



**FOR INFORMATION**

**PUBLIC**

**OPEN SESSION**

<b>TO:</b>	Academic Board
<b>SPONSOR: CONTACT INFO:</b>	Mr. Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances, (416) 946-7663, <a href="mailto:christopher.lang@utoronto.ca">christopher.lang@utoronto.ca</a>
<b>PRESENTER: CONTACT INFO:</b>	See Sponsor
<b>DATE:</b>	November 6, 2025 for November 13, 2025
<b>AGENDA ITEM:</b>	11a

**ITEM IDENTIFICATION:**

Academic Appeals Committee, Individual Reports, Fall 2025.

**JURISDICTIONAL INFORMATION:**

Section 2.1 of the *Terms of Reference of the Academic Appeals Committee* describes the function of the Committee as follows:

To hear and consider appeals made by students against decisions of faculty, college or school councils (or committees thereof) in the application of academic regulations and requirements and to report its decisions, which shall be final, for information to the Academic Board. The name of the appellant shall be withheld in such reports.

Section 5.3.4 of the *Terms of Reference of the Academic Board* provides for the Board to receive for information Reports of the Academic Appeals Committee without names.

**GOVERNANCE PATH:**

1. Academic Board [for information] (November 13, 2025)

**PREVIOUS ACTION TAKEN:**

The last semi-annual report came to the Academic Board on May 29, 2025.

**HIGHLIGHTS:**

The purpose of the information package is to fulfill the requirements of the Academic Appeals Committee and, in so doing, inform the Board of the Committee’s work and the matters it considers, and the process

it follows. It is not intended to create a discussion regarding individual cases or their specifics, as these were dealt with by an adjudicative body, with a legally qualified chair and was bound by due process and fairness. The Academic Appeals Committee's decisions are based on the materials submitted by the parties and are final.

**FINANCIAL IMPLICATIONS:**

There are no financial implications.

**RECOMMENDATION:**

For information.

**DOCUMENTATION PROVIDED:**

- Academic Appeals Committee, Individual Reports, Fall 2025

**UNIVERSITY OF TORONTO  
GOVERNING COUNCIL**

Report #440 of the Academic Appeals Committee  
July 17, 2025

To the Academic Board  
University of Toronto

Your Committee reports that it held a hearing on May 2, 2025, at which the following members were present:

**Academic Appeals Committee Members:**

Sara Faherty, Chair  
Professor Aarthi Ashok, Teaching Staff Governor  
Cameron Miranda-Radbord, Student Governor

**Hearing Secretary:**

Carmelle Salomon-Labbé, Associate Director, Office of Appeals, Discipline and Faculty Grievances

**For the Student Appellant:**

G.M. (the “Student Appellant”)

**For the Faculty of Applied Science and Engineering:**

Professor Evan Bentz, Vice Dean, Undergraduate

**I. Overview**

This is an appeal of the decision reached by the Faculty of Applied Science and Engineering (FASE) Academic Appeals Board after a hearing on September 26, 2024. The Appeals Board approved the original June 5, 2024, decision of the FASE Undergraduate Assessment Committee to deny the Student’s petition.. They wrote that they were sympathetic to the Student’s circumstances but found there was insufficient rationale to justify granting his appeal request.

Issue: The Student is asking to be allowed to write a deferred exam in CIV332H1S, *Transport II*, rather than taking the course again.

**II. The Facts**

*The Car Accident*

The Student Appellant had a busy exam schedule during the Winter term of 2024, requiring him to write five exams in ten days. On his way home from his first exam, on the afternoon of Friday, April 19, 2024, the Student Appellant was a passenger in a car accident. He writes that he and the driver, a classmate, were “shaken and stunned” after the collision. He brought the driver to the hospital and spent the rest of the afternoon and evening there, although he was not admitted himself.

The Student Appellant submitted a police report filed regarding the collision on April 19<sup>th</sup>. The report establishes that the accident was severe: indicating that the right front door of the vehicle involved

required repair and the right back door required replacement. The Division noted that the Student's name does not appear on the report, but Vice Dean Bentz acknowledged that this did not mean he was not in the car. He stated that he believed the Student was being truthful about the occurrence of the accident.

The three photographs submitted by the Student Appellant also support the veracity of his report about the automobile accident. Two of them show the car, and it is clearly damaged. The third show him and his friend, the driver of the vehicle in the hospital, and are time stamped on April 19<sup>th</sup> after 10 pm.

### Post-Accident Injuries

He reports that on the days following the accident he “experienced painful migraines,” and “sharp pains throughout [his] body,” which made it hard for [him] to focus on studying.” He “constantly require[d] breaks to ease the pain.” The Student Appellant reports that he has had a concussion before, and that he experienced similar symptoms during the period after the collision. The symptoms worsened each day for the first week. He did not seek medical attention during this week following the accident.

During this period, he had his remaining four exams to write. Despite the challenges he was facing, he decided to complete those exams because he “had already prepared extensively and did not want to undergo the lengthy process of submitting petitions and writing deferred exams.” He was also reluctant to defer exams because he had pre-determined arrangements with an in-person co-op placement that could not be changed. (The Student Appellant told your Committee, and the division confirmed, that the placement strictly requires students to undergo training and if they missed training days they would not be allowed to continue in the placement.)

The Student was aware, even as he wrote the exams that week, including two on Monday and Tuesday of the week following the accident, of “the impairment the accident had caused on [his] ability to retain topics [he] had studied, and [his] ability to critically think.” in the days following the accident.

### Transport II

The Student Appellant wrote the exam for CIV332H1S, *Transport II*, on Thursday, April 25, 2024. That exam is the subject of this appeal.

The Student Appellant reports that *Transport II* was the most difficult course of the semester. He had received a 20% on the midterm exam and a 60% on non-closely supervised term work. Vice Dean Bentz argues that the Student Appellant's poor performance on these assignments suggests that his score on the final exam was an accurate reflection of his understanding of the course material. However, the Student Appellant attributes his low score on the midterm to a deliberate strategy – the course instructor raised Students' midterm and non-supervised term work marks to be the same as their mark on the exam, which meant that if the Student Appellant improved on his performance on the midterm, the final exam would functionally be worth 100% of his final grade. Thus, the Student Appellant reports, he did not study for the midterm to prioritize studying for the final exam and completing more pressing assignments in other courses.

The Student Appellant and Vice Dean Bentz agree that this was a risky strategy, and one that ultimately did not pay off. While writing the exam for *Transport II*, the Student Appellant continued to experience migraines and body aches. Although, he felt most anxious about this most difficult course of the semester, and he did his best to “stay focused and take [his] attention away from the pain,” he left the exam “[feeling] uneasy about [his] performance and was certain that [his] injury had negatively impacted [his] results.”

However, the Student Appellant did not submit a petition to retake the exam in the weeks after he wrote it but before he received his final grade. While he knew he had done poorly on the exam, he explained during the hearing that he was hoping that he either (a) scored at least 50%; or (b) if his mark were under 50% it would be raised up “by the curve.”

Neither took place. The Student Appellant scored a 39% on the final exam (which his midterm score was upgraded to equal) and a 41% in the course overall. Shortly after receiving his mark, the Student Appellant petitioned to retake the exam.

In his original petition, the Student Appellant submitted a letter from Dr. P.A. Rostas, a family physician, dated May 24, 2024. The physician reports that the Student Appellant told him he was having headaches on April 22, when he wrote his exam in CIV332H1S, *Transport II*. Dr. Rostas goes on to write that the Student Appellant related to him that “the headache was probably secondary to motor vehicle accident in which he was involved on April 19, 2024.”

The Student Appellant is convinced that he would have done well in CIV332H1S, *Transport II*, had it not been for the car accident, his resulting injuries, and the effect those injuries had on his performance on the final exam. He reports that he studied extensively for the exam and believes that, but for the car accident and the effect it had on his performance, he would have done significantly better on the final than he did on the midterm.

### **III. Decision**

This is a difficult case. It was terribly unfortunate that the Student Appellant was in a car accident on April 19, 2024. No one doubts that the accident occurred, despite the lack of the Student Appellant’s name on the police report. The thornier question is what effect that accident had on the Student Appellant’s performance on his final examination in CIV332H1S, *Transport II*. That question can only be answered by medical evidence.

The Division requires students to provide clear documentation when they argue that they were unwell at the time they wrote an exam. The letter provided by Dr. Rostas, because he treated the Student Appellant over a month after the day of the accident, cannot convincingly make that case. The content of the letter makes it clear that Dr. Rostas was not able to directly report on the Student Appellant’s condition on the day of the exam. Instead, he wrote that the Student told him about the headaches he had suffered a month earlier.

The Student Appellant suggested that the Division’s focus on the timing of the doctor’s visit is arbitrary and harsh. Your Committee cannot agree. The Division wants medical evidence that was gathered close in time to the day of the exam because it is more pertinent to a student’s condition on the day of the assessment. The more time that passes, the less relevant a physician’s observations and verification will be. Significantly, the doctor does not make any effort to describe the patient’s condition on the day of the doctor’s visit. That is because the Student Appellant’s condition on May 24, 2024, was of little relevance. Your Committee does not question the doctor’s credibility. Rather, it is a question of the usefulness of a verification of illness statement prepared a month after the illness.

Because of this emphasis on contemporaneous medical documentation, it was important for the Student Appellant to seek medical documentation at the time he was experiencing symptoms. The Student Appellant was cognizant of the accident’s effect on his ability to prepare for his exams and his ability to write them. He could have sought medical treatment and petitioned for an exam deferral before he wrote his final examinations. Instead, he made the decision to write the exams because he felt he had done a lot

of preparation, and he did not want to undergo the process of writing petitions and writing deferred examinations. He was eager to begin his co-op placement and knew that if he missed training days he would not be permitted to proceed in the placement. Those may have been reasonable decisions, but they carried a risk.

Similarly, after he wrote his CIV332H1S, *Transport II* examination and sensed that he had not done well, the Student Appellant did not visit a medical professional to collect evidence of how unwell he was that week. He did not seek advice from the Division about his options. If he had, they might have directed him to seek medical advice while it was still close in time to the exam. Instead, the Student Appellant was hopeful that he scraped by with a passing mark, or that he would benefit from an upward adjustment if the instructor “curved” the class. Once again, this was a decision that did not work out well for the Student Appellant.

The Student Appellant provided documentation that an automobile accident occurred, but he did not document the effect that accident had on him. Your Committee understands that it might have had an effect, but without adequate documentation we cannot say that it did. Notwithstanding whether the Student Appellant’s performance on the midterm is indicative of his knowledge of course material, he did not provide sufficient evidence that his ability to write the final exam was impeded. These circumstances reasonably led the Division to require him to repeat this course.

#### **IV. Conclusion**

Appeal dismissed.

**THE UNIVERSITY OF TORONTO  
THE GOVERNING COUNCIL**

Report #441 of the Academic Appeals Committee  
August 7, 2025

To the Academic Board  
University of Toronto

Your Committee reports that it appeared to attend your hearing on June 2, 2025, at which the following members were present and the hearing was adjourned:

**Academic Appeals Committee Members:**

Dr. Erika Murray, Chair  
Professor Laurent Bozec, Teaching Staff  
Jovan Bursac, Student Governor

**Hearing Secretary:**

Karen Bellinger, Associate Director, Office of Appeals, Discipline and Faculty Grievances

**For the Student Appellant:**

Failed to attend – H.K. (the “Student”)

**For the University of Toronto Mississauga (UTM):**

Professor Vivienne Luk, Associate Dean, Academic Experience

**I. Overview**

Your Committee considered the Student’s appeal from a decision of the Academic Appeals Subcommittee dismissing his appeal from a decision of the Committee on Standing to refuse to grant the Student’s petition for late withdrawal without academic penalty from the courses: MAT240H5S, 2024(1), MAT159H5S, 2024(1), and MAT136H5Y, 2024(5). The appeal is dismissed.

**II. The Facts**

The Student first registered with the University of Toronto Mississauga (UTM) in the Fall 2021 term. At the time of the Appeal, the Student had completed 8.50 credits and at the end of the Fall 2024 session, the Student’s academic status was “in good standing”, and his CGPA was 1.79.

