



Appeal and Reconsideration Regulations

Office of Accountability:	Postgraduate Medical Education
Office of Administrative Responsibility:	Postgraduate Medical Education
Scope:	All Postgraduate Trainees; All non-Dalhousie Trainees registered for electives; and University and Postgraduate Training Program Leadership
Approved	PGME Committee – 7 January 2021 Faculty Council – 3 Mar 2021

1.0 Appeal of an Unsatisfactory ITER, ITAR, Summative Performance Review, Competence Committee Review and Competence Committee Promotion Decision

1.1 Grounds for Appeal

Only ITERs rated as “Fail”, “Not Pass”, or “Failed to Meet Expectations” can be appealed. Only ITARs or summative performance reviews, or competency portfolio biannual review with a global rating of “significant concerns about progress” can be appealed. For the purposes of section 1.0, ITER, ITAR, Bi-Annual Performance Review, and Competence Committee Review or Competence Committee Promotion Decision will be referred to collectively as Program-Based Summative Assessments or “PBSA”.

An appeal of a PBSA can be made only on the basis that the Supervisor who completed it failed to follow the process set out in section 1.1, 1.2 or 1.3 of the Assessment of Training and Promotion Regulations, as applicable, or on the basis that there are extraordinary mitigating personal circumstances that ought to be considered.

1.2 Time Limitation

An appeal of a PBSA is a two-stage process that must be initiated within 10 working days of the postgraduate trainee being sent the PBSA results. The first stage must be completed within 15 working days of the postgraduate trainee being sent the PBSA; the second stage must be completed within 40 working days of the postgraduate trainee being sent the PBSA. Any deadline except the deadline to initiate the appeal in the first instance may be extended by the Program Director, in his or her sole discretion, at the request of any party to the appeal.

1.3 First Stage of Appeal

The first stage is an informal stage in which the postgraduate trainee must discuss the PBSA with the Supervisor who completed it and identify whatever additional information the postgraduate trainee believes should be considered (e.g. external factors which influenced the postgraduate trainee's performance; identification of other individuals who could add an additional perspective on the postgraduate trainee's performance). In the case of Competence Committee decisions, the postgraduate trainee must discuss the PBSA at issue, with the Competence Committee chair.

Within 15 working days of the postgraduate trainee being sent the PBSA, the Supervisor must either a) revise the PBSA in which event the revised PBSA becomes the official PBSA, replacing the earlier one; or b) advise the postgraduate trainee in writing that the PBSA will remain unchanged.

1.4 Second Stage of Appeal

If the postgraduate trainee is not satisfied with the review by the Supervisor (or Competence Committee chair, as appropriate), the postgraduate trainee may proceed to the second and formal stage of the appeal process by notifying the Program Director in writing of his or her intention to do so. This notice must be delivered no later than 5 working days following receipt of the Supervisor or Competence Committee chair's decision under section 1.3 above.

Upon receipt of written notice from the postgraduate trainee, the Program Director shall ask the Chair of the Department within which the Program resides to strike a Department Appeal Committee comprising two faculty members from the Department who have had no direct involvement in the evaluation of the postgraduate trainee in relation to the rotation in issue, one of whom shall be appointed Chair of the Department Appeal Committee, and, at the postgraduate trainee's election, another postgraduate trainee. If the postgraduate trainee appealing the PBSA elects to have a postgraduate trainee appointed to the Department Appeal Committee, such postgraduate trainee shall be selected by the Associate Dean, PGME and in the case of small Departments may be a postgraduate trainee from another program. If the postgraduate trainee does not elect to have a postgraduate trainee appointed to the Committee, the Chair of the Department shall appoint a third faculty member to the Committee.

Coincident with the appointment of the Department Appeal Committee members, the Chair of the Department shall set a date for the appeal. The appeal must be scheduled and heard within 20 working days of the Program Director receiving written notice from the postgraduate trainee.

The Program Director and postgraduate trainee shall provide the Department Appeal Committee with all documentation (i.e. evaluations, correspondence) relevant to the issues under appeal no later than 5 working days prior to the appeal. The Department Appeal Committee will provide the Program Director and postgraduate trainee respectively with copies of materials submitted by the other.

The Program Director and postgraduate trainee shall attend the appeal hearing and will be provided the opportunity to make submissions. The Department Appeal Committee shall then deliberate in camera. Minutes shall be kept of the appeal hearing and the decision reached through the in camera deliberations on a form provided by PGME will be recorded. No minutes shall be kept of the in camera discussions themselves.

The Department Appeal Committee has the power to:

1. a) uphold the original ITER/ITAR rating;
2. b) change the ITER to a rating of "Pass" or "Borderline";
- c) change the ITAR or Bi-Annual Performance Review or Competence Committee Review to a global rating of "progress as expected" or "some concerns about progress"; or
- d) Promote the trainee to the next stage of training

A copy of the minutes will be provided to the Associate Dean PGME. These minutes will not become part of the PGME postgraduate trainee file.

