



College of Intensive Care Medicine
of Australia and New Zealand
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APPEALS, REVIEW AND RECONSIDERATION PROCESSES

INTRODUCTION

This policy sets out the mechanism for appeal by any person (the appellant) adversely affected by a decision of the College that is inconsistent with approved policy. An appellant who has been directly and adversely affected by a decision that is inconsistent with approved policy and procedure may apply to the Chief Executive Officer (CEO) of the College to have the decision considered by the Appeals Committee.

Before convening the Appeals Committee, the CEO will generally advise an appellant to seek a reconsideration and/or review of the original decision. The Appeals Committee shall only be convened if the CEO is satisfied that the appellant has exhausted all other avenues of reconsideration and review of the relevant decision.

1. RECONSIDERATION AND REVIEW OF DECISIONS

The processes of reconsideration of a decision and review of a decision allow an appellant to present additional information relevant to a decision, and to ensure that the Committee/Group has had the opportunity to receive and consider all relevant information.

1.1 Grounds of Reconsideration and Review

Any person who is dissatisfied with, and adversely affected by a decision referred to below may apply to have the decision reconsidered. Any person who remains dissatisfied after such reconsideration may apply to have the decision reviewed. Any person who remains dissatisfied following review of the decision may, within three months of receipt of notice of such decision, apply to the CEO to have the matter heard by the Appeals Committee. The process for a formal appeal is detailed below (see 4.).

The decisions which may be reconsidered or reviewed are:

- 1.1.1 Selection into the training program of the College
- 1.1.2 Decisions of the Censor or Deputy/Assistant Censor, the Committees for Examinations, or the Hospital Accreditation Committee, the Supervisors of Training, or a Formal Project Assessment Committee in relation to the assessment of progress of trainees of the College (including dismissal or recognition of training).
- 1.1.3 Decisions of the Board or Committees in relation to applications for admission to Fellowship.
- 1.1.4 Decisions of the Overseas Trained Specialists Committee or Interviewing Panel, or Area of Need Appointees in relation to applications from Overseas Trained Doctors (OTS) for assessment for recognition on behalf of the Australian Medical Council, or the Medical Council of New Zealand, or any applicable State or Territory Medical Board (or for other appropriate purposes).

- 1.1.5 Decisions of the Overseas Trained Specialists Committee or Interviewing Panel in relation to examinations or training required by the Chair of the OTS Committee to be undertaken by OTS for assessment as set out above.
- 1.1.6 Decisions of the Board in relation to participation in the CPD Program, awarding of points to activities, and awarding of the CPD Certificate.
- 1.1.7 Decisions of the Committees of the College, in relation to accreditation for training by hospitals, units, other organisations or supervisors.
- 1.1.8 Decisions of the College in relation to the financial status of Fellows, trainees or other persons.
- 1.1.9 Such other decisions of the College or Committees, as the Board may permit or determine from time to time.

2. RECONSIDERATION COMMITTEE

A reconsideration of a decision is undertaken by the same Committee or person who made the original decision. The appellant for reconsideration should lodge the application in writing with the CEO stating reasons for the request. The appellant should provide any additional material considered relevant to the decision. The Committee will convene as the Reconsideration Committee either at its next scheduled meeting, or by special arrangement. The Reconsideration Committee will consider all the original material and documentation; all additional material and documentation supplied by the appellant; and any additional material and documentation considered relevant by the Chair.

Minutes of the Reconsideration Committee deliberations, whether as part of a scheduled meeting or specially convened, shall be kept in accordance with the normal Committee practice.

2.1. Decisions of the Reconsideration Committee.

- 2.1.1. The decision made by the Reconsideration Committee shall be conveyed to the appellant in writing following the meeting.
- 2.1.2. Where possible, the Reconsideration Committee should endeavour to provide the appellant with reasons for the decision.
- 2.1.3 The appellant should be advised of the opportunity for review of the decision should he/she be dissatisfied with the decision.