The Student petitioned for late withdrawal without academic penalty (WDR) from the courses MAT159H5S, 2024(1), MAT240H5S, 2024(1) and MAT136H5Y, 2024(5). These petitions were denied and appeals of those decisions to the UTM Committee on Standing and subsequently the UTM Academic Appeals Subcommittee were dismissed.

The Student claimed that in the week leading up to both the April and August exams, his father's medical emergency was on his mind, affecting his studies. The Student submitted one piece of medical documentation which was undated, making it difficult to assess its relevance. The Student did not establish when the medical incident occurred and had not provided clear details about the medical emergency and its impact upon him, beyond the single undated record of a visit to an urgent care clinic.

The Student then appealed to the Academic Appeals Subcommittee, however since the Student did not submit any additional information to substantiate his claim for exceptional circumstances, the Student's appeal was refused with the following comments:

- (1) While the Subcommittee sympathized with the difficulties you faced, the members of the Subcommittee noted that you did not present a compelling case, which would prompt the Subcommittee to exempt you from an academic regulation.
- (2) The Subcommittee encourages you to familiarize yourself with the rules and regulations of the University. You are expected to make responsible decisions in order to effectively manage your course load.
- (3) The Subcommittee recommends that you make appointments with staff of the Robert Gillespie Academic Skills Centre regarding the development of your academic skills.

The Student then appealed to this Committee, to which the hearing was set down for June 2, 2025 and to be conducted via the Zoom video conferencing platform. The Student did not submit any further materials or submissions in advance of the hearing date. Multiple notifications of the hearing date, time, and access details were sent to the Student by the Office of Appeals, Discipline and Faculty Grievances ("ADFG Office"). Despite this, the Student did not attend or notify the ADFG Office of any difficulty or request for rescheduling.

Your Committee prepared and reviewed the materials on record, the one piece of undated medical record of unknown relevance, in advance of the hearing. Your Committee waited for 20 minutes for the Student to join the hearing. The appeal hearing did not proceed in the Student's absence. The hearing was adjourned. Following the hearing, on the same day, the Hearing Secretary, Office of Appeals, Discipline and Faculty Grievances sent the Student electronically a Notice of Intention to Dismiss Academic Appeal – Failed to Attend Electronic Hearing.

The Notice provided that after reviewing the Student's written submissions and the materials on file, your Committee had determined that the appeal raises no real grounds that would warrant a full hearing and that pursuant to Section 4.6(1)(a) of the *Statutory Powers Procedure Act* ("SPPA") and Section 3.1.8 of the *Academic Appeals Committee Terms of Reference*, the Committee is of the preliminary view that the appeal is without merit and does not constitute a legitimate basis for further consideration. Accordingly, the letter served as formal Notice of Intention to Dismiss the appeal without a hearing.

In accordance with Section 4.6(4) of the SPPA, the Student was notified of entitlement to submit written submissions in response to this notice by no later than 5:00pm (EST) on Monday, June 16, 2025 and your Committee would consider any such submission prior to rendering a final decision. Further, it was made clear to the Student that should no response be received by June 16, 2025, your Committee would proceed with final dismissal of the appeal without further notice. To date, no response or communications have been received by the Student.

### **III. Decision**

Appeal dismissed. In accordance with Section 4.6 of the *Statutory Powers Procedure Act* and Section 3.1.8 of the *Academic Appeals Committee Terms of Reference*, your Committee determined that the appeal was without merit and did not disclose a legitimate ground for further consideration. Despite having been given notice of the hearing and an opportunity to respond to the Committee's preliminary intention to dismiss, the Student failed to attend the scheduled hearing on June 2, 2025, and did not submit any written materials in advance or in response to the Notice of Intention to Dismiss.

The Student's original appeal lacked adequate supporting documentation to establish exceptional circumstances that would justify an exemption from academic regulations. In particular, the single piece of medical documentation was undated and did not establish a clear connection to the relevant academic period or the Student's capacity to meet academic responsibilities. No new evidence or submissions were presented to address these deficiencies.

As no further submissions were received by the deadline provided, your Committee determined that the matter did not warrant the holding of a full hearing and dismissed the appeal without further notice.

**UNIVERSITY OF TORONTO  
GOVERNING COUNCIL**

Report #442 of the Academic Appeals Committee  
October 21, 2025

To the Academic Board  
University of Toronto

Your Committee reports that it held a hearing on October 3, 2025, at which the following members were present:

**Academic Appeals Committee Members:**

Professor Hamish Stewart, Senior Chair  
Professor Angela Pyle, Teaching Staff Governor  
Rishi Shah, Student Governor

**Hearing Secretary:**

Karen Bellinger, Associate Director, Office of Appeals, Discipline and Faculty Grievances

**For the Student Appellant:**

R.S. (the “Student”)

**For the University of Toronto Mississauga:**

Professor Vivienne Luk, Associate Dean, Academic Experience

**Overview**

The Student appeals from a decision of the Academic Appeals Subcommittee (AAS) of the University of Toronto Mississauga (UTM), dismissing his appeal from UTM’s Committee on Standing (COS), which dismissed his appeal from UTM’s decision to refuse his petition for second deferred examinations in three courses from the fall 2023 term.

The appeal is dismissed.

**Previous proceedings**

The Student is enrolled in a Bachelor’s degree program at the University of Toronto Mississauga (UTM). In the Fall 2023 term, he was enrolled in four courses. The final examinations in these courses were scheduled for the December 2023 examination period. The Student was granted a deferral of the final examination in three courses (MAT232H, MAT244H, and STA256H). The deferred examinations were set for February 20, 22, and 23, 2024, during the Winter term Reading Week.

On February 21, 2024, the student petitioned UTM for further deferrals of each of these three examinations. The only reason given in support of the petitions was “time conflict” (UTM materials, pp. 023-029). The Student provided no supporting documentation. The petitions were denied, and the Student therefore received a grade of zero on each examination. As a result, the Student received a grade of F in each of the three courses.

On April 15, 2024, the Student appealed the denial of his petitions to the COS. In his appeal the Student stated: “During Reading Week, I need to return home due to a family emergency, and my dog has also fallen ill and requires care” (Student’s materials, p. 034). The Student’s appeal was dismissed. The COS stated (UTM materials, p. 039):

Your petition for a further deferred examination in this course has been refused, as you did not present adequate compelling reasons/explanation and/or supporting documentation to warrant special considerations. It will be noted, there was no exam schedule conflict to your February Deferred Exam Period.

The Student appealed the COS’s decision to UTM’s AAS. His appeal was filed outside the 90-day deadline for commencing an appeal, but he provided compelling medical evidence of the reasons for the delay. The Chair of the AAS therefore ruled that his appeal should be allowed to proceed. In his appeal statement, the Student wrote (UTM materials, p. 046):

Around February 22, 2024, my pet dog suddenly fell ill with bloody diarrhea, continuously scratching itself, and its ears and eyes were swollen, with scratches all over its body, which deeply worried me and required a significant amount of my energy to care for it and seek medical treatment. However, due to it being the weekend, my dog did not receive treatment until February 25 [2024] when the clinic opened. Concurrently, my girlfriend felt very guilty and anxious about my dog’s illness, which worsened her existing anxiety and depression, causing me to focus on comforting her. These events led to my missing the deferred exam period for [the three courses].

The Student submitted a bill from a veterinarian, indicating that on February 25, 2024, his dog “Bagel” had been seen and treated (UTM materials, p. 068). The Student made no mention of the family emergency that he had referred to in his appeal to the COS.

On March 5, 2025, the AAS released a decision dismissing the Student’s appeal. Its reasons for dismissing the appeal were as follows:

While the Subcommittee sympathized with the difficulties you faced, the members of the Subcommittee noted that you did not present a compelling case, which would prompt the Subcommittee to exempt you from an academic regulation.

The Student appeals to your Committee.

## **Decision**

### *The applicable policy*

UTM's Calendar states the policy applicable to granting a petition for a second deferred examination:

Only under exceptional circumstances (e.g., hospitalization or severe personal emergency), and when supported with strong and compelling evidence, will a petition for a further deferred exam be considered.

### *The initial decision*

The Student provided no documentation in support of his original petition, stating merely that there was a "time conflict." In fact, because the deferred examinations were scheduled for Reading Week, there was no time conflict. The Student's statement therefore did not support his petition. Your Committee finds that UTM's initial decision to refuse the petition was reasonable.

### *The decision of the COS*

Your Committee finds that the documentation that the Student provided to the COS falls well short of establishing the kind of "exceptional circumstances" required to justify the granting of a second deferred examination under UTM's policies. The Student provided no description or documentation of the family emergency. The record shows that he left Toronto on February 13 and arrived in Beijing on February 14, 2024 (UTM materials, Tab M), but does not indicate when he returned to Toronto. The Student did not provide any explanation for whether or why the family emergency would prevent him from returning to Canada in time to write the deferred examinations at the scheduled times. The Student provided no documentation of his dog's illness or of the effect of the dog's illness on his ability to attend the deferred examinations. Your Committee finds that the COS's decision to dismiss the Student's appeal was reasonable.

### *The decision of the AAS*

Your Committee finds that the decision of the AAS was reasonable. The record shows that the Student was well aware of the need to provide compelling documentation in support of his position before the AAS. Because he had missed the initial deadline to appeal from the COS to the AAS, the Student was required to obtain leave from the chair of the AAS to proceed with the appeal. He did so by filing extensive documentation concerning his

situation in the summer and fall of 2024 (UTM materials, tab I), and accordingly obtained leave to proceed with his appeal.

In contrast, the documentation filed in support of the merits of the Student's appeal to the AAS was extremely thin. As noted, the Student no longer relied on the existence of a family emergency mid-February 2024 and there was accordingly no documentation relating to that matter. Instead, the Student asserted that his dog's illness and his girlfriend's situation explained his inability to take the deferred examinations. The dog's illness was documented with a bill from a veterinarian dated February 25, 2024. But there was no explanation, let alone documentation, of why the dog's illness would prevent the Student from writing the deferred examinations, which presumably he had been preparing for, on the scheduled dates. There was no explanation and no documentation at all of why the Student's girlfriend's situation would prevent him from writing the deferred examinations on the scheduled dates. Your Committee finds that it was reasonable for the AAS to conclude that the Student had not established the exceptional circumstances that would justify a further deferral of his examinations.

At the hearing of the appeal, in reply to UTM's submissions, the Student stated that his dog was a service dog. This assertion was not made at any previous step in the proceedings and was not supported with any documentation. Your Committee therefore disregarded it.

#### **A Comment from the Senior Chair**

The decision of the COS, though brief, clearly conveyed the COS's reasons for dismissing the appeal; it noted the lack of documentation and the inadequacy of the Student's assertion that there was a "time conflict." The Senior Chair of your Committee observes that, in contrast, the decision of the AAS is conclusory and does not indicate, even briefly, why the AAS found that the Student's case was not "compelling." The Senior Chair is aware that UTM has a high volume of academic appeals; nevertheless, he notes, as previous Chairs have observed, that as a matter of procedural fairness, when a student's appeal is dismissed, they are entitled to an explanation, be it brief, of the reasons why.

**UNIVERSITY OF TORONTO  
GOVERNING COUNCIL**

Report #443 of the Academic Appeals Committee  
October 24, 2025

To the Academic Board  
University of Toronto

Your Committee reports that it held hearings on January 20, February 3, February 4, April 17, and April 29, 2025, at which the following members were present:

**Academic Appeals Committee Members:**

Professor Hamish Stewart, Senior Chair  
Professor Douglas E. McDougall, Teaching Staff Governor  
Maya Povhe, Student Governor

**Hearing Secretaries:**

Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances  
Karen Bellinger, Associate Director, Office of Appeals, Discipline and Faculty Grievances

**For the Student Appellant:**

Lisa Constantine, Constantine Legal  
Vladimira Ivanov, Ivanov Katz LLP

**For the Faculty of Medicine:**

Sari L. Springer, PembertonLane PC

**In Attendance:**

N.N. (the “Student”)

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## **Introduction**

The Student was a resident in the Anesthesia Residency Program (the Program) in Post-Graduate Medical Education (PGME) at the Temerty Faculty of Medicine (the Faculty). On May 3, 2022, PGME's Board of Examiners (the BoE) dismissed the Student from the Program. The basis for the dismissal was unprofessionalism. The Student's appeal to the Faculty's Academic Appeals Committee (FMAAC) was unsuccessful. He now appeals to your Committee. The central remedy he seeks is reinstatement into the Program.