The Departmental Appeal Committee will prepare a written decision, which shall include:

1. a) a list of all individuals present during the hearing;
 2. b) evidence considered by the Departmental Appeal Committee;
 3. c) summary of submissions made during the hearing;
 4. d) a list of Department Appeal Committee members involved in making the decision;
- and
- e) reasons for the decision.

A copy of the decision will be provided to the postgraduate trainee and the Program Director. The Program Director will provide the decision to the Residency Program Committee ("RPC") or Areas of Focused Competence Committee ('AFCC').

If the Department Appeal Committee's decision is to change the rating per b) or c), the Program Director, in consultation with the RPC or AFCC, will determine if an Informal Enhanced Learning Plan is required to address deficiencies.

The decision of the Department Appeal Committee is final. It is tantamount to a final decision on a grade reassessment and is not subject to further appeal.

2.0 Reconsideration of the Residency or AFC Program Committee's decision to require a Formal Enhanced Learning Plan (FELP), the contents of a FELP, or the Terms and Conditions of Probation

2.1 Availability of a Reconsideration

A postgraduate trainee may request that the RPC or AFCC reconsider:

- a) its decision to require a postgraduate trainee to complete a FELP under section 6.2 or 6.4 of the Assessment of Training and Promotion Regulations;
- b) the contents of a FELP imposed by the Program Director under section 6.5 of the Assessment of Training and Promotion Regulations; and/or
- c) the terms and conditions of probation imposed by the RPC or AFCC under section 7.2 or 7.3 of the Assessment of Training and Promotion Regulations.

2.2 Time Limitations

A request for reconsideration under section 2.1 must be made in writing by the postgraduate trainee to the Program Director within 10 working days of delivery of the written notification of the decision to require a FELP, of the contents of the FELP, or of the terms and condition of probation to the postgraduate trainee. Any deadline except the deadline to initiate the review in the first instance may be extended by Program Director, in his or her sole discretion.

2.3 Procedure

Upon receipt of the request for reconsideration from the postgraduate trainee, the Program Director will set a date for the reconsideration hearing and provide notice to the postgraduate trainee and the RPC or AFCC. The reconsideration hearing must be scheduled and heard within 20 working days of receipt of the written notice to the Program Director. The Program Director shall provide the postgraduate trainee access to all documentation (i.e. evaluations, correspondence, minutes) forming the basis for the RPC decision being reconsidered, no later than 10 working days prior to the hearing. The postgraduate trainee shall provide the Program Director with any additional materials he or she wishes the RPC or AFCC to consider no later than five working days prior to the hearing.

The postgraduate trainee shall attend the reconsideration hearing and be provided the opportunity to make submissions. The RPC or AFCC shall then deliberate in camera. Minutes shall be kept of the hearing and the decision reached through the in camera deliberations will be recorded. No minutes shall be kept of the in camera discussions

themselves. The Program Director will not participate in the in camera portion of the meeting but will assign an alternate faculty member to chair the discussion. The RPC or AFCC may:

1. reaffirm its original decision, in whole or in part;
2. reverse its decision to require the postgraduate trainee to complete a FELP; or
3. make specific modifications to the contents of the FELP or to the terms and conditions of probation, as the case may be.

The RPC will prepare a written decision, which shall include:

1. a list of all individuals present during the hearing;
2. evidence considered by the RPC;
3. summary of submissions made during the hearing;
4. a list of RPC members involved in making the decision; and
5. reasons for the decision.

The Program Director will provide a copy of the decision to the postgraduate trainee. A copy of the decision will also be forwarded to the Associate Dean, PGME for inclusion in the postgraduate trainee's file. A copy of the minutes will be forwarded to the Associate Dean PGME, but will not become part of the postgraduate trainee's file.

The decision of the RPC or AFCC may be appealed to the standing Faculty Appeals Committee.

3.0 Appeal of a Reconsideration by the RPC or AFCC or of a Decision to Dismiss or Suspend a Postgraduate Trainee from the Program

3.1 Availability of Appeal

A postgraduate trainee may appeal a decision of:

a) the RPC or AFCC:

- i) in relation to its reconsideration of its decision to require a postgraduate trainee to complete a FELP and/or of the contents of a FELP under section 2.1 of these regulations;
- ii) in relation to its reconsideration of the terms and conditions of academic probation under section 2.1 of these regulations, or

iii) to dismiss or suspend a postgraduate trainee from the program under sections 9.1 or 9.2 of the Assessment of Training and Promotion Regulations,

b) the Program Director and Assistant Dean, Resident Affairs in relation to an accommodation decision made by them under the Postgraduate Medical Trainee Academic Accommodation Policy.

