

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report # 420 of the Academic Appeals Committee
June 23rd, 2022

To the Academic Board
University of Toronto

Your Committee reports that it held an electronic hearing, conducted by Zoom on Thursday, March 17, 2022, at which the following members were present:

Academic Appeals Committee Members:

Professor Hamish Stewart, Senior Chair
Professor Mark Lautens, Faculty Governor
Mr. Amin Kamaleddin, Student Governor

Hearing Secretary:

Ms. Nadia Bruno, Special Projects Officer, Office of Appeals, Discipline and Faculty Grievances

For the Student Appellant:

Mr. S.J. (the “Student”)

For the Faculty of Medicine:

Mr. Robert Centa, Paliare Roland Rothstein Rosenberg LLP
Ms. Glynnis Hawe, Paliare Roland Rothstein Rosenberg LLP

Overview

In July 2016, the Student began a five-year residency program in paediatric neurology at the Hospital for Sick Children (SickKids). During the 2018/2019 academic year, the third year of the program, the Student failed one of his four-week rotations. Following three months of informal remediation, the program’s Promotions and Competence Committee (PCC) recommended that he complete six months of formal remediation. The Faculty of Medicine’s Board of Examiners – Postgraduate (BOE-PG) ultimately accepted this recommendation. The Student appealed to the Faculty’s Appeal Committee (FMAC). While the FMAC was considering the Student’s appeal, the Student successfully completed the formal remediation. Effective June 5, 2020, the Student resigned from the residency program. On July 21, 2020, the FMAC dismissed the Student’s appeal. The Student appeals to your Committee.

The appeal is dismissed.

Chronology of the Student's Residency and of the Student's Appeals

In the fall of 2016, the Student entered the Paediatric Neurology Residency and Fellowship Program at SickKids, a five-year program. The program director was Dr. Cecil Hahn of SickKids' Division of Neurology and of the Faculty's Department of Paediatrics. Each year of the program consisted of several training blocks of approximately four weeks each. A student's performance in each block was evaluated on a scale of 1 to 5, with 3 ("meets expectations") being the passing grade. Throughout the first two years of the program and the first eight blocks of the third year, the Student received an overall evaluation of 3 or higher in each rotation, though some concerns were expressed about his performance.

In the ninth block of the third year, the Student was assigned to the Epilepsy rotation, which ran from February 11 to March 10, 2019, under the supervision of Dr. Robyn Whitney. Although he received an overall passing grade of 3, some elements of his performance were assessed at 2 ("below expectations").

In the tenth block of the third year, the Student was assigned to the Ward/Consult rotation, which ran from March 11 to April 7, 2019, under the supervision of Dr. Elizabeth Pulcine. His overall performance in this rotation was assessed at 2 ("below expectations"). In her evaluation, Dr. Pulcine expressed several concerns about the Student's background knowledge and about his skills in patient examination, history-taking, and diagnosis.

In early March 2019, Dr. Hahn had discussions with several faculty members who had supervised the Student concerning the Student's performance. Dr. Hahn concluded that the Student was in academic distress and, in accordance with the applicable policy, presented the PCC with some options for remediating the Student's performance. On April 1, 2019, the PCC recommended six months of formal remediation. The Student objected to this recommendation on various grounds. The PCC responded to the Student's objections by withdrawing its original recommendation and recommending instead three months of informal remediation. The remediation was to be conducted in accordance with an academic support plan which provided certain criteria for success. On May 2, 2019, the Student agreed to the academic support plan.

Accordingly, from May 6 to July 28, 2019, the Student engaged in three blocks of informal remediation. The Student failed to meet the criteria set out in the academic support plan. His evaluations noted weaknesses with his skills in patient examination and history-taking, among other areas.

Because informal remediation had not succeeded, the PCC recommended that the Student again be presented to the BOE-PG for formal remediation. The Student appealed that recommendation to the Department's Appeal Committee. That appeal was dismissed (Student's Notice of Appeal [NoA], p. 60). The PCC then asked the BOE-PG to order formal remediation. On August 26, 2019, the BOE-PG accepted that recommendation and directed the Student to enter into a six-block period of formal remediation, which would last roughly six months.