The appeal is dismissed.

## **Background**

The Student is a medical doctor. He is of West African origin. He holds an M.D. and a Ph.D. from Heidelberg University in Germany.

The Student had previously been enrolled in the Program and had been dismissed. In 2018, the Student was diagnosed with attention deficit hyperactivity disorder (ADHD) (pp. 0049-0050; all otherwise unidentified page references in this Report are to the Student's materials submitted to your Committee). In 2019, the previous dismissal was set aside on the basis that the concerns about the Student's performance might be related to ADHD and that his ADHD should be accommodated. The Student was reinstated into the Program on the basis that he restart at the first year (PGY-1). Your Committee did not give detailed consideration to the Student's previous history in the Program.

In January 2020, the Student recommenced a residency in the Program at the PGY-1 level. Owing to the ADHD diagnosis, the Student had an accommodation plan, which was renewed from time to time. The accommodation plan relevant to this appeal was in effect for the period July 1 to September 26, 2021 (pp. 0076-0077).

It is not contested that the first several months (January 2020 to June 2021) of the Student's residency went smoothly. The events relevant to the allegations of unprofessionalism occurred between July and October 2021. At the relevant time, Dr. Eric You-Ten was the Program Director, Dr. Joseph Fiorellino was the Assistant Program Director, and Mr. Wayne Rodriguez was the Program Officer.

To successfully complete a residency program at PGME, a physician must complete a certain number of training sessions, referred to in the materials as "rotation blocks," "rotations," or "blocks," each roughly four weeks in length, at teaching hospitals affiliated

with the Faculty. During the period at issue, the Student was scheduled to complete the following four blocks (rotations):

- Block 1: Pediatric Emergency, The Hospital for Sick Children (SickKids), July 1 to August 1, 2021.
- Block 2: Obstetrics, Mount Sinai Hospital, August 2 to 29, 2021.
- Block 3: Intensive Care, Toronto Western Hospital, August 30 to September 26, 2021
- Block 4: Anesthesia, SickKids, September 27 to November 1, 2021.

The instances of unprofessionalism that the Faculty alleges span all four blocks.

### **Overview of Proceedings**

#### *Summary of proceedings in the Faculty*

Between August 20 and October 21, 2021, in accordance with s. 7.2 of the Guidelines for the Assessment of Post Graduate Residents (the Guidelines, pp. 0293-0306), Dr. You-Ten drafted a report recommending the Student's dismissal. At a meeting of the Program's Residency Program Committee (RPC) on October 14, 2021, Dr. You-Ten presented his draft report. The RPC took no action concerning the report (pp. 0271-0275). The RPC met again on October 25, 2021. There are no minutes of this meeting in the materials before your Committee.

On October 26, 2021, Dr. You-Ten, Dr. Fiorellino, and Mr. Rodriguez met with the Student (on Zoom). They advised him of the allegations of unprofessionalism, gave him a copy of the draft dismissal report, and told him that he was suspended with pay. The meeting and the suspension were in accordance with s. 6.3 of the Guidelines, which provides that "A Program Director may, pending consultation by the [BoE] and after consultation with the PGME Dean, suspend a Resident for Improper Conduct ..." and that the Resident must be informed in writing of the reasons for the suspension (p. 0304). Some of the instances of unprofessionalism alleged by the Faculty fall within the Guidelines' definition of "Improper Conduct."

On October 27, 2021, Dr. Patricia Houston, the Vice-Dean of PGME, sent a letter to the College of Physicians and Surgeons of Ontario (CPSO), advising them of the Student's suspension from the Program, together with a report outlining the reasons for the suspension (p. 0276 and pp. 0280-0290). The Senior Chair observes that PGME was required to send this letter and the accompanying report by virtue of s. 85.5(1) of the *Health Professions Procedural Code*, Sched. 2 to the *Regulated Health Professions Act*, S.O. 1991, c. 18 (see also *Mehar v. The University of Toronto*, 2020 ONSC 1293 (Div.Ct.), at para. 20).

The RPC was to consider Dr. You-Ten's report at its meeting of November 10, 2021, but at that time the Student was on a medical leave of absence and so the RPC did not consider the report at that meeting. When the Student returned from his leave of absence, he was given an opportunity to be present when the RPC next considered his case on April 14, 2022. The Student did not attend that meeting. At its meeting on April 14, 2022, in accordance with s. 6.4 of the Guidelines, the RPC recommended to the BoE that the Student be dismissed.

On April 27, 2022, the Student provided the BoE with a written statement of his response to the Program's allegations of unprofessionalism. The BoE met on April 29, 2022. On May 3, 2022, in accordance with s. 7 of the Guidelines, the BoE dismissed the Student from the Program (p. 0338-0346).

The Student appealed the BoE's decision to the FMAAC, in accordance with s. 9 of the Guidelines. He was self-represented at the FMAAC hearing. The Faculty was represented by counsel. On February 27, 2023, the FMAAC dismissed the Student's appeal (pp. 0028-0038).

The proceedings in the Faculty will be discussed in greater detail below.

#### *Proceedings before your Committee*

The Student and the Faculty were both represented by counsel. Before the hearing, your Committee received extensive written submissions from the Student and from the Faculty, including affidavits from the Student, from Dr. You-Ten, and from Ms. Caroline Abrahams, the Director of Policy, Analysis, and Systems at PGME.

The appeal was initially scheduled to be heard on August 6 and 7, 2024. These dates were vacated, as the parties had filed additional materials less than a week in advance of the hearing date. The hearing was then rescheduled to be heard on October 23 and 30, 2024. These dates were also vacated, due to the parties' requests to file further materials, and the need for redactions in both parties' materials.

The appeal was heard on five days over four months, as follows.

January 20, 2025: Your Committee heard opening statements from counsel for both parties and then heard the Student's testimony.

February 4, 2025: Your Committee heard Dr. You-Ten's examination in chief. Counsel for the Student began cross-examination Dr. You-Ten.

February 5, 2025: The cross-examination of Dr. You-Ten continued.

April 17, 2025: The cross-examination of Dr. You-Ten concluded. Your Committee heard the testimony of Ms. Abrahams.

April 29, 2025: Your Committee heard closing submissions from counsel for both parties.

### **Standard of Review**

As the Senior Chair held in a ruling of May 31, 2024 (attached as Appendix A to these reasons), the standard of review applied by your Committee is reasonableness. Normally, your Committee asks itself whether the decision appealed from was a reasonable application of the relevant University and divisional policies to the appellant student's situation. Your Committee has previously applied this standard in appeals from decisions of the FMAAC (see, for example, Reports 401 and 420). Your Committee may find a divisional decision unreasonable where it was arrived at in a procedurally unfair manner, including where a division does not follow its own procedures in making a decision (see, for example, Reports 413 and 427).

Having identified the normal standard of review, the Senior Chair notes that your Committee's usual practices were adjusted to the circumstances of this appeal. For reasons stated in his ruling of May 31, 2024, the Senior Chair decided that your Committee would hear oral evidence from the Student, if he chose to testify, and, with leave, from additional witnesses. Following a case conference with counsel, in a direction of August 2, 2024, the Senior Chair directed that each of the proposed witnesses would provide an affidavit in advance of the hearing and that examination-in-chief of each witness would accordingly be limited to one hour. The Senior Chair placed no time limit on cross-examination. Your Committee heard from three witnesses, each of whom was examined in chief and cross-examined. The parties did not seek leave to call any additional witnesses. While there was some disagreement between the parties as to the scope of examination-in-chief contemplated by the Senior Chair's direction, in the end each of the examinations-in-chief was completed within an hour or slightly longer.

Thus, your Committee had before it not only a paper record of submissions and relevant documents (normally the sole source of evidence for its deliberations) but also the affidavits and the *viva voce* evidence of three witnesses. In these circumstances, your Committee owed no deference to the findings of fact of the previous decision-makers but made its own factual determinations based on all of the evidence before it.

Your Committee does, however, accord its usual deference to the previous decision-makers' application of the Faculty's academic standards to the Student. As your Committee has held many times, its role is not to apply academic standards to specific

instances of academic performance. Your Committee has no expertise and no jurisdiction to make such assessments. A determination that a medical resident has or has not exhibited the competency of professionalism is an application of one of the University's academic standards to one of its students. It is not the role of your Committee to make this assessment, just as it is not your Committee's role to regrade an essay submitted in a graduate philosophy course (see Report 415), or to consider the merits of a doctoral student's performance in a qualifying or comprehensive examination (see Report 435 at p. 10), or to assess other academic criteria applicable to medical residents, such as their clinical knowledge or history-taking skills (see Report 420 at p. 6).

## **The Faculty's Allegations of Unprofessionalism**

### *Submission of EPA assessments that were not approved by clinical fellows*

#### Introduction

Medical residents are required to complete a number of Entrustable Professional Activities (EPAs). EPAs are assessed by supervising physicians (clinical fellows).

The most serious allegation of unprofessionalism is that the Student completed and submitted two EPA assessments to the Program without the assessments having been approved by a clinical fellow. The parties generally referred to these two assessments as "the impugned EPAs." It is not contested that the Student did submit the impugned EPA assessments without their having been approved or even seen by any clinical fellows. The Student's position is that he made an honest mistake. It was implicit in this position, though the parties did not argue this issue explicitly, that such a mistake either would not be an instance of unprofessionalism or, if it was, would not be so serious as to justify his dismissal from the Program. The Faculty's position is that the Student completed the impugned EPAs and submitted them directly to the Program, knowing that they had not been approved by a clinical fellow. The Program characterized this conduct as incurable unprofessionalism.

#### Overview of EPA assessment procedure

EPA assessments are submitted through an online platform known as Elenra. Your Committee had before it extensive evidence concerning the operation and use of the Elenra platform to complete EPA assessments, as it appeared in August 2021 and as it appeared in March 2025, from the following sources:

- The Student's appeal materials, including but not limited to the following:
  - a description in his original affidavit (pp. 0801 to 0830);
  - Exhibit C to his supplementary affidavit (pp. 0946 to 0951); and

- a description in his reply affidavit (pp. 1216 to 1220);
- The Student’s testimony in chief;
- The Faculty’s appeal materials, including:
  - paras. 16 to 18 of Dr. You-Ten’s affidavit (pp. 046-047);
  - paras. 5 to 13 of Ms. Abrahams’s affidavit (pp. 147-148);
- Dr. You-Ten’s testimony in chief;
- Exhibit 1 to Dr. You-Ten’s cross-examination, consisting of an alternative version of pp. 0946 to 0951 of the Student’s materials, with certain commentary removed.
- Ms. Abrahams’s testimony in chief and cross-examination and the exhibits thereto, including a video-recorded demonstration of the operation of the Elentra platform as it currently appears to users (Exhibit 3).

The first step in the process of completing an EPA assessment on the Elentra platform requires the user to select the name of an assessor and the date of the encounter. At the second step, the user chooses between two methods of completion. In August 2021, the choice was between “Complete now” and “Complete and confirm via email.” The choice in 2025 is between “Complete now” and “Initiate now and complete via email.” Having made that choice, the user proceeds to the third step, which is to identify their program and select the particular EPA to be completed. The variables entered in the first three steps – the student’s name, the date, the program, and the particular EPA – were generally referred to as “contextual variables” in the evidence before your Committee. The parties agree that it is acceptable and common practice for either a clinical fellow or a resident to fill in these contextual variables.

Regardless of whether the “Complete now” or “Complete and confirm via email” method is chosen, the fourth step in an EPA involves an assessment of the Student’s clinical performance on the particular task at issue. In the “Complete now” method, before this assessment begins, a yellow banner appears stating “Assessor completes the assessment now on this device. The assessor will receive a confirmation email upon submission.” In the “Complete and confirm via email” (now “Initiate and confirm via email”) method, this banner reads as follow: “Once you have submitted this assessment, the assessor will receive an email link to review/edit and confirm the assessment.”

This portion of the form begins with a series of choices that Ms. Abrahams referred to as “demographic and contextual variables”: the type of assessor, the type of assessment, the rotation service, the site, the type of case, and the degree of complexity of the case. The parties agree that, as with the contextual variables in the first three steps, either the clinical fellow or the resident may fill in these variables.