3. REVIEW COMMITTEE

A review of a reconsidered decision is undertaken by the nominees of the Committee which oversees the Committee or person making the original decision. The Review Committee will not have any members who have been part of the Committee making or reconsidering the decision. The Chair of the relevant Committee will ensure, before convening the Review Committee that all those taking part were not part of the original Committee or Reconsideration Committee.

An appellant seeking a review will lodge the request in writing with the CEO, and may provide additional material/documentation not previously submitted. The Review Committee will consider all the original material and documentation, all additional material and documentation supplied by the appellant and any additional material and documentation considered relevant by the Chair. It will consider whether the principles of natural justice were followed when making the original decision, or reconsidering that decision. In addition the Chair will obtain information regarding the policy and procedures relevant to the decision. Minutes of the hearing of the Review Committee

shall be confined to a report listing the documentation presented and a report of the decision to the Committee making the original decision, if any.

3.1 Decisions of the Review Committee

- 3.1.1. The decision made by the Review Committee shall be conveyed to the appellant in writing following the meeting.
- 3.1.2. The decision made by the Review Committee shall be conveyed to the original Committee in writing following the meeting.
- 3.1.3. The Review Committee is not required to furnish the appellant with reasons for the decision but, where changing the decision, should endeavour to provide reasons to the original Committee.
- 3.1.4. The appellant should be advised of the availability of Appeal and the College Appeals Process (refer below).

4. APPEALS PROCESS

It is expected that persons will lodge appeals only as a last resort, with the College having exhausted avenues of reconsideration by the body making the original decision. Before convening the Appeals Committee, the CEO may advise an appellant to seek a reconsideration of the original decision. Such reconsideration shall not, and does not, constitute an appeal under these Rules. The Appeals Committee shall only be convened if the CEO is satisfied that the appellant has exhausted all other avenues of reconsideration and review of the relevant decision

4.1. Appeals Committee

An Appeals Committee may be convened by the CEO, comprising the following:

- *Chair*: The Vice-President of the College, or another Board member appointed by the Board.
- *Members*: Two Fellows of the College, at least one of whom will have specialised knowledge of the subject matter of the appeal. Two other appropriately qualified persons who are not Fellows of the College, of whom one will be a member of the legal profession. The Appeals Committee will not comprise any individual who was party to the decision of the College to which the appeal relates.
- The CEO and the College Solicitor shall be the Secretary and Legal Adviser respectively to the Appeals Committee, but shall not form part of the Appeals Committee.
- A quorum for meetings of the Appeals Committee will be the Chair and three other members. All members of the Appeals Committee shall be entitled to vote on decisions.
- The Appeals Committee shall decide on the basis of a majority vote.
- In the event of an equality of votes, the Chair may exercise a casting vote.

4.2. Decisions that can be Appealed

Any person adversely affected by a decision referred to below, may, within six months of receipt of notice of such decision, apply to the CEO to have the decision reviewed by the Appeals Committee. Such application shall be in writing and accompanied by all relevant information or grounds upon which the person seeks to rely in respect of the review.

The decisions which may be reviewed by the Appeals Committee are:

- 4.2.1. Decisions relating to selection into the training program of the College

- 4.2.2. Decisions of the Censor or Deputy/Assistant Censor the Committees for Examinations, or the Hospital Accreditation Committee, the Supervisors of Training, or a Formal Project Assessment Committee in relation to the assessment of progress of trainees of the College (including dismissal or recognition of training).
- 4.2.3. Decisions of Boards or Committees in relation to applications for admission to Fellowship.
- 4.2.4. Decisions of the Censor or Overseas Trained Specialists Committee or Interviewing Panel, or Area of Need Appointees in relation to applications from Overseas Trained Doctors (OTS) for assessment for recognition on behalf of the Australian Medical Council, or the Medical Council of New Zealand, or any applicable State or Territory Medical Board (or for other appropriate purposes).
- 4.2.5. Decisions of the Overseas Trained Specialists Committee or Interviewing Panel in relation to examinations or training required by the Chair of the OTS Committee to be undertaken by OTS for assessment as set out above.
- 4.2.6. Decisions of the Board in relation to participation in the CPD Program, awarding of points to activities, and awarding of the CPD Certificate.
- 4.2.7. Decisions of the Board and Committees of the College, in relation to accreditation for training by hospitals, units, other organisations or supervisors.
- 4.2.8. Decisions of the College in relation to the financial status of Fellows, trainees or other persons.
- 4.2.9. Such other decisions of the College or Committees, as the Board may permit or determine from time to time.