3.2 Grounds of Appeal

A postgraduate trainee's appeal may be made only on the following grounds:

a) that the RPC, AFCC, or Program Director and Assistant Dean, Resident Affairs (as applicable) had no jurisdiction to make the decision; or

b) that the RPC, AFCC, or Program Director and Assistant Dean, Resident Affairs (as applicable) denied the postgraduate trainee natural justice (procedural fairness) in rendering its decision.

c) under section 9.1 i) of the Assessment of Training and Promotion regulations that the decision to dismiss a resident from their training program based on inability to provide appropriate accommodation does not meet the appropriate standard for reasonableness

3.3 Time Limitation

An appeal of a decision of the RPC or AFCC under this section must be made within 15 working days of delivery of the RPC or AFCC's written decision pursuant to section 2.3 of these regulations to the postgraduate trainee. To initiate an appeal, the postgraduate trainee must notify the Associate Dean PGME in writing of his or her intention to appeal, enclosing a copy of the decision of the RPC or AFCC. Any deadline except the deadline to initiate the appeal in the first instance may be extended by Associate Dean, PGME, in his or her sole discretion, at the request of any party to the appeal.

3.4 Faculty Appeals Committee

The purpose of the Faculty Appeals Committee is to hear any academic or disciplinary appeal by a postgraduate trainee registered within the Faculty of Medicine in accordance with the jurisdiction and procedures approved by the Faculty of Medicine for Faculty Governance as per Section 21.0-21.10 of the ***Procedural Framework & Terms of Reference for Faculty, Faculty Council, & Standing Committees of Faculty***.

Upon receipt of the notice of appeal from the postgraduate trainee, and on notice to the Program Director, the Associate Dean PGME shall notify the Chair of the standing Faculty Appeals Committee. The Chair will appoint an appeal panel from among its members to hear and decide the appeal brought by a trainee in accordance with the terms of reference for ***Faculty, Faculty Council, & Standing Committees of Faculty***, and the PGME Appeal Regulations, as applicable.

The appointed panel (hereafter referred to in this document as the Committee) will be comprised of members of the standing Faculty Appeals committee including a minimum of two faculty members (one of whom shall be the Chair or Vice Chair of the standing Faculty Appeal committee who will serve as appointed Chair of the appointed appeal panel) and one postgraduate trainee. None of whom shall have had any prior connection with the issues under appeal. The Associate Dean, PGME will review the appeal process with the postgraduate trainee.

3.5 Pre-Hearing Procedures

The Associate Dean, PGME shall:

- a) set a date for the appeal hearing which shall be no later than 40 working days after receipt of the postgraduate trainee's notice of appeal and provide notice of the appeal date to the Program Director and to the postgraduate trainee;
- b) establish a deadline for the Program Director to provide the Chair with copies of all documentation considered by the RPC or AFCC in making the decision under appeal, together with a copy of the RPC or AFCC's written decision;
- c) provide copies of the material provided by the Program Director under subsection b) to the postgraduate trainee and establish a deadline for the postgraduate trainee to provide written submissions outlining the basis for the appeal and any supporting documentation;
- d) provide copies of the postgraduate trainee's submissions to the Program Director and establish a deadline for the Program Director to provide written submissions responding to the postgraduate trainee submissions;
- e) provide the postgraduate trainee with a copy of the Program Director's submissions;
- f) provide the Committee members with both sets of submissions and supporting documentation.

3.6 The Appeal Hearing

The postgraduate trainee and the Program Director shall attend the appeal hearing and be provided the opportunity to make submissions, and to respond to questions from the Committee or the other party. The postgraduate trainee has the right to have a support person or other representative present for the meeting.

3.7 Deliberations and Decision

The Committee shall then deliberate in camera.

3.7.1 In relation an appeal under section 3.1 a) i) or ii), the Committee has the power to:

1. a) dismiss the appeal, thereby permitting the RPC or AFCC's decision to stand; or

2. b) allow the appeal in whole or in part, providing direction to the RPC or AFCC for further consideration as may be appropriate.

3.7.2 In relation to an appeal of a decision to suspend or dismiss a postgraduate trainee, the Committee has the power to:

- a) dismiss the appeal;
- b) allow the appeal, in whole or in part, directing the RPC or AFCC to place the postgraduate trainee on probation and providing recommendations concerning the terms of probation the Committee deems appropriate; or
- c) refer the matter back to the RPC, or AFCC to:
 - i) provide better written reasons where the Committee determines that the RPC or AFCC's only deficiency is in relation to the adequacy of the written reasons provided to the postgraduate trainee; or
 - ii) re-hear all or part of the matter, providing such direction as the Committee deems appropriate.

3.7.3 In relation to an appeal of an accommodation decision, the Committee has the power to:

- a) dismiss the appeal;
- b) allow the appeal, in whole or in part, directing the Program Director and Assistant Dean of Resident Affairs to provide reasonable accommodation on terms the Committee deems appropriate;
- c) refer the matter back to the Program Director and Assistant Dean of Resident Affairs to:
 - i) provide better written reasons where the Committee determines that the Program Director and Assistant Dean, Resident Affairs' only deficiency is in relation to the adequacy of the written reasons provided to the postgraduate trainee; or
 - ii) reconsider all or part of the matter, providing such direction as the Committee deems appropriate.

3.7.4 Minutes shall be kept of the appeal meeting including *in camera* deliberations. The Committee will provide a written decision, including reasons and the minutes to the Associate Dean PGME. The Associate Dean, PGME, shall provide the decision to the postgraduate trainee and to the Program Director.

The Committee's minutes will not become part of the postgraduate trainee's file.