The assessment criteria, also referred to as “milestones,” then appear. For example, in an EPA concerning “routine initial assessment of a patient in labour,” there are eight performance criteria to be assessed, each with six possible notations: “no rating”, indicating that the criterion is not applicable to the task in question, and “Intervention,” “Direction,” “Support,” “Autonomy,” and “Excellence”, indicating in decreasing order the degree of supervision the resident needed in performing the activity (see also pp. 1627-1628).

In 2021, the next part of the EPA was a section headed “Feedback & Comments”, which included two boxes labelled respectively “2-3 Strengths” and “2-3 Actions or areas for improvement.” This portion of the EPA now appears before the assessment criteria. The parties agree that the clinical fellow, not the resident, would use these boxes to make comments, if appropriate. The Student stated that it was his practice to leave these boxes empty.

Finally, the person completing the EPA assessment faces a choice between two buttons. The appearance of these buttons in the current version of Elentra is the same in 2025 as in the 2021 version. The choice is different depending on whether the “Complete now” method or the “Complete and confirm via email” (now the “Initiate now and complete via email” method) is used.

In the “Complete now” method, a small blue button on the left of the screen says “Save as draft & email assessor a link”; if this button is pressed, the assessor will receive an email prompting them to complete the assessment. A large red button on the right of the screen says “Submit”; if this button is pressed, the assessor and the resident will both receive emails indicating that the EPA has been completed.

In the “Complete and confirm via email” (now the “Initiate now and complete via email” method), a small blue button on the left of the screen says, “Save as draft.” If this button is pressed, neither the resident nor the assessor would receive an email; the EPA would simply be saved in the system as a draft. A large red button on the right of the screen says, “Submit and notify assessor by email”; if this button is pressed, the resident then sees a box labeled “Assessment cue.” The resident is required to write a few words in the assessment cue box to remind the assessor what the particular EPA was about. The assessor will then receive an email prompting them to complete the assessment

This description of the two procedures for completing an EPA assessment using Elentra are summarized in the following table.

	Complete Now	Complete and Confirm Via Email

Yellow banner that appears before assessment begins	Assessor completes the assessment now on this device. The assessor will receive a confirmation email upon submission.	Once you have submitted this assessment, the assessor will receive an email link to review/edit and confirm the assessment.
Buttons to select at end of assessment	Small Blue: Save as draft & email assessor a link  Large Red: Submit	Small Blue: Save as draft  Large Red: Submit and notify assessor by email
Next Step, based on button selected	Small Blue: Assessor Receives email prompt to complete assessment  Large Red: Both assessor and resident receive an email indicating assessment is complete	Small Blue: EPA is saved as a draft; no emails sent  Large Red: Box labeled "Assessment Cue" in which the resident is required to write a few words to remind the assessor what the EPA is about. Assessor then receives email prompt to complete the assessment.

The impugned EPAs submitted by the Student on August 19, 2021

From August 2 to 29, 2021, the Student was on an obstetrics rotation (Block 2) at Mount Sinai Hospital. He was scheduled to go on vacation on August 20. On August 19, 2021, the Student submitted three EPA assessments through the Elenra system (pp. 0090-0111). One EPA was approved by a clinical fellow and there is no suggestion that there was any lack of professionalism in the completion or approval of this EPA. The other two EPA assessments (the impugned EPAs) were purported to have been completed and approved by Dr. Nancy Nancy and Dr. Anjila Roumia respectively but were not. The Student initiated these two EPAs with the "Complete now" method, filled in all the fields himself, including the assessment criteria, and submitted them to the Program by clicking on the "Submit" button. Accordingly, Dr. Nancy and Dr. Roumia each received email notifications via the Elenra system indicating that they had completed an assessment for the Student. On August 20, 2021, Dr. Roumia contacted Dr. You-Ten by email, stating "I was asked by a resident (see below) to do an evaluation but i never did it and then i got this conformation and im a bit concerned [sic]" (Faculty's materials, p. 064). On August 31, 2021, in response to a query from Mr. Rodriguez, Dr. Nancy stated that, while she had worked with the Student, she had not completed any assessment of him (Faculty's materials, p. 068).

The Faculty's position is that the Student submitted the two impugned EPA assessments knowing that they had not been approved by the relevant clinical fellows, and that this conduct manifests a degree of unprofessionalism justifying his dismissal from the Program. In the RPC's dismissal report, Dr. You-Ten described the Student's actions in submitting the impugned EPAs as "egregious breach[es] of professionalism [that] are not remediable", requiring his dismissal from the Program (p. 1052). In his report to the CPSO and in his testimony before your Committee, Dr. You-Ten described the Student's behaviour as "fraudulent." The BoE and the FMAAC accepted these characterizations of the Student's behaviour.

The Student's position is that his submission of the impugned EPAs was accidental, an honest and inadvertent error. He recognizes that the two impugned EPAs were not approved by Dr. Nancy and Dr. Roumia, as they should have been. He says that he made two mistakes: first, he accidentally began the impugned EPAs with the "Complete now" method instead of using the "Complete & confirm by email" method; second, at the end of each EPA, he accidentally clicked on the "submit" button rather than on the "Save as draft & email the assessor a link" button. As he put it in his affidavit (p. 0824), "Unbeknownst to me, instead of sending the draft EPAs to the two Clinical Fellows, I apparently, accidentally submitted them to the Program." In his affidavit and in his testimony, he explained these mistakes as the result of a combination of several factors. First, he states that it was his practice to complete the assessment criteria on the EPAs himself, subject to the approval of the relevant clinical fellow, and that he did so on August 19, 2021 (pp. 0802-0803). Second, he states that on August 19, 2021, he was using an iPad for the first time to complete the EPAs (p. 0824). Third, he notes that he was having considerable difficulties in his personal life at the relevant time (p. 0793). Finally, he says that his ADHD may have contributed to his errors (p. 0880). The Student recognizes that when he clicked the "Submit" button, the Elentra system would have automatically generated an email addressed to both him and the relevant clinical fellow. He says that his University of Toronto email account was not installed on his mobile phone or on his new iPad and therefore he did not see the email on August 19<sup>th</sup>, 2021 (p. 0825).

Moreover, the Student asserts that in order to pass his Obstetrics block, he did not need to complete the impugned EPAs because, in his submission, residents are never required to complete any particular number of EPA assessments to pass a rotation (pp. 1176-1181). Thus, he would have no reason to intentionally submit the impugned EPAs.

In his affidavit evidence and oral testimony, Dr. You-Ten stated that every clinical rotation has certain EPAs associated with it and that "all EPAs must in fact be passed for a resident to successfully pass the rotation" (Faculty's materials, p. 046). He says that three EPAs

were required to successfully complete the obstetrics rotation in August 2021 (Faculty's materials, p. 047).

The FMAAC rejected the Student's claim that the submission of the impugned EPAs was accidental (p. 0036):

Neither your previous clinical performance nor your non-fraudulent EPAs led to the inference that the August 19 submissions were not intentional. Dr. You-Ten reported to the Committee why someone with your clinical performance and without a history of fraudulent submissions would choose to take this action. Dr. You-Ten informed the Committee that August 19 was your last day on the obstetrics rotation as you were going on vacation on August 20. The fraudulent EPAs were submitted late in the afternoon of your final shift and were required for you to pass the rotation. Based on this evidence, the Committee believes the August 19 EPAs were intentionally submitted.

#### The Student's practice of self-assessment

The Student said in his affidavit and in his testimony that his practice was to self-assess his performance on EPAs, and therefore to fill in the assessment criteria in his EPAs himself, subject to correction or adjustment by a clinical fellow. In cross-examination, he stated that the Program and the Royal College of Medicine's CanMEDS guidelines encouraged residents to self-assess. He testified that no-one ever told him that it was inappropriate to self-assess.

The Student drew your Committee's attention to fifteen "uncompleted EPAs" (they appear at Tabs 4 through 18 at pp. 0668 to 0755). These are EPAs that the Student initiated between January 2020 and August 2021 but that were never approved by a clinical fellow. Dr. You-Ten testified that there were various reasons why an EPA might be initiated but not completed. Ms. Abrahams testified that incomplete EPA assessments would automatically expire after a certain period of time. Your Committee is unable to determine from the record why these EPAs remained uncompleted. The Student notes that many of these uncompleted EPAs include the assessment criteria that he was in the habit of filling in himself and offers that as some evidence supporting his position that he was in the habit of self-assessing.

Two of these EPAs (at tabs 13 and 15) are blank and list the assessor as the Student himself. (The Student listed the EPA at tab 4 in this category as well, but that is an error, as the assessor for that EPA is identified as Dr. Aliya Salman (p. 0668).) Your Committee finds that these two EPAs were obviously submitted in error and notes that there was no clinical fellow who could have approved them. As for the remaining thirteen EPAs, they present a

mixed picture. On four of them (at tabs 4, 8, 11, and 16) the assessment criteria are mostly or entirely blank. On the remaining nine (5, 6, 7, 9, 10, 12, 14, 17, and 18), most or all of the assessment criteria are filled in.

The Student also stated in his affidavit that “[i]t is commonplace for trainees to partially complete the EPA and leave the ‘assessor’s comments’ section blank. In this way, the assessor can either accept or modify the partially completed form and insert their comments in the ‘assessor’s comments’ section and submit the form” (p. 0091).

The Faculty’s position is that, regardless of whether “Complete now” or “Complete and confirm via email” method was used, the assessor – the clinical fellow – is the person who should assess a resident’s performance and who should complete this portion of the EPA; a resident should not do so. Dr. You-Ten’s evidence was that “the resident is **only to complete contextual information** (meaning their name, the rotation, the site, the type of activity being assessed etc.). They are **not** to self assess” (Faculty’s materials, pp. 046-047, original emphasis). If the “Complete now” method is being used, the typical scenario would be that the clinical fellow and the resident would be together, discussing the resident’s performance, but the clinical fellow would be the one to make the assessment. If the “Complete and confirm via email” method is used, typically the resident would not be with the clinical fellow when initiating the assessment and therefore should complete only the demographic and contextual variables, leaving the assessment criteria blank for the clinical fellow to complete later.

Your Committee agrees with the Faculty on this issue. The assessment criteria in the EPA involves the application of academic criteria to a student’s performance and it is the task of a faculty member, not a student, to assess a student’s academic performance. There was evidence before your Committee that residents are encouraged to engage in self-assessment, in the sense of self-reflection, on their learning (Exhibit 3; see also p. 1148). Your Committee agrees with the general proposition that self-reflection is an important part of learning. But your Committee agrees with the Faculty that self-reflection does not extend to self-grading, that is, assessing one’s own performance on an academic assignment. There is no indication in Exhibit 3, the *PGME Guidelines: Use of Resident Self Assessment in CBME Assessment Programs* (2018), to suggest that self-assessment may include self-grading.

Moreover, with respect to EPAs in particular, residents in the Program (including the Student) were instructed during an orientation at the outset of their residency that EPAs were “staff-completed” (pp. 0340, 1054). There is no indication in the record that residents in the Program were ever told that self-completion of the assessment criteria on EPAs was an acceptable practice.

Your Committee does not accept the Student's statement that it was commonplace for residents to self-assess. Your Committee would not expect students at the University to engage in self-assessment without explicit permission from faculty. The Student was asked in cross-examination about his basis for his statement. He was hesitant to answer questions on this topic and ultimately was able to identify only one other student who, he said, was in the habit of self-assessing.

But the Student's practice of self-assessment was not among the allegations of unprofessionalism that were the basis for his dismissal. While the Program clearly disapproves of this practice, the RPC was unaware that the Student engaged in it and accordingly it formed no part of the RPC's recommendation that the Student be dismissed. In the proceedings before your Committee, the Faculty did not (and arguably could not) rely on it as an alternative or additional ground for the Student's dismissal. While your Committee accepts the Faculty's position that self-assessment is not appropriate, your Committee is in no position to determine whether the Student's practice of self-assessment was unprofessional or what the consequences of such a determination might be. The relevance of the Student's habit of self-assessment lies elsewhere: it makes his claim that the impugned EPAs were submitted erroneously more plausible.