The Student requested, and was granted, permission to complete a block of training at McGill University, from October to December 2019, before beginning his formal remediation. The Student began the formal remediation on December 16, 2019.

In January 2020, the Student appealed the BOE-PG's decision to require formal remediation to the FMAC. On March 2, 2020, the FMAC issued its decision. It considered information provided by the parties that had not been before the BOE-PG, and in light of this information, directed the BOE-PG to reconsider its decision. In particular, the FMAC was "concerned that [the Student] did not receive the

feedback that was used internally to justify the need for remediation and some of this this feedback ... was provided well after the evaluation period” (NoA, p. 212).

On March 30, 2020, the BOE-PG affirmed its earlier decision to require formal remediation and on April 27, 2020 provided its reasons for doing so. It is this decision that is ultimately the subject of the Student’s appeal to your Committee.

The Student successfully completed formal remediation on May 29, 2020. Effective June 5, 2020, he resigned from the residency program.

Meanwhile, the Student had appealed the BOE-PG’s decision of March/April 2020 to the FMAC. His grounds of appeal were essentially the same as those on the appeal to your Committee, as noted below. On July 21, 2020, the FMAC dismissed the Student’s appeal (NoA, pp. 006-007).

The Student’s Complaints about Dr. Hahn and Dr. Dlamini

In November 2019, the Student filed two complaints with the Faculty’s Department of Paediatrics. In the first complaint, he alleged that Dr. Hahn had harassed him at a meeting on March 4, 2019, and that Dr. Hahn’s decision to refer him to the PCC was retaliation or reprisal for a negative performance evaluation that the Student had made of Dr. Hahn on March 13, 2019. The second complaint concerned Dr. Noma Dlamini. Dr. Dlamini had supervised the Student’s rotation from June 8 to 30, 2018, but did not complete her evaluation of the Student’s performance until May 2019. The Student alleged that this late filing was a form of intimidation and harassment.

The Student’s complaints were dealt with in accordance with the Faculty’s procedures for handling complaints of intimidation, harassment, and unprofessionalism in post-graduate medical programs. Dr. Salvatore Spadafora, Vice-Dean for post-graduate medical education, ultimately concluded that the Student had not been intimidated or harassed, but ordered the late evaluation removed from the Student’s record.

Your Committee has no jurisdiction to consider these complaints on their own merits. While your Committee is arguably not bound by the factual conclusions reached by Dr. Spadafora in resolving them, to the extent they are relevant to this appeal, your Committee finds as follows.

First, with respect to the allegation that Dr. Hahn’s decision to refer the Student to the PCC was a form of retaliation, the evidence is overwhelming that Dr. Hahn was unaware of the evaluation until December 2019 and that, accordingly, it could not have affected his decision-making in March 2019. Your Committee had before it Dr. Hahn’s unchallenged affidavit to that effect (Faculty Book of Documents [BoD], Tab 10) and no evidence to the contrary. Moreover, the evidence is also overwhelming that Dr. Hahn was motivated to refer the Student to the PCC by the information he had received from his colleagues expressing their concerns about the Student’s performance in the residency program (BoD, Tabs 4 to 7). Finally, in any event, the issue on this appeal is the reasonableness of the BOE-PG’s decision to require the Student to take formal remediation, not Dr. Hahn’s reasons for referring the Student to the PCC.

Second, the late evaluation was only one of many pieces of information that was before the BOE-PG when it made its decision. Your Committee finds that removing it from the Student’s file at an earlier stage would have made no difference to that decision.

Jurisdictional Comments from the Chair

The Chair of your Committee has doubts as to whether it was appropriate for your Committee to hear this appeal. As noted, the Student appeals from a decision directing him to complete an academic requirement that he then successfully completed. This sequence of events suggests two related reasons why it might not be appropriate to hear the appeal. First, the student having successfully completed the academic requirement in question, an appeal from an order that he do so is arguably moot. Second, if your Committee agreed with the Student's submission that he should not have been directed to complete this requirement, it is unclear what remedy your Committee could have given him. The Student specifically seeks the following remedy (NoA, p. 011):

a clear recognition letter; that **1**) admits; a) the injustice of the prolonging process that has many circumstances of bias and external influences and b) unfair decisions from the Board of Examiners (BOE) of the remediation for six months that was released on August 26, 2019, and **2**) clarifies all inaccurate responses and harmfulness from all committees who supported that decision ...