4.3. Grounds of Appeal

An appeal may only be made on one or more of the following grounds:

- 4.3.1. That an error in law or in due process occurred in the formulation of the original decision.
- 4.3.2. That relevant and significant information was not considered, or not properly considered, in the making of the original decision.
- 4.3.3. That the original decision was clearly inconsistent with the evidence and arguments put before the body making the original decision.

4.4 Consideration of Appeals

- 4.4.1. In any appeal, the appellant will have the onus of proof to establish the grounds of the appeal.
- 4.4.2. At least twenty-one days prior to the convening of the Appeals Committee hearing, the CEO will advise the appellant of:
 - 4.4.2.1. The date, time and place of the hearing. For Appeals generated in Australia or New Zealand, every effort will be made to convene the Appeals Committee in the relevant Australian State/Territory or New Zealand in order to minimise costs to the appellant.
 - 4.4.2.2. The right of the appellant to appear before the Appeals Committee and to seek leave to have legal representation.

- 4.4.3. An applicant to the Appeals Committee shall have the right to appear and address the Appeals Committee in relation to his or her submissions. The appellant has the right to be advised and/or accompanied by a legal representative or support person but shall not be entitled to be legally represented before the Appeals Committee, unless the Appeals Committee has given its prior consent. A personal advocate, colleague or mentor may represent the appellant in those cases where the Appeals Committee considers that an appellant could not present, or would be disadvantaged in his/her appeal if required to present in person. Such a request for an appellant to be so represented must be made in writing to the CEO no later than seven (7) working days prior to the date of the appeal hearing. In those cases where the appellant is granted leave to be so represented by an advocate, the Appeals Committee may appoint a person to act as counsel assisting in the hearing of the appeal.
- 4.4.4. The Appeals Committee must act according to the rules of natural justice and decide each appeal on its merits. The Appeals Committee is not bound by the rules of evidence and, subject to the rules of natural justice, may inform itself on any matter, and in such manner as it thinks fit.
- 4.4.5. The Appeals Committee shall be entitled to consider all relevant information which it thinks fit, and may invite any person to appear before it or to provide information.
- 4.4.6. The Appeals Committee shall conduct its affairs with as little formality as possible, but otherwise, subject to these Rules, shall have full power to regulate its conduct and operation.
- 4.4.7. Except where otherwise required by law, or otherwise determined by the Appeals Committee, a transcript of the hearing of the Appeals Committee and other information provided to the Appeals Committee, shall be kept confidential (save that information may be released with the consent of the appellant and a report of the Appeals Committee may be issued by the Appeals Committee to the Board, and/or published by the Board, as the Board thinks fit).
- 4.4.8. Minutes of hearings of the Appeals Committee shall be confined to a report of the decision made by the Appeals Committee and its recommendations, if any, to the Board.
- 4.4.9. Costs to the appellant associated with convening a meeting of the Appeals Committee will be capped at AUD \$1,000 per Appeal. The Appeals Committee may recommend to the Board that some or all of the costs be waived. In the event that the Appeal is successful, all College related costs paid by the appellant will be refunded.
- 4.4.10. The CEO may delegate his or her powers and duties in respect of any appeal to such persons as he or she determines.

4.5. Decisions of the Appeals Committee

An Appeals Committee may, upon considering all submissions:

- 4.5.1. Confirm the decision which is the subject of the appeal.
- 4.5.2. Revoke the decision which is the subject of the appeal.
- 4.5.3. Revoke the decision and/or refer the decision to the Board or relevant Committee for further consideration (upon such terms or conditions as the Appeals Committee may determine).

- 4.5.4. Revoke the decision and/or replace it with such other decision as it thinks fit.
- 4.5.5. Recommend to the Board whether part or all of the costs associated with the Appeals Committee should be waived.

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