Your Committee infers from the Student's evidence and from the uncompleted EPAs that the Student sometimes, but not always, filled in the assessment criteria before saving an EPA assessment in draft. Moreover, while your Committee accepts the Student was never explicitly told he could not self-assess on EPAs, your Committee notes that nothing in the evidence suggests that residents were ever told that they were permitted to self-assess. To the contrary: as noted above, the materials include two slides from a presentation shown to residents concerning EPAs in which they are clearly identified as "staff-completed" exercises where the resident's performance is assessed by the assessor, not by the resident (pp. 1054-1055). Dr. You-Ten stated in his final dismissal report that the Student had attended a training session where these slides were presented (pp. 1047) and there is nothing in the record to contradict that statement.

#### The Student's explanation for the error

The Student had been assessed on numerous EPAs without incident. As noted above, the Student had also initiated a number of draft EPA assessments that had expired without being completed or approved by a supervising physician (pp. 0611-0657). None of these was submitted to the system without a clinical fellow's approval. The Student fully completed the two impugned EPAs, including all of the assessment criteria, and submitted them to the Program by clicking on the red "Submit" button, rather than saving them in draft by clicking on the blue "Save as draft & send assessor a link" button. The fact that the

Student chose the afternoon of the final day of his rotation to complete the three EPAs that were expected of him during the rotation (whether they were required to pass the rotation, as the Faculty asserts, or mere “targets,” as is implicit in the Student’s submission) suggests that it was important to him that they be completed. These circumstances strongly support the inference that the Student intentionally submitted the impugned EPAs knowing that they had not been approved by Dr. Nancy and Dr. Roumia.

Your Committee does not find the Student’s explanation for his errors credible. In order for his conduct to have been accidental, he must have made two errors and failed to notice the features of the Elentra system that would have alerted him to these errors. The first error would be choosing the “Complete now” method rather than the “Complete and confirm by email” (now “Initiate now and complete via email”). At the outset of the “Complete Now” method, a yellow banner appears, stating “Assessor completes the assessment now on this device. The assessor will receive a confirmation email upon submission.” (Exhibit 4 at 1:05.) But in the “Complete and confirm by email” method, the wording of the yellow banner is different: it states “Once you have submitted this assessment, the selected assessor will receive an email link to review it and confirm the assessment.” (Exhibit 4 at 10:18.)

The second error would have been choosing “Submit” rather than “Save as draft & email assessor a link” at the end of the assessment. The Student’s evidence was that he intended to send the impugned EPAs to the clinical fellows as drafts (p. 0112). If so, then since he was using the “Complete now” method, “Save as draft & send assessor a link” rather than “Submit” would have been the appropriate choice. If he had been using the “Complete and confirm by email” method, which the Student states that he erroneously believed himself to be using, there would have been a “Submit and notify assessor by email” button. But there is no such button in the “Complete now” method, which the Student was actually using. But even had the Student mistaken the “Submit” button for the absent “Submit and notify assessor by email” button, in the “Complete & confirm by email” method, clicking it would not be the final step in the process. If he had been using the “Complete & confirm via email” before submitting the draft EPA, the Student would then have had to respond to the assessment cue; but because he was using the other method, there was no such cue.

Your Committee does not find it credible that the Student would have failed to notice the differences in the wording of the yellow banner, the different labelling of the buttons, and the absence of the assessment cue at the final step.

Your Committee does not accept the Student’s evidence that his use of a new iPad was a source of error. There is no substantial difference between the Elentra interface on an iPad and the Elentra interface on a desktop or laptop; regardless of the device used, the form

must be completed via a Web browser and its appearance is much the same in either case. In particular, there is no Elentra app for the iPad.

Your Committee notes that the Student was working under an accommodation plan that was designed to address the impact of his ADHD on his work. The accommodation plan did not include any accommodations relating to deadlines for or manner of preparing EPAs. The Student does not allege that the plan was inadequate. As discussed below, there had been some problems in the implementation of the plan in the first half of August, but there is no suggestion that there were any such problems on August 19, 2021. The Student's performance on that date has to be assessed as accommodated.

One member of your Committee is of the view that your Committee should not attempt to assess the impact of the Student's ADHD on his submission of the EPAs because it is sufficient to note that his performance has to be assessed as accommodated.

The other members of your Committee agree that the Student's performance has to be assessed as accommodated. Furthermore they do not accept the Student's submission that his ADHD was a source of error. In these members' view, there is no satisfactory explanation of why the Student's ADHD would differentially cause him, on the same day, to complete one EPA correctly while inadvertently completing two EPAs incorrectly. Nor is there any satisfactory explanation of how the Student's ADHD would, on the same day, not affect his ability to perform his clinical duties satisfactorily while interfering with his ability to complete (two of three) EPAs correctly. As the FMAAC observed (p. 0036), the Student's claim that the impugned EPAs were submitted accidentally is inconsistent with the Student's clinical performance on the day in question (and indeed throughout the rotation). The Springboard report, relied upon by the Student in support of this claim (p. 0175), speaks of the potential impact of ADHD on "executive functioning tasks such as paperwork and reporting". But the drafting of a complete EPA is not "paperwork and reporting"; it is an academic assessment; moreover, it is an assessment that is directly concerned with a resident's clinical performance. In any case, the Springboard report provides no insight into why ADHD would affect the executive functioning tasks involved in the completion of EPAs as opposed to the executive functioning tasks involved in the Student's clinical work. The Student testified that he perceived the EPAs as a "low-stakes" task as opposed to his "high-stakes" clinical work; he testified that his ADHD could be a source of strength in enabling him to "hyper-focus" on his clinical work but at the same time might make him more prone to err in the completion of EPAs. Your Committee appreciates the point that there is a sense in which any one EPA is a "low-stakes" task (the Faculty characterizes them this way at p. 1621-1622), but, taken as a whole EPAs are undoubtedly an important element in the

evaluation of residents. Moreover, in cross-examination, the Student recognized the importance of taking care in the completion of EPAs, particularly when using a new device.

Your Committee unanimously finds that the Student submitted the impugned EPAs knowing that they had not been seen or approved by the relevant clinical fellows. This conclusion is based on the evidence and argument presented to your Committee. Having made that finding, your Committee must defer to the BoE and FMAAC's judgment that the Student's knowing submission of false EPAs was an egregious instance of unprofessionalism justifying his dismissal from the Program.

### *The other allegations*

In its recommendation for dismissal, the Program relied on six incidents relating to the Student's communication with the Program, which it asserted manifested the Student's lack of professionalism. The FMAAC reviewed the facts relating to each incident and commented on them globally as follows (p. 0037):

The Board of Examiners was presented with a history outlining a variety of issues related to [the Student's] communication with the Program. The Appeals Committee believes that this, along with the two fraudulent EPAs, warranted your dismissal from the ... Program ...

The facts surrounding these allegations are largely undisputed, although, as discussed below, the factual basis for the third one is unclear to your Committee. The Student's submissions on these issues essentially amount to a request that your Committee make its own judgment concerning the professionalism of his behaviour rather than deferring to the Faculty's assessment (that is, the judgment made by the BoE and affirmed by the FMAAC) (see pp. 0088, 0118-0119). Your Committee will not do so.

#### First incident: Absences and communication issues (start of Block 1)

The Student was on vacation for the first two days of this rotation (July 1 and 2, 2021). He was initially scheduled to begin work on July 3, but he requested that he not be on call for July 3 and 4, and that request was granted. So, it was anticipated that he would start work on July 5. Late on the evening of July 4, Toronto time, he left a voice mail message with SickKids rotation coordinator, Ms. Majda Savaglio, stating that he was sick and would not be able to attend work on July 5 and 6 (p. 1188; the Student states on p. 1190 that he made this phone call on July 5; the discrepancy is due to the time difference between West Africa and Toronto). On July 5, Ms. Savaglio replied to this voice mail by email, reminding the Student that he was scheduled to work on July 10 and 11 and would have to complete a

training session before that. She stated, “Please touch base with me and let me know when you are better so I can see if another [training] session can be set up for you so that you can work your shifts on [July 10 and 11]” (Faculty’s materials, p. 074). The Student did not reply to this message. Late on the afternoon of July 9, Mr. Rodriguez emailed the Student, noting that Ms. Savaglio had not heard from him since July 4, that his weekend shifts would have to be cancelled, and that “the rotation has no resident on site” (Faculty’s materials, p. 081). The Student replied, stating that he was in hospital and anticipated being discharged on July 10 or 11 (Faculty’s materials, p. 080). On July 11, the Student emailed Ms. Savaglio, stating that he was feeling better and would be able to begin work on July 13 (p. 1190). Ultimately, the Student did begin work on July 13.

At an earlier stage in the proceedings, the Faculty challenged the Student’s account of the events surrounding the beginning of his July 2021 rotation. However, the Faculty withdrew that challenge before the hearing at the FMAAC and did not renew it before your Committee.

On July 15, 2021, Dr. You-Ten emailed the Student, stating among other things that “the Program and the Ped ER received no communication for many days and were rightly concerned of your well-being. It is very important that communications are provided in a timely and professional manner” (p. 1191).

The Student states that between July 6 and 9 he was hospitalized in West Africa with malaria and that he did not have access to a phone until July 9. He was discharged from hospital on July 9 (earlier than expected), returned to Canada on July 10 and 11, and began work on July 13 (pp. 1188-1191). It is not clear from the record whether the Student informed the Program or SickKids that he was in West Africa during this time.

The Faculty’s allegation of unprofessionalism concerns both the Student’s delay in starting the rotation and the Student’s lack of communication with the Program. The Faculty’s position regarding the delay was that, given the time required to travel from West Africa to Canada, to start work on July 5, the Student should have been on a plane on July 3, or July 4 at the latest; the Faculty submits that the time-line of the Student’s whereabouts in early July suggests that he may never have intended to return in time for the start of the rotation. Moreover, the Student has never provided any documentation of his travel plans for July 2021.

But, according to the report from Dr. Anu Augustine that appears as Appendix 14 to Dr. You-Ten’s affidavit, the Student’s malaria symptoms first manifested themselves on July 3. If that is so, it would not have been possible for the Student to return to Toronto on July 3 or 4. As for the subsequent delay in returning for July 10, evidently, if the Student was

hospitalized outside Canada from July 6 to July 9, given the time required to return to Toronto, it was impossible that he would be able to work on July 10 and 11. Your Committee accepts the Student's account of the reasons for the delay in his return to Canada.

In contrast, the Faculty's allegation concerning the Student's failure to communicate with SickKids or with the Program between July 4 and July 9, 2021, is well-founded. The Student failed to reply to Ms. Savaglio's email of July 5 or to communicate with the Program at all until prompted to do so by Mr. Rodriguez's email of July 9. The dismissal report describes this behaviour as one of "a series of unprofessionalism incidents involving absences from work and lack of communication" (p. 1046). The BoE noted that the Student had stated that he was unable to communicate because "he was hospitalized without access to a phone" but commented that "that ought not to have precluded him from making reasonable efforts to ensure that the program was aware of his absence, for example, asking a friend or family member to make contact with the program on his behalf" (p. 0343).

The RPC, the BoE, and the FMAAC all judged the Student's behaviour in not communicating with SickKids or with the Program between July 5 and July 9 to be unprofessional. That judgment was an application of the Program's academic standards to the Student. It is not your Committee's role to make its own judgment on this academic matter. Your Committee therefore defers to the conclusion of the BoE and the FMAAC that this incident was an instance of professionalism.

#### Second Incident: Non-attendance and lack of communication concerning call shifts (Block 2)

Beginning on August 2, 2021, the Student had a rotation in Obstetrics at Mount Sinai Hospital. The Student did not attend two scheduled call shifts during this rotation. Specifically, he was scheduled to attend a day shift on August 8 and a night shift on August 12. He did not do so. These facts are not in dispute.

The Faculty states further that the Student did not inform anyone of his decision not to attend these shifts. In the dismissal report and in his testimony before your Committee, Dr. You-Ten explained the importance of adhering to a call schedule: "Attending a call shift is a professional and clinical care obligation of a resident, and a requirement of any residency training program. Leaving a clinical service without adequate house staff is unprofessional and can result in patient care and safety issues when there are not enough physicians at critical times" (p. 1051). The Faculty characterizes the Student's failure to attend scheduled call shifts and his lack of communication about his reasons for not attending as unprofessional behaviour.

The Student explains his failure to attend these shifts as his response to an on-call schedule that did not comply with his accommodation plan. He believed that he had adequately communicated his reasons for not attending.

