

## **Schedule G: Level 2 Appeals Academic Review Board Terms of Reference and Rules of Procedure**

### **I. Academic Review Board function**

The Academic Review Board (ARB) is a special committee convened by the Associate Dean, Postgraduate Medical Education (PGME) to hear Level 2 appeals from a postgraduate medical resident or an International Medical Graduate in the Assessment Verification Period (hereafter referred to as “residents” or “appellants”) from the decision of the CC imposing a period of probation or a requirement to withdraw. The ARB makes a formal decision whether to deny or grant the appeal, with or without conditions.

The ARB also makes decisions with respect to suspensions under section 13.

### **II. Academic Review Board Membership**

The ARB will normally consist of no less than three members including:

- A designated Chair
- One faculty member
- One resident

**Note:** This number may be expanded at the discretion of the Associate Dean, PGME in consultation with the Vice-Dean Health Sciences Education should circumstances warrant.

Administrative support (secretarial) will be provided by the Postgraduate Medical Education Office.

Members will be selected from the Appeals Subcommittee (see Schedule I), as appointed by the Associate Dean, PGME. An Academic Review Board that is convened to consider a suspension shall have its membership approved by the Vice Dean, Health Sciences Education.

### **III. Procedure for a Suspension**

1. In the event of an investigation resulting from the suspension of a resident, pursuant to section 13.3b, the Associate Dean, PGME, appoints an investigator to conduct an investigation, which will include a review of relevant documents, interviews with individuals who have, or are reasonably likely to have, information that is relevant and necessary to the determination of the facts at issue, and an opportunity for the Program Director(s) and resident to understand and respond to the issues to be determined.

2. The Investigator will make findings of fact, on the balance of probabilities standard, and will provide a copy of their final report to the ARB. The ARB will meet in camera to review the Investigator's report and will determine whether the facts as found by the Investigator support a finding of misconduct. The ARB's conclusion(s) and reasons shall be reduced to writing.
3. The ARB shall provide the Program Director and the Resident (the Parties) with the Investigator's Report, and the ARB's conclusion(s) and reasons, and shall provide the Parties with a reasonable opportunity to present their views regarding next steps to the ARB. Where the ARB directs the Parties to provide their views in writing, the Parties are required to copy one another on any written submission they may choose to make.
4. The ARB shall have discretion to redact those portions of the Investigator's report that contain personal information that is not reasonably required in order to determine whether the Investigator's conclusions are based on relevant information and supported by the reasons given.
5. The Resident may have an advisory and/or support person (e.g., PARO representative, or legal counsel) present, but the Resident is expected to directly address any questions of the ARB.
6. After receiving the input of the Parties, or after the time for the Parties' response has lapsed, the ARB will decide whether to reinstate the Resident (immediately or after a period of time, with or without conditions), or require the Resident to withdraw. The ARB's decision, including its reasons, shall be provided in writing to the Parties, with a copy to the Associate Dean, PGME.

## **Procedure for an Appeal**

### **IV. Starting an Appeal – Time Limits**

- (a) A resident may, within 15 business days of notification of the CC/CCC decision that results in the imposition of probation or requiring the resident to withdraw, appeal to the ARB. Failure to adhere to the time limits may prevent the resident from pursuing the matter further.
- (b) The Chair may extend or abridge this, and other time limits established in these rules if, upon a written application by the requesting party, a satisfactory reason is provided for the delay and there is no undue prejudice to the other party. Normally time limits will be extended during holiday periods.

### **V. Parties**

Parties to every resident appeal shall include:

- (a) The resident who is appealing (the appellant); and
- (b) A respondent, who shall be the Program Director from the program whose decision is being appealed.

## **VI. Right to Representation and Assistance**

An appellant is encouraged to seek the assistance of an advisor or any other person, including legal counsel.