Your Committee "has only the powers given to it by Governing Council, expressly or by necessary implication, in its Terms of Reference" (Report 359-1). It is unclear whether the discretion to hear a moot appeal or the jurisdiction to issue a letter of the kind sought by the Student falls within those powers. Since the Student's appeal is in any event dismissed, and since it appears that the Faculty deliberately chose not to argue these questions, it is not necessary to determine them.

The Student's Appeal to the Academic Appeal Committee

The Student's central claim is that the BOE-PG should not have required him to engage in formal remediation. The Student raises the following grounds of appeal:

- A. "Lack of Transparency and Timeliness" leading up to Dr. Hahn's decision to refer the Student to the PCC (NoA, pp. 014-015).
- B. "Lack of Consistency" in that the Student "did not have any opportunity to do outside rotation or elective during the unofficial remediation period ..." (NoA, p. 015, original emphasis).
- C. "Lack of Confidentiality". The Student alleges breaches of confidentiality.
- D. "Lack of Fairness and Equity" (NoA, p. 016). Under this heading, the student makes a number of complaints about the conduct of the informal remediation (May to July 2019).
- E. "Lack of Credibility in Evaluations". Under this heading, the Student takes issue with the manner in which he was evaluated throughout the program.
- F. "Lack of Adhering to Official University Policy and Procedure". Under this heading, the Student argues:
 1. His supervision during the formal remediation was not consistent with the BOE-PG's remediation decision;
 2. In particular, Dr. Mahendranath Moharir should not have been assigned as an evaluator because of alleged bias;
 3. The remediation block that he passed at McGill should have been counted towards his formal remediation; and
 4. When reconsidering his case, the BOE did not comply with the FMAC's directions.

The Faculty submits that “[t]he sole issue on this appeal is whether the FMAC’s decision to uphold the decision of the BOE-PG to require remediation was reasonable” (Faculty Submissions, para. 29).

Your Committee finds that none of the grounds of appeal raised by the Student cast any doubt on the reasonableness of the BOE-PG’s decision or on the reasonableness of the FMAC’s dismissal of the Student’s appeal from that decision.

A. Allegations Concerning Transparency and Timeliness

The essence of the Student’s complaints under this heading is that “there were never any concerns about my performance brought to my attention” in the year proceeding March 2019 (NoA, p.014, emphasis removed). However, as the Faculty points out in its submission, this complaint is clearly contradicted by the material filed by both parties with your Committee. The Student’s Notice of Appeal and the Faculty’s Book of Documents both contain numerous expressions of concern about the Student’s performance before March 2019 (see also the discussion under E below).

Moreover, as the Faculty submits, “Even an absence of prior documented academic difficulty would not invalidate [the Student’s] referral to remediation” (Faculty Submissions, para. 81). The issue for the BOE-PG, given the information before it when it reconsidered its decision in March 2020, was whether the Student required remediation as of the end of his informal period of remediation (*i.e.*, late August 2019). Given the Student’s weak performance in the ninth and tenth blocks of his third year, and particularly given his lack of success in informal remediation, the BOE-PG’s determination that he required formal remediation was reasonable.

B. Allegation of Lack of Consistency

The Student complains about inconsistent responses to his requests to do outside rotations during the period of informal remediation, in particular a rotation that he proposed to do at McMaster from August 26 to September 22, 2019. As noted above, the Student was eventually able to complete a rotation at McGill University from October to December 2019. The Student does not clearly explain how these events bear on the decision of the BOE-PG; perhaps the suggestion is that good performance at McMaster would have made formal remediation unnecessary. In any event, your Committee finds no inconsistency in the way the Faculty dealt with the Student’s requests concerning outside rotations. When the Student proposed the McMaster rotation, Dr. Hahn simply told him that a decision on that issue would have to await the outcome of his appeal of the decision of the BOE-PG to the Department’s appeal committee (BoD, p. 157). Ultimately, the Faculty did approve this suggestion and the Student chose not to take it up. There is no merit to the allegation of lack of consistency.