The Student's accommodation plan provided that he would "work a maximum of 14 hours in a 24 [hour] period. [He] is approved to complete one overnight shift ever[y] 2 weeks until further notice" (p. 0077). Thus, he would expect to be scheduled for no more than two overnight shifts during each block. The call schedule, as originally released on July 21, 2021, did not comply with the Student's accommodation plan. The Student alerted Mr. Kamil Devonish, the site administrator for obstetrics and gynecology at Mount Sinai. According to the Student's testimony, a revised schedule was subsequently released, but this revised schedule also did not comply with the plan. When the final call schedule was released on August 1, 2021, the Student was scheduled for three overnight shifts in a period of less than 10 days (August 5, 8, and 12); moreover, the August 8 and 12 night shifts followed day shifts, resulting in periods of work longer than 14 hours (p. 0080). In contrast to his actions when the first draft call schedule was released, the Student did not contact Mr. Devonish with any concerns.

The Student explains his failure to attend the August 8 day shift as follows. The Student states that on August 2 he drafted an email to Mr. Devonish. This email "was intended to clarify my duty hours for August 8 and August 12", but that because he was "going through a lot of personal family issues" he forgot to send it (pp. 0081-0082). Despite having received no response from Mr. Devonish, he believed that Mr. Devonish had approved his request; accordingly, he assumed that he was not required to attend the day shift on August 8 (p. 0794).

The Student explains his failure to attend the August 12 shift as follows. On August 11, Dr Shirin Dason, one of the two chief residents,<sup>1</sup> sent the Student a query on WhatsApp concerning his working hours on the 12<sup>th</sup>. The Student replied: "Unfortunately, I am [not] allow to do more than a 14 hours shift and not more than two overnight calls per block" (p. 0796). He added, "I however would be ok to do – 10am to midnight If this would be of most help" (p. 0085). Dr. Dason advised him that if he had already completed two overnight shifts, he could come for the day shift on the 12<sup>th</sup>, otherwise he should come for the night shift (p. 0085). The day shift would have been from 07:00 to 17:00 on the 12<sup>th</sup>, the night shift from 17:00 on the 12<sup>th</sup> to 07:00 on the 13<sup>th</sup>. The Student did not reply to this message. He

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<sup>1</sup> The two chief residents were Dr. Shirin Dason and Dr. Shira Gold. In his materials (e.g., p. 0795), the Student identifies the person who sent this query as "Dr. Shirin Gold." But it is clear from the Faculty's materials (p. 093) that the message originated from Dr. Dason. Nothing turns on this confusion.

states that he understood from his exchange with Dr. Dason “that I was not to take another overnight shift but was to come in for the daytime shift only” (p. 0086).

On the afternoon of August 12, Dr. Dason wrote to the Student on WhatsApp and said (p. 0086):

... we understand that you were on the schedule for 3 call shifts. You did two of them as overnight and left the daytime shift on Sunday [August 8] uncovered.

Unfortunately, no one was aware of when you were coming and also that you were not planning to do the shift tonight.

Ideally you would have done the day shift on Sunday and then done the night shift tonight [August 12-13].

In response to a query from Dr. You-Ten, Dr. Dason described this incident in more detail (Faculty’s materials, p. 093):

[The Student] had accommodations during his block. One of the accommodations was that he could only do 2 overnight shifts. He had been put on the schedule by our administrator for 3 call shifts. Two overnight shifts and one Sunday shift (which is usually 24H). [The Student] didn’t clarify with us or with Kamil [Devonish] what part of the Sunday shift he should do so (as he can only work 14H) so he came for the overnight portion and not the daytime portion. He also did not inform the senior resident on call when he would be arriving. We had to ask him on the day of when we would be expecting him to arrive.

He was then scheduled to be on overnight call on August 12. I messaged him to ask him about it as I thought he would not be coming (he did not reach out to us to clarify the schedule or tell us he was on for too many shifts). He then told me that he could not attend the shift. I asked him a few clarifying questions to which I did not receive a response. The next day, I tried to call him to see if he had come in for the daytime and he did not respond. I had to ask around to find out if he had come in and he had. In addition, he made appointments (outside of the already set aside time for his appointments) on a day that he was off the schedule because he was meant to be postcall and didn’t clarify with me in advance why he was off the schedule in the first place.

Dr. Rory Windrim was responsible for completing the Student’s In-Training Assessment Report (ITAR) for this rotation. The ITAR shows that the Student passed this rotation overall, but did not meet the competency of professionalism (p. 1610). Dr. Windrim commented (p. pp. 1610-11):

[The Student] did not let us know that he was not going to be coming in for a call shift and did not clarify scheduling issues in advance. It is important that [the Student] clearly communicates with the team, especially if there are any scheduling concerns.

...

be aware of call shifts, communicate effectively with the team well in advance if there are any scheduling concerns ...

It is very unfortunate that none of the various versions of the call schedule that were prepared for Block 2 complied with the Student's accommodation plan. The making and the implementation of an accommodation plan is the joint responsibility of the accommodated student and of the accommodating university division. The Program had a duty to accommodate the Student's ADHD. That duty included a proper implementation of the accommodation plan. On the other hand, the material in the record indicates that the Program and SickKids, and in particular Dr. Dason, would have been more than willing to assist the Student in ensuring that his accommodation plan was properly implemented.

Subject to receiving permission to absent himself, the Student was required to attend his call shifts as indicated on the final version of the schedule. The Student did not communicate his unilateral decision not to attend the August 8 day shift to anyone in the program. His apparent assumption that he had been approved not to attend was unwarranted because he had heard nothing to that effect from Mr. Devonish. The Student's communications with Dr. Dason concerning the August 12 night shift were ambiguous. His assumption that he had been approved not to attend the overnight shift was unwarranted, as he never responded to Dr. Dason's message giving him options concerning August 12<sup>th</sup> and never obtained confirmation from her that he would not be required to attend the night shift.

The RPC, the BoE, and the FMAAC judged the Student's behaviour in not attending his shifts as scheduled and in not communicating about his reasons for not attending to be unprofessional. The FMAAC characterized it as "grossly unacceptable" (p. 0037). That judgment was an application of the Program's academic standard of professionalism to the Student. It is not your Committee's role to make its own judgment on this academic matter. Your Committee therefore defers to the conclusion of the BoE and the FMAAC that these incidents in Block 2 were instances of unprofessionalism.

#### Third incident: Failure to respond to communications from UHN's COVID Centre (Block 3)

The Student was scheduled for a rotation at the Intensive Care Unit at Toronto Western Hospital from August 30 to September 26, 2021. He was on holiday in West Africa from

August 21 until September 6, and therefore in the normal course would have started the rotation on September 7. While on holiday (or shortly after returning to Canada), one of the Student's family members tested positive for COVID-19; subsequently, another family member also tested positive. As a result, the Student had to self-isolate until September 24, and in the end missed the entire rotation.

While self-isolated, the Student was supposed to be in contact with the University Health Network's Health Services COVID-19 Centre (UHN-COVID) to develop a plan for his return to work. On September 21, 2021, he spoke with someone at that team, and he advised them that he would have to remain self-isolated until September 24 (p. 0387).

On September 24, 2021, Dr. Ian Randall, the clinical site rotation coordinator, received the following email from a registered practical nurse at UHN-COVID, identified in the materials only as "Catherine" (Faculty's materials, p. 110):

This message is to inform you that the UHN HS COVID-19 Centre has made multiple attempts to contact your employee – [the Student] – to assess them for return to work clearance. Please contact your employee and have them submit a request to be contacted form (found in the signature of this email). This employee is not cleared to return to work until assessed by the HS COVID-19 Centre.

Dr. Randell promptly forwarded this email to Dr. You-Ten, stating, "I'm not sure what to do with this but perhaps he is in touch with his next rotation site lead." (Faculty's materials, p. 110). On September 26, Dr. You-Ten wrote to the Student, stating (p. 0121; Faculty's materials, p. 109):

UHN COVID has attempted to contact you on many attempts. As I have already mentioned to you that communication must be replied in a timely fashion. This lack of communication is an unprofessional behaviour.

The Student replied promptly, stating that he had spoken with UHN-COVID on September 21, that he may have missed calls from them on September 23 or 24, and stating that "they certainly did not reach out via email." He also noted that he was "not scheduled to rotate at UHN until several months into next year" (Faculty's materials, p. 109). His next rotation was at SickKids, which is not part of UHN. Thus, the Student implicitly questioned the need for him to be in touch with UHN at all concerning his return to work.

The record before your Committee includes two narratives of phone communications between the Student and UHN-COVID, one from the Student and one from a staff member at UHN-COVID (pp. 0386-0387). These narratives are consistent with each other. They show that the Student was regularly in contact by phone with UHN-COVID between September 6 and 21, 2021. There is no specific record of any email communications that

the Student failed to respond to, and in particular, no specific record of any such communications between the last documented phone conversation on September 21, 2021, and the end of the rotation on September 24, 2021. The email of September 24, 2021, refers to “multiple attempts” to contact the Student but does not state whether these attempts were in the form of phone calls (which the Student acknowledges he may have missed) or emails (which were not placed before your Committee and which the Student denies having received). Nor does it state over what period of time these attempts were made. Your Committee is not sure what to make of this. On the one hand, there is nothing whatsoever in the record to indicate any motive on the part of anyone at UHN-COVID to make any misrepresentations in the email of September 24, 2021; on the other hand, the evidence placed before your Committee concerning the communications that the Student is said not to have responded to is unsatisfactory. If it were shown that the Student had failed to respond to “multiple attempts” to contact him between September 6 and 24, 2021, your Committee would defer to the judgment of the BoE and the FMAAC that such behaviour was unprofessional. However, your Committee is not satisfied that the factual basis for the Program’s finding of unprofessionalism in relation to this third incident has been established.

#### Fourth Incident: Lack communication (start of Block 4)

The Student was scheduled to begin a rotation at the Hospital for Sick Children (SickKids) on September 27, 2021. Before beginning the rotation, he was required to contact Occupational Health at SickKids to inform them of his COVID status and availability for work. The Student did not do so until reminded to do so by Dr. Mandy Lam, the site resident coordinator at SickKids. The Student’s statement at p. 1204 that he had contacted Occupational Health at SickKids is incorrect; the communications he references concern his contacts with UHN-COVID, as discussed above, and do not show any contacts with Occupational Health at SickKids, which (as the Student knew) is not part of UHN.

Late in the evening on September 26, 2021, the Student emailed Dr. Lam, stating that he might have to take his daughter to Emergency and so might not be able to attend on September 27. He did not contact Dr. Lam on the morning of September 27 to indicate whether he would attend or not. In the end, he arrived late for the orientation session. These facts are not in dispute.

In cross-examination, Dr. You-Ten was very clear that he regarded the Student’s failure to reconnect with Dr. Lam to indicate whether he would attend or not on September 27 as an instance of unprofessional conduct. The FMAAC commented that “in isolation, this likely would not have been a significant issue” but noted that the BoE had treated it as among the “variety of issues relating to [the Student’s] communication with the Program” (p. 0037).

Your Committee defers to the conclusion of the BoE and the FMAAC that this incident, though probably not very serious considered in isolation, was an instance of unprofessionalism.

Fifth Incident: Lack of communication concerning renewal of accommodation plan

The Student's accommodation plan was in force between July 1 and September 26, 2021 (pp. 1176-1177; Faculty's Materials, pp. 123-125). Thus, a new plan needed to be in place before he began his rotation at SickKids on September 27. The existing plan stated that four to six weeks would be required if any changes were to be made. The reason for this timeline was the need for Dr. Lam to draft a schedule that would be consistent with the Student's accommodation plan. As Dr. Lam explained to the Student in an email of September 27, 2021 (p. 0122), "It is challenging to schedule your clinical and call duties without your new accommodations, as you have started a new rotation at Sick Kids." The Student did not communicate with the Wellness Office concerning the plan until prompted to do so by Dr. You-Ten on September 27 (Faculty's Materials, p. 129). In the end, no changes were required. These facts are not in dispute.