## **VII. Procedure**

- (a) An appeal to the ARB is commenced by filing a Notice of Appeal (Form A) with the ARB Secretary (the Secretary), with all supporting documentation, including a copy of the decision being appealed, any relevant facts, the precise grounds of the appeal, the specific remedy sought, all documents upon which the appellant intends to rely (including any authorities to which the ARB will be referred), the appellant's preferred method of proceeding, the reasons for requesting an in-person proceeding (if applicable) together with a list of any witnesses that the appellant intends to call, the name of appellant's counsel, if any, and the appellant's current contact information.
- (b) The respondent shall be provided with a copy of the Notice of Appeal by the Secretary and shall have 15 business days from the date of receipt to file a Response (Form B) which will include all documents upon which the respondent intends to rely (including any authorities to which the ARB will be referred), the respondent's preferred method of proceeding, the reasons for requesting or opposing a request for an in-person proceeding (if applicable,) together with a list of any witnesses to be called, and the name of respondent's counsel if any.
- (c) The secretary shall provide both parties with a list of the Appeals Subcommittee membership by email and shall be deemed to be received on the day after it was sent, unless that day is a holiday, in which case it shall be deemed to be received on the next day that is not a holiday. The parties shall then have 5 business days from the day after it was sent to respond by email, identifying any member(s) they perceive could have a conflict of interest with regard to the case.
- (d) Any submissions about preliminary matters such as jurisdiction or summary dismissal shall be raised at this time.
- (e) The Secretary shall provide the appellant with a copy of the Response.
- (f) No matter shall be placed before the ARB unless the appellant has filed, to the satisfaction of the Secretary, the appeal documents described above. The Secretary shall notify the appellant of any deficiencies in the appeal documents, and if these deficiencies are not corrected within the timeframe specified by the Secretary, the appeal may be disallowed for lack of completeness or for non-compliance with procedures. In the event that the Secretary is unable to contact the appellant at the last known address, the appeal shall be considered withdrawn.

## **VIII. Convening the ARB**

The Chair shall convene the ARB within 5 business days after the filing of the Response, or as soon thereafter as is possible, to examine the documents and to determine whether any additional information may be required. If the ARB requires additional information, it may request that the parties supplement their submissions or provide additional documents. Upon request, the ARB shall also have access to the resident's file.

## **IX. Disclosure**

The Secretary will forward to all parties every document that is before the ARB.

## **X. Delivery of Documents**

- a) Documents from both parties may be delivered personally, electronically, or by mail.
- b) An appellant shall provide the Secretary with the following information:
  - (i) a mailing address.
  - (ii) an email address; and
  - (iii) a telephone number.
- c) The appellant shall ensure that the contact information provided is current and accurate at all times until the appeal is finally disposed of. The appellant shall immediately notify the Secretary in writing of any change in this information.
- d) If the document is sent by regular mail, it shall be sent to the latest mailing address provided by the appellant and shall be deemed to be received by the party on the fifth business day after it was mailed.
- e) If the document is sent by email, it shall be deemed to be received on the day after it was sent, unless that day is a holiday, in which case it shall be deemed to be received on the next day that is not a holiday.

## **XI. Notice of Appeal Proceeding**

The Secretary, on behalf of the ARB, shall give the parties reasonable notice of the appeal proceeding. A Notice of Appeal Proceeding shall include:

- a) a statement of the method of the proceeding as selected by the ARB, and if the proceeding is to be held in person, the time and place selected; and
- b) a statement that if the party notified does not provide written submissions or attend at the proceeding, as the case may be, the ARB may nevertheless proceed, and the party will not be entitled to any further notice in the proceeding.

## **XII. Alternate Dispute Resolution**

- a) The Chair may at any stage of the proceedings before a decision is rendered, recommend that the parties participate in an alternate dispute resolution process for the purpose of resolving the proceeding or an issue arising in the proceeding.
- b) If the parties agree to participate in an alternate dispute resolution process, they and the Chair must establish timelines for resolving the dispute, normally no longer than 20 business days. At any time during the dispute resolution process, or at the conclusion of the established timeline if the dispute remains unresolved, either party may request that the appeal proceeding resume.
- c) No person called upon as a mediator or otherwise appointed to facilitate the resolution of a dispute under this section shall be required to give testimony or produce documents in a proceeding before any University decision-maker or in a civil proceeding with respect to matters that have come before them in the course of carrying out such duties.
- d) No mediation notes or document which is produced for the purposes of resolving the dispute will be disclosed in a proceeding before any University decision-maker or in a civil matter, other than as required for implementation or enforcement of the term of an agreed final resolution.
- e) Both parties shall sign a confidentiality agreement in the form attached (Form C).

## **XIII. Dismissal of Appeal Without Appeal Proceeding**

- a) The ARB may, on its own motion, dismiss a case after a review of the documents filed and without hearing from the parties if:
  - (i) The Chair determines that the ARB does not have jurisdiction;
  - (ii) The ARB determines that the appeal is clearly without merit or was commenced in bad faith; or
  - (iii) The appellant has not complied with the timelines or has failed to rectify a deficiency described in VII(f).
- b) The ARB shall notify the parties in writing that it is considering dismissing the appeal without an appeal proceeding for any of the reasons described in XIII(a), and it shall set a date to receive submissions from the parties on the issue.
- c) If a party files a request with supporting documentation asking that the ARB dismiss the appeal without an appeal proceeding, the ARB will provide the other party with 10 business days within which to file a response to the request and will schedule a time for the receipt of submissions.
- (d) If a decision is made to dismiss an appeal without an appeal proceeding, the Chair shall inform the parties in writing of the ARB's decision with reasons.