C. Allegations of Lack of Confidentiality

The Student says (i) that “a resident and 2 staff that Dr. Hahn ... and Dr. Yeh had told them that they had concerns about me **prior** to the decision of remediation” (NoA, p. 015, original emphasis). He also says (ii) (under ground of appeal D) that Dr. Hahn contacted Dr. Cooper and Dr. Aziz, who were his supervisors during a rotation from July 29 to August 25, 2019, before he started that rotation, “and told [them] that he has concerns about me and he needs their ‘honest’ feedback” (NoA, p. 016). He alleges that these incidents adversely affected his remediation.

As for allegation (i), throughout the proceedings, the Student has never provided any evidence as to who these three people were (except his statement that they “were not . . . part of the remediation plan”), precisely what information they received, or whether they were unauthorized to receive such information. Moreover, he has never made any submissions as to how this incident, whether or not amounted to a breach of confidentiality, might have affected the reasonableness of the BOE-PG’s decision or the manner in which his informal or formal remediation was conducted. It is not disputed that Dr. Hahn and Dr. Yeh did have concerns and that the BOE-PG took those concerns into account.

As for allegation (ii), your Committee agrees with the Faculty that any disclosures Dr. Hahn made to Drs. Cooper and Aziz about his concerns regarding the Student’s performance were authorized by the Faculty’s Remediation Policy. Your Committee agrees with the Faculty’s submission that “Drs. Cooper and Aziz were [the Student’s] clinical supervisors and it was within Dr. Hahn’s discretion as Program Director to discuss [the Student’s] learning needs with them” (Faculty Submissions, para. 99). The Student does not explain how these discussions might have affected the reasonableness of the BOE-PG’s decision or the manner in which his remediation was conducted.

The Student states that Dr. Hahn’s discussions with Drs. Cooper and Aziz indicated an “intention of punishing me with 6 months remediation regardless of the outside rotation [at McMaster] . . .” (NoA, p. 16, emphasis removed). This submission misconstrues the function of remediation. Remediation is not a form of punishment, but an opportunity for students to demonstrate that their skills are at the level necessary to proceed in their residency. Your Committee finds that these discussions were entirely proper.

D. Allegations Concerning the Conduct of the Informal Remediation

The Student notes that he passed the first block of his informal remediation, supervised by Dr. Hernan Gonorazky, and submits that “this rotation was not accounted for” (NoA, p. 016). There is no basis for this submission. The materials filed by the parties indicate that the Student successfully completed this rotation and that the evaluation forms part of his academic record (BoD, pp. 283-284).

The Student alleges that Dr. Hahn accused him of “being unprofessional” because of his decision to appeal the BOE-PG’s decision. The Student had a right to bring that appeal and his decision to do so does not manifest any lack of professionalism. However, there is nothing in the record to document the Student’s allegation that Dr. Hahn accused him of lack of professionalism on this basis. Your Committee rejects this allegation.

E. Allegations of Lack of Credibility in Evaluations

Under this heading, the Student challenges some of the evaluations that he received at various points from various supervisors during his third program year and during the informal remediation. He also notes the lateness of Dr. Dlamini’s evaluation from June 2018, discussed above, and argues that there was no concern about his communication skills prior to March 2019. At the hearing of the appeal, the Student emphasized the subjective element in the evaluation of skills such as communications and history-taking.

Your Committee will not reassess the merits of the Student’s academic performance. It is well-recognized that reassessing an evaluation is not the proper role of this Committee, as it has neither the expertise nor the informational basis to make such a reassessment. For example, the Student recounts an evaluation, conducted by Dr. Weiss, of his history-taking skills. He submits that he should have passed because he

“asked all important relevant questions”, but Dr. Weiss failed him because he “missed a few points” (NoA, p. 017). Your Committee is in no position to determine whether the competing assessments that Dr. Weiss and the Student himself have provided of his performance on this evaluation were reasonable or correct, and we must therefore accept Dr. Weiss’s assessment. There is no indication in the materials that the Student appealed any of the grades assigned at any point in his program. Your Committee accepts that there is a subjective element in assessment, but the Student has not provided us with any reason to think that any subjective element in evaluation was applied unfairly to him. In any event, the proper venue for such determinations is a grade appeal.