The Student was aware that he was required to communicate with the Postgraduate Wellness Office well before the previous accommodation plan expired, even if there were to be no changes (pp. 0389-0393; Faculty's Materials, p. 125). In an email of June 20, 2021, concerning the Student's accommodation plan for July 1 to September 26, 2021, Dr. Charlie Guiang, the Interim Associate Director of Postgraduate Wellness, stated "I would like to avoid any last-minute communication in the future - as I hope you can appreciate, this is not ideal" (Faculty's Materials, p. 135). The accommodation plan for the period July 1 to September 26, 2021, concluded with the following note (p. 0077):

The Postgraduate Wellness Office will require ample time (4-6 weeks) prior to September 26, 2021 to make any changes to this occupational plan if required, after consultation with [the Student], his treating provider(s), and the Anesthesia Program, which includes receiving any required documentation (includes, but not limited to, letter(s) from treating provider).

Thus, the Postgraduate Wellness Office needed to be in a position by late August 2021, at the latest, to make any changes to the Student's accommodation plan. In order to do that, the office would have needed to receive the required information from the Student sometime in August 2021, at the latest, to determine whether any changes were needed and, if so, what they would be.

The Faculty's submissions state that the Student had failed to respond to "multiple emails prior to the expiry date of the occupational plan" (Faculty's Materials, p. 054). If such

emails were sent, they were not produced to your Committee. What your Committee did have before it was a series of emails primarily involving the student and Ms. Diana Nuss, who was the Wellness Coordinator in the Postgraduate Wellness Office of PGME, and Ms. Tania Campbell, Clinical Coordinator of the Physician Health Program (PHP) at the Ontario Medical Association (pp. 1801-1836). These emails were exchanged between September 16 and 29, 2021. The overall topic of these emails is the following: who should serve as the Student's workplace monitor at PHP going forward? There is also a single email dated July 21, 2021, from the Student to Dr. Heather Flett (p. 1800), in which the Student expresses his concern about not having a workplace monitor. Your Committee infers from these emails that the Student did not turn his mind to the need to change or renew his accommodation plan until September 16, 2021, well outside the time-line required by his previous accommodation plan.

The Student's position on this incident is that it should not have been characterized as unprofessional (p. 0119). Some members of your Committee have some sympathy for this position. As the Faculty submitted, and as noted above, the implementation of an accommodation plan is the joint responsibility of a student and a university division. Given the problems that the Student had in getting his accommodation plan implemented for Block 3, it appears to your Committee somewhat harsh for the Program to allege unprofessionalism on the basis of the Student's delay in ensuring that his new accommodation plan was in place, particularly when, in the event, no changes were needed. Moreover, considered in isolation, this incident does not appear to your Committee to be particularly serious. Nevertheless, your Committee again defers to the conclusion of the BoE and the FMAAC that this incident was an instance of and part of a pattern of unprofessionalism.

#### Sixth Incident: Inadequate use of MedRez to record vacation days

The Faculty describes the MedRez program as follows: "MedRez is an online tool that each resident must input their vacation, sick and education days so the Anesthesia program can keep track and to ensure that the limited number of vacation days (4 weeks) are fairly allocated to all residents and residents are not unfairly taking excessive vacation which might not allow other resident to take their vacation" (p. 0998). On occasion, the Student failed to record, or delayed recording, his vacation days in MedRez. These facts are not in dispute. The materials before your Committee suggest that other residents may also have failed to do so; in the fall of 2021 the Program sent an email reminding all anaesthesiology residents (not only the Student) about the need to use MedRez to enter vacation days and time off (p. 0275). In your Committee's view, it is fair to say that these incidents were not a major element in the BoE's or the FMAAC's conclusion that the Student had behaved

unprofessionally. The FMAAC mentioned this issue only in its summary of the Faculty's position (p. 0035) and did not comment on it during its own review of the issues before it (pp. 0035-0037). Nevertheless, your Committee has no jurisdiction to interfere with the BoE's finding that it was an instance of unprofessionalism.

### **The Student's Allegations of Procedural Unfairness**

The Student alleges that the process followed by the Faculty was unfair at every step: the drafting of Dr. You-Ten's dismissal report, the process leading to the RPC's recommendation that the Student be dismissed, the BoE's acceptance of that recommendation, and the FMAAC's dismissal of the Student's appeal.

Given your Committee's conclusion on the substantive issue, it is not strictly necessary to determine whether the proceedings in the Faculty were procedurally fair. Nevertheless, your Committee offers the following remarks on those issues. Your Committee rejects the allegations of procedural unfairness in relation to the drafting of the report and the RPC. Your Committee does have some concerns about the fairness of the procedure followed by the BoE, but it is not necessary to determine whether those concerns are so severe as to require the appeal to be allowed. The Senior Chair notes that if the appeal had been allowed on this basis, the appropriate remedy would likely have been to remit the matter to the BoE for redetermination. Counsel for the Student were very clear in their submissions that they did not seek this remedy. Your Committee finds that the procedure followed by the FMAAC was fair and reasonable in light of its own rules and usual practices. It is not necessary to decide whether FMAAC should have modified its procedures in this case.

#### *Dr. You-Ten's dismissal report*

Dr. You-Ten's investigation into the impugned EPAs was prompted by an email he received from Dr. Roumia stating "I was asked by a resident (see below) to do an evaluation but i never did it and then i got this confirmation ..." (Faculty's Materials, p. 064). As he explained in his report to the RPC and in his testimony, Dr. You-Ten then contacted other clinical fellows to determine whether there was any issue with any of the Student's other EPAs. The investigation revealed the other impugned EPA. No problem with any other EPA was discovered (p. 1049).

Counsel for the Student cross-examined Dr. You-Ten with a view to challenging the integrity of his investigation. Some of Dr. You-Ten's answers were surprising to your Committee. He said that after being alerted to the first impugned EPA by Dr. Roumia, he or Mr. Rodriguez contacted all of the clinical fellows who appeared to have evaluated the Student's other

EPAs and that they had discovered the second impugned EPA; but he agreed that no correspondence or notes from these inquiries had been included in his report or in the materials that he provided to the Faculty for inclusion in the materials filed in these proceedings. He thought they were not relevant. Your Committee found this approach surprising. It appears to your Committee that these documents were relevant to these proceedings and could easily have been included in the Faculty's materials or produced to the Student. Having said that, your Committee accepts Dr. You-Ten's testimony that these communications did occur and that they did not disclose any additional instances of unprofessional behaviour by the Student. In this respect, this case is quite different from *Gopinath v. The College of Physicians and Surgeons of Ontario*, 2014 ONSC 3143, relied upon by the Student. In *Gopinath*, the undisclosed material was part of the basis for an expert opinion that was put against the member in a proceeding in the CPSO's Inquiries, Complaints and Reports Committee. In contrast, the information Dr. You-Ten received from this part of his investigation were not part of the case the Student had to meet at the BoE.

In cross-examination, Dr. You-Ten was asked a series of questions about his understanding of the word "fraud." These questions included a hypothetical question: if Dr. You-Ten had concluded that the Student had accidentally submitted the impugned EPAs, would he still have regarded the Student's behaviour as fraudulent. He said he would, on the basis that the Student was in any event self-grading, which he should not have done, and was not following the correct procedures. Your Committee was surprised by this answer. In your Committee's view, in both legal and ordinary language, words like "fraud" and "fraudulently" refer to intentionally deceptive behaviour. But your Committee does not accept the Student's submission that Dr. You-Ten's understanding of the word "fraud" tainted his investigation. The question was hypothetical. Dr. You-Ten's view was, and appears from his testimony still to be, that the Student intentionally submitted the impugned EPA evaluations. The Student's initial response, on being confronted with the allegation, was not to say that he might have made a mistake but to deny that such errors could have occurred (p. 0278). Thus, there was no basis at that stage to consider the Student's claim that he simply made a mistake.

Moreover, with one exception, nothing in the Student's materials or testimony or in his counsel's submissions contradicts any of the facts stated in the report that Dr. You-Ten prepared for the RPC. The one exception is, of course, Dr. You-Ten's conclusion that the Student's submission of the impugned EPAs was intentional; as discussed above, the Student's position is that it was an honest mistake. Otherwise, there is surprisingly little in the facts stated that the Student takes issue with, though he does take issue with the characterization of those facts as constituting unprofessionalism. There is no dispute that

there are only two EPAs at issue; in other words, that Dr. You-Ten was correct to conclude that there was no issue with any of the other EPAs.

Dr. You-Ten was cross-examined at some length as to whether he had met in person with Dr. Roumia or spoken to her on the phone, as his affidavit suggests (Faculty's Materials, p. 048), or whether he communicated with her by email, as some other aspects of the record suggest. In the end, he could not recall exactly how he had communicated with Dr. Roumia. While this cross-examination did not reflect well on Dr. You-Ten's credibility in general, this factual issue is of no moment, given there is no dispute that the EPA in question was submitted without Dr. Roumia's approval. The manner in which Dr. You-Ten and Dr. Roumia communicated about the impugned EPA would not have made any difference to the content of his report.

Similarly, there is no dispute about the following factual matters stated in Dr. You-Ten's report: that the Student did not communicate with his program between July 4 and 9, 2021; that he did not attend his call shifts as scheduled on August 8 and 14, 2021; that he did not communicate his decision not to attend those shifts to the Program or to any of the physicians on site; that he did not obtain clearance from SickKids Occupational Health before beginning his rotation on September 27, 2021; that he did not confirm with Dr. Lam whether he would or would not attend on the first day of that rotation; and that he did not communicate with PGME's Wellness Office concerning the renewal of his accommodation plan until prompted by Dr. You-Ten to do so. The dismissal report does not include the Student's position on the impugned EPAs, but does summarize his position on the other allegations of unprofessionalism.

The Student makes a second submission concerning the fairness of the drafting of Dr. You-Ten's report. The Student notes that 67 days passed between August 20, 2021, when Dr. You-Ten became aware of the first impugned EPA, and October 26, 2021, when Dr. You-Ten met with the Student to discuss the allegations of unprofessionalism. The Student submits that this 67-day delay was inconsistent with the *Code of Behaviour on Academic Matters* (Code), which provides that "Where an instructor has reasonable grounds to believe that an academic offence has been committed by a student, the instructor shall so inform the student immediately after learning of the act or conduct complained of, giving reasons, and invite the student to discuss the matter ...". And apart from this alleged violation of the Code, the Student submits that, before finalizing the dismissal report, Dr. You-Ten had a duty to provide the Student with notice of the investigation and to give him the opportunity to respond to the evidence gathered against him. The Student submits that, had he been aware of Dr. You-Ten's investigation earlier, he could have provided a more timely recollection of his version of events and possibly provided other independent evidence in

support of his position (p. 0228). The Student says that “the RPC had already made a decision, by October 25, 2021, at the latest, to dismiss him, all without notice or the right to be heard” (p. 0227).

Your Committee rejects these submissions.

The Code was not applicable in these proceedings. Non-compliance with the Code in the drafting of Dr. You-Ten’s report is therefore irrelevant. The Code applies to allegations of academic misconduct. Dr. You-Ten was not making an allegation of academic misconduct. He was considering the Student’s success or failure in meeting an academic requirement, namely, the competency of professionalism. The applicable procedure was outlined in the Guidelines for the Assessment of Postgraduate Residents. Dr. You-Ten followed that procedure. While the issue of the impugned EPAs might have been dealt with as a matter of academic discipline, it was also a matter of professionalism. Section 6.2 of the Guidelines (p. 0304) contemplates that conduct inconsistent with the Code may be treated as “improper conduct” potentially leading to suspension and dismissal from a program. The Program’s other concerns about the Student’s professionalism were not in the nature of academic misconduct.

Counsel for the Student argued that the Code applied here because it had been incorporated by reference into all of PGME’s procedures. The basis for this argument is the statement in the Guidelines for the Assessment of Postgraduate Residents that the Guidelines “are ... designed to be consistent with the following ... policies”, including the Code (p. 0295). Your Committee rejects this argument. The Guidelines list seven University and professional policies that they are “designed to be consistent with ...” It cannot be the case that each of these policies is incorporated by reference into every action that PGME takes by way of assessing a resident. It appears that the Code applies to students enrolled in PGME, and as a University-wide policy, it would likely apply whether or not it was mentioned in the Guidelines. But that does not mean it is incorporated by reference into every academic or administrative action that PGME takes concerning the assessment of any student. It applies when the Faculty alleges academic misconduct against a medical resident. The allegations here were of unprofessionalism.