#### **XIV. Appeal Proceedings**

The ARB shall ordinarily determine appeals by way of written submissions. In-person appeal proceedings shall be held on an exceptional basis, including but not limited to the following circumstances:

- where the issues related to the grounds of appeal cannot be determined without the participation of one or more witnesses;
- where a credibility assessment is required to resolve competing evidence on an important point related to the grounds of appeal; or
- where the ARB determines that an in-person proceeding would permit a more efficient resolution of the issues before it.

A party that wishes to have an in-person appeal proceeding shall advise the ARB of their request in their Notice of Appeal or Response, as the case may be, and shall provide reasons for their request. The ARB shall consider any such requests and may exercise its discretion in determining the method of proceeding. Notwithstanding whether any such requests have been made, the ARB may decide to hold an in-person proceeding on its own motion.

#### **XV. Attendance of Witnesses**

Where an in-person proceeding has been selected by the ARB and witnesses have been permitted to be called:

- (a) Witnesses are not expected to be sworn or affirmed.
- (b) The ARB has no power to compel any person to attend an appeal proceeding.

#### **XVI. Appeal Proceedings To Be Private**

ARB proceedings are to be conducted in private. The Chair may direct who may or may not be present at any stage of an appeal proceeding.

#### **XVII. Examination of Witnesses**

- (a) A party to an in-person proceeding or their representative may
  - (i) Call and examine any witnesses and present evidence and submissions; and
  - (ii) Conduct cross-examinations of any witnesses reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding.
- (b) The Chair may reasonably limit examination or cross-examination of a witness when satisfied that the examination has been sufficient to disclose fully and fairly all matters relevant to the appeal, or that the questioning is irrelevant or abusive.

## **XVIII. Adjournments**

- (a) If during the course of any appeal proceeding, the ARB decides that additional information is required in order to resolve the matter, the Chair may adjourn the matter to permit the parties to bring forward such additional information or facts or to permit the ARB to obtain such additional information.
- (b) The ARB may decide to adjourn the appeal proceeding at the request of a party when it is satisfied that no party will be unduly prejudiced by the delay or that an injustice would occur if the appeal were to proceed.

## **XIX. Incapacity of Board Member**

If a member of an ARB who has participated in an appeal proceeding becomes unable, for any reason, to complete the appeal proceeding or to participate in the decision, the remaining members may complete the appeal proceeding and give a decision. In this event, if the decision of the ARB is not unanimous, a new ARB must be struck and the appeal proceeding re-commenced.

## **XX. Powers of the ARB**

- (a) The ARB has the following powers:
  - (i) To make preliminary or interim directions and procedural rulings concerning the conduct of the appeal proceeding, disclosure of documents and attendance of any witnesses
  - (ii) To direct any party to provide particulars or produce documents before or during the appeal proceeding
  - (iii) To fix dates for the commencement and continuation of appeal proceedings
  - (iv) To admit, in the interests of a fair and expeditious appeal, only evidence that is relevant to the issues properly before it
  - (v) To admit evidence that would not be admissible in a court of law if it is determined that the evidence is relevant, reliable and its probative value outweighs any prejudice which its admission might produce
  - (vi) To exclude evidence on the ground that it is unduly repetitious, irrelevant, or otherwise inadmissible, for example because of confidentiality or privacy concerns
  - (vii) To determine rules of procedure that are just and equitable and intended to provide a fair and expeditious appeal proceeding
  - (viii) To uphold the appeal and grant the remedy sought by the appellant in whole or in part, including re-instatement in the Postgraduate Program, and fashion any remedy deemed just and reasonable in the circumstances
  - (ix) To grant the appeal in part and require the appellant to complete a remediation plan developed by the Postgraduate Program prior to being

- permitted to continue in the Postgraduate Program
- (x) To deny the appeal
- (xi) To remit the matter back to the CC for reconsideration with directions regarding the process to be followed

(b) The ARB may not award financial compensation or costs to an appellant except for compensation for out-of-pocket expenses, other than legal fees or medical expenses, that were incurred by the appellant as a direct result of the decision that was reversed on appeal.

## **XXI. ARB Decision**

The ARB shall render a decision with reasons as soon as reasonably possible following the conclusion of the appeal proceeding. The decision and reasons shall be delivered to the Associate Dean, PGME. That decision will then be distributed to the appellant and the respondent(s) on behalf of the Associate Dean, PGME.

## **XXII. Record of Proceeding**

- I. The Secretary shall keep a record of all proceedings before the ARB which shall include:
  - (xii) Any written documents filed by the parties;
  - (xiii) Any interim orders made by the ARB;
  - (xiv) The decision of the ARB and the reasons therefore.
- II. The Secretary may make an audio recording of any in-person appeal proceeding for the purposes of aiding the ARB in its deliberations. Ordinarily any recording that is made shall be erased or destroyed after the decision of the ARB is rendered.