its recommendation on the appeal by a simple majority vote.
- 6.2. In appeals of decisions to dismiss by the Program if the Appeal Committee finds that there has been a procedural error of sufficient magnitude that they are satisfied that the academic judgment of the Program Director or faculty members may be erroneous, the Appeal Committee may recommend that the Program reinstate the Resident to post-graduate medical training, and place the Resident on Probation or Formal Remediation in accordance with the terms of the Resident Assessment Policy
- 6.3. In appeals of decisions related to FSA if the Appeal Committee finds that there has been a procedural error of sufficient magnitude that the Appeal Committee is satisfied that the academic judgment of the Program Director may be erroneous the Appeal Committee may recommend that the Program Director be directed to provide a successful FSA to the Resident or to re-issue the FSA addressing the errors in academic judgment.
- 6.4. In either appeal described in section 7.2 and 7.3 if the Appeal Committee finds that there has been a procedural error of a minor nature, but the Appeal Committee is satisfied that the procedural error did not result in an erroneous academic decision, the Appeal Committee may recommend that the appeal be denied.
- 6.5. If the Appeal Committee finds there were no procedural errors or omissions may recommend that the appeal be denied.

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6.6. The recommendations of the Appeal Committee will be provided in writing to the Dean of the Faculty of Medicine within ten (10) days of the conclusion of the hearing. The Dean will consider the recommendation of the Appeal Committee and will render a final decision within ten (10) days of receipt of the Appeal Committee decision. A copy of the Appeal Committee recommendation and the Dean's decision will be provided to the Resident and the Program Director.

6.7. The decision of the Dean is final.

Action	Committee	Date	Status