However, it is fair to say that the essence of the Student’s submission under this heading was not that your Committee should directly reassess his performance. It was, rather, that your Committee should infer from his previous academic success that he would have continued to succeed and therefore it follows that he was not assessed fairly during the third year of his program and during his informal remediation; thus, his failure must have been due to some factor other than his performance. As he puts it, “I am not aware that people can fluctuate from competence to incompetence so rapidly and abruptly between rotations” (NoA, p. 018, emphasis removed).

Your Committee declines to draw the inference that the Student’s previous academic success means that his performance during the third program year and during the informal remediation was not properly assessed. As counsel for the Faculty rightly noted at the hearing, past performance is not a guarantee of future success. Moreover, there are numerous indications of concerns about the Student’s performance prior to March 2019 (see, for example, BoD, pp. 201, 212-217, 239, 252, 266; these assessments include several occasions on which the Student’s performance had been assessed at 2 (“below expectations”) on various competencies). The Student’s difficulties during the Ward/Consult rotation and the period of informal remediation, contrary to the Student’s submissions, are not inconsistent with his past performance.

F. Alleged Failure to Follow University Policies During Formal Remediation

The Student raises some objections to the supervisors who were assigned to him during the period of formal remediation. He notes that two of those supervisors had also supervised him during the period of informal remediation and that three of them were members of the PCC; moreover, both the BOE-PG and the FMAC had indicated that a greater diversity of supervisors might be advisable. The Faculty notes that, in fact, only one of the formal remediation supervisors had supervised him during informal remediation (the other completed an evaluation but was not a supervisor) and that the Student had a total of 11 different supervisors during the formal remediation.

It might have been preferable to arrange the Student’s remediation so that he was supervised only by faculty members who had not previously evaluated him. However, given the relatively small size of the paediatric neurology program, that does not appear to have been feasible. In any event, your Committee finds that the Student’s objections to his supervision are irrelevant to this appeal because, as already noted, the Student successfully completed the formal remediation.

Your Committee rejects the allegation that Dr. Moharir was biased against the Student. The Student states that Dr. Moharir “failed me for professionalism during PGY-1” and that Dr. Moharir “did not provide me with any feedback regarding the professional concerns” (NoA, p. 019). There is no basis for the claim that the Student “failed” professionalism in the first program year. As noted, the Student passed all training blocks in the first two years of the program. Dr. Moharir did contribute to an evaluation where the Student

received a grade of 2 (“below expectations”) in certain aspects of his professional role, but the supervisors’ overall evaluation of the Student in that role was 3 (“meets expectations”) (NoA, pp. 330-332). In Block 1 of the third program year, Dr. Moharir and Dr. MacGregor jointly evaluated all aspects of the Student’s professional role as 3 (“meets expectations”) or 4 (“above expectations”) (BoD, p. 288). In any event, an instructor’s negative assessment of a student’s work is not an indication of bias, nor is it an indication that the instructor will be unable to assess a student’s work fairly in the future.

The Student argues that the three months he spent at McGill should have been counted as part of his formal remediation. He states that it was “officially part of the initial remediation plan” (NoA, p. 019). Again, since the Student successfully completed the formal remediation, the significance of this argument is unclear. In any event, there is nothing in the record to suggest that the Student’s time at McGill was ever part of the formal remediation or that the Student was told it would be. The BOE-PG accepted the remediation plan proposed by the Student’s program (NoA, p. 061). The only reference to McGill in that plan was the statement that the Student “received permission to complete a three month elective at McGill University ...” (notes of the CPC Committee meeting, NoA, p. 167). There was no suggestion that this period would count towards the formal remediation.

The Student submits that when reconsidering his case, the BOE-PG did not comply with the FMAC’s directions. As noted, on March 2, 2020, the FMAC ordered the BOE-PG to reconsider its decision of August 26, 2019, and specifically asked it to consider certain documents (NoA, p. 212). The Student says that the BOE-PG did not do so. When it released its reconsideration decision on March 30, 2020, the BOE-PG stated that it had had “a thorough discussion of this new material” (NoA, p. 216). There was nothing before your Committee to cast doubt on this statement.

Conclusion

The appeal is dismissed.