Your Committee does not consider the fact that the Student was not notified of the investigation until October 26, 2021, or that Dr. You-Ten prepared the draft report before notifying the Student of the allegations to have occasioned any procedural unfairness. Between July 1 and October 25, 2021, the Student had been alerted to many of the Program’s concerns about his lack of communication on several occasions. With respect to the lack of communication between July 4 and 9, 2021, Dr. You-Ten had reminded the Student on July 15 that “It is very important that communications are provided in a timely

and professional manner” (p. 1191). With respect to the missed call shifts and lack of communication during Block 2, Dr. Dason had expressed concerns on August 12 (p. 0797) and Dr. Windrim had evaluated the Student as having not met the competency of professionalism (p. 1610). With respect to the lack of communication around the start of Block 4, Dr. You-Ten expressed his concerns on October 13, 2021 (p. 0124). With respect to the delay in getting the Student’s accommodation plan varied or renewed, Dr. You-Ten advised the Student on September 27, 2021, and again on October 13, 2021, that this was an issue of professionalism (pp. 0122, 0124). Thus, before the meeting on October 26, 2021, the Student was well aware of these professionalism concerns. The serious allegations relating to the impugned EPAs were new to him; however, Dr. You-Ten was under no obligation to discuss them with the Student before drafting his report and suspending the Student.

Having been informed on October 26, 2021, of all the facts that formed the basis for the findings of unprofessionalism, the Student had ample time to prepare a response for consideration by the RPC or (if the RPC recommended dismissal, as it ultimately did) the BoE. The RPC’s decision to recommend the Student’s dismissal was not made before October 26, 2021, as the Student states at certain points in his materials (pp. 0152, 0868), but on April 22, 2022, after the Student had been given an opportunity to speak to the RPC and had chosen not to do so (see below). And, as contemplated by the Guidelines, the decision to dismiss the Student was not made by the RPC but by the BoE, with submissions from the Student, on April 29, 2022.

Third, the Student alleges that between August and October 2021, Dr. You-Ten was “building a case” for his dismissal. During this period, Dr. You-Ten was drafting the dismissal report and in that sense, he was indeed building a case for the Student’s dismissal. But there is nothing unfair about that in itself. Your Committee understood the point of this submission to be that Dr. You-Ten had an improper motivation to dismiss the Student and was seeking out information that could support that result. To the extent that this submission is understood this way, your Committee rejects it. As counsel for the Faculty correctly pointed out, apart from the second impugned EPA, the concerns in the report were for the most part not sought out by Dr. You-Ten but brought to his attention by his colleagues. Dr. Roumia contacted Dr. You-Ten about the first impugned IPA. Dr. You-Ten was alerted to the issue of the missed call shifts in Block 2 because, according to the ITAR completed by Dr. Windrim, the Student failed to meet the professionalism competency in that block. Dr. You-Ten therefore sought out additional information as to why (Faculty’s materials, pp. 092-094). Dr. Randall contacted Dr. You-Ten about the email he received from UHN-COVID (Faculty’s materials, p. 110). The concerns about the Student’s delay and lack of communication around the start of Block 4 came from Dr. Lam in response to a

routine query (Faculty's materials, p. 120). Dr. You-Ten was not seeking information to support a conclusion he had already come to; rather, he reached the conclusion that the Student should be dismissed only after investigating the concerns expressed by various colleagues.

Fourth, the Student alleges that the draft dismissal report was unfair, inaccurate, and prejudicial. In particular, the Student notes that the initial draft of the report had contained a lengthy description of the Student's history in the Program prior to January 2020 (see pp. 0978-0990). In the final version of the dismissal report, this section was reduced to about half a page, noting simply that the BoE had on three previous occasions required the Student to undergo remediation, and that he had previously been dismissed from and then reinstated into the program (p. 1039). In cross-examination, Dr. You-Ten agreed that he removed this material because he had concluded that it was not relevant to the reasons for recommending the Student's dismissal, which concerned his conduct between July and September 2021. However, he rejected counsel's suggestions that this material was prejudicial to the Student or that the RPC would be influenced by having seen it in the draft report. His testimony was that it was simply irrelevant. Your Committee agrees with this assessment. The dismissal report concerned the Student's conduct during the period between July and September 2021. The Student's history in the Program before January 2020 provided some context, but was of little if any relevance to the events described in the dismissal report. Moreover, when the RPC met to consider Dr. You-Ten's final dismissal report, more than six months had passed since they had seen the draft report.

The Student submitted that the final dismissal report was unfair because, although it noted that the Student had been dismissed and reinstated, it did not say why: it did not explain that the BoE had previously concluded that some of the Student's difficulties might be attributed to ADHD and that the FMAAC had ordered his reinstatement with accommodations. Your Committee rejects this submission. These facts were not relevant to the RPC's deliberations. As noted, during the events in question, the Student had an accommodation plan. He has never suggested that the plan was inadequate. His academic performance from January 2020 onwards had to be assessed as accommodated.

The Student also argues that the dismissal report did not adequately represent his version of events. Your Committee does not accept the Student's submission that the failure of the report to include all of his explanations for the events in question created any unfairness. As noted, when the report was drafted, the Student had not yet advanced the claim that the impugned EPAs were submitted in error; his position was that he had discussed all EPAs with clinical fellows and "there is no way he would have completed an EPA without staff or fellow approval or discussion beforehand" (p. 0278). The report would have been more

balanced had it provided more detail concerning the Student's explanations for the other allegations of unprofessionalism; however, the Student was given the opportunity to make his own submissions to the RPC, which he chose not to do, and to the BoE, which he did.

Finally, Dr. You-Ten was cross-examined about the circumstances surrounding the report that PGME sent to the CPSO on October 27, 2021. While this cross-examination highlighted the significance of the Program's decision to suspend the Student, it did not disclose any procedural unfairness. As noted above, PGME was legally required to make this report to the CPSO.

### *The Residency Program Committee*

As noted above, the Residency Program Committee (RPC) initially received a draft of Dr. You-Ten's dismissal report on October 14, 2021, but did not act on it at that time. It was contemplated that the RPC would consider the draft report at its meeting of November 10, 2021, but at that time the Student was on a medical leave of absence, so the RPC could not consider his situation. In a letter of March 27, 2022, Dr. You-Ten and Dr. Fiorellino offered the Student, "as a gratuitous gesture," an opportunity to appear before the RPC at its meeting of April 14, 2022. The Student did not attend. At the time, he told Dr. You-Ten that he would not attend, but did not say why, and said that he would provide some material for the BoE to consider, as he ultimately did (pp. 0156, 0868). He now states that he thought it would "make no difference to the decision that the RPC had already made about me as of October 14 and 25, 2021" and that he was not feeling well (p. 0867).

The RPC did not act unfairly in proceeding in the Student's absence. The Student did not inform the Program or the RPC of his reasons for not attending and did not seek to have the meeting rescheduled to another time when he would be able to attend.

The Student takes exception to the use of the word "gratuitous" to describe the opportunity he was given to attend the meeting of the RPC. He suggests that it showed "contempt for [his] rights" (p. 0245). In his affidavit, Dr. You-Ten states that "We were simply communicating that another meeting was being scheduled to address the prior one that he could not attend", *i.e.*, the meeting of November 10, 2021 (Faculty's materials, p. 56).

The word "gratuitous" was perhaps not well-chosen, but your Committee finds that it was meant only to convey that the RPC was providing the Student with an opportunity to attend its meeting. As the Student recognizes (p. 0229), the RPC does not normally hear from students. The Program thought it important to give the Student an opportunity to be heard, even though it does not normally do so. Since he was unable to attend in November 2021, when the RPC was initially scheduled to consider the dismissal report, the program offered

him an opportunity to attend the meeting where it did consider the report. Far from being an indicator of procedural unfairness, the opportunity that the RPC offered the Student was an attempt to adapt its usual procedures to provide a measure of procedural fairness.

The RPC met as scheduled on April 14, 2022. It accepted Dr. You-Ten's recommendation. In turn, in accordance with s. 7.2 of the Guidelines, the RPC recommended to the BoE that the Student be dismissed from the Program.

### *The Board of Examiners*

The Board of Examiners (BoE) makes decisions about matters such as academic standing and remediation (see, for example, Report 420). As the FMAAC put it, the role of the BoE "is to review the cases of trainees in academic difficulty and determine the appropriate course of action" (p. 0035). The BoE is not a "tribunal" (as the Student suggests at p. 0257). Its function is not to resolve factual disputes between the Faculty and individual students in an adversarial setting. The BoE undoubtedly owes a duty of fairness to the students who are affected by its decisions, but that duty of fairness does not require it to adopt the kind of procedures that would be appropriate for an administrative tribunal or a court.

Students are not permitted to attend meetings of the BoE (pp. 0160-0161). The record does not indicate whether the Student asked the BoE to make an exception to this rule; if he had, his request would likely have been refused. The Student did, however, provide the BoE with 93 pages of written submissions (these submissions are described at p. 0162, but were not included in the materials before your Committee).

Your Committee has no power to set aside or invalidate divisional procedures and policies. It is therefore difficult, if not impossible, for your Committee to find that a division's decision is unreasonable because it followed its own rules (see, for example, Report 371), even if your Committee harbours its own doubts about the fairness of those rules (see, for example, Report 307). Therefore, the fact that the Student was not given an opportunity to appear and make oral submissions to the BoE cannot be a basis for a finding of procedural unfairness.

Where a division has followed its own rules, it is nevertheless possible for its decision to be procedurally unfair for other reasons. In this case, your Committee is troubled by the lack of any indication that the BoE considered the material filed by the Student on April 27, 2022. As the Student has pointed out, the BoE's minutes largely reproduce Dr. You-Ten's dismissal report. They do not refer at all to the material that the Student filed in advance of the BoE's meeting. It is therefore impossible to determine whether or not the BoE considered the Student's written submissions. The BoE's duty of fairness required it to

consider the Student's submissions in deciding whether to dismiss him from the Program. The lack of any indication that it did so raises a serious doubt as to whether it complied with its duty of fairness.

#### *The Faculty of Medicine Academic Appeal Committee*

The Faculty of Medicine Academic Appeal Committee (FMAAC), unlike the RPC or the BoE, is a tribunal. The FMAAC has a duty of procedural fairness because it is a tribunal and because of the significant impact its decisions have on medical students, in this case on the Student's "ability to complete his medical education and practice medicine" (p. 0234).

The Student submitted that the proceedings before the FMAAC were unfair because its jurisdiction is "limited to only three potential grounds for appeal" (p. 0164) namely, that (a) faculty regulations were not followed; or (b) relevant evidence was not considered; or (c) "The decision could not be supported by the evidence which was considered when it was made" (Faculty's materials, p. 006). In the Student's submission, these limited grounds of appeal made it impossible for the FMAAC to conduct the kind of hearing *de novo* that was necessary for him to effectively challenge the BoE's decision, given that his challenge depended in part on a determination of his credibility (pp. 0234-0238). The Student also argues that the FMAAC should have required the Faculty to disclose documents and to ensure that the BoE rendered a proper decision, and that its failure to do these things also made the procedure unfair (p. 0238).

The Faculty submits that the FMAAC did conduct a hearing *de novo* and that it correctly followed its own procedures. The Faculty notes that the Student had the opportunity to make, and did make, oral submissions. The Faculty defends the FMAAC's decision as both "correct and reasonable" (Faculty's materials, pp. 006-008).

In the absence of authority, the Senior Chair would be inclined to the view that proceedings before the FMAAC should be characterized as an appeal rather than as a hearing *de novo*. But in *Bastien v. University of Toronto*, 2021 ONSC 4854, at para. 39, the Divisional Court held that the FMAAC had conducted a hearing *de novo*. In *Bastien*, the BoE referred the resident for remediation rather than, as here, dismissing him, but in other respects the two cases are very similar. In both cases, the student appealed from a decision of the BoE to the FMAAC; the student alleged procedural unfairness at the BoE; the student's concerns about the fairness of the BoE's process were well-founded; the FMAAC considered the three grounds of appeal that appear in its Terms of Reference in conducting the hearing; the FMAAC conducted its own review of the evidence and of both the program's and the student's position; and the FMAAC dismissed the student's appeal. Given these

similarities, the Senior Chair holds that the Divisional Court's holding in *Bastien* is binding on your Committee and that the proceeding before the FMAAC should be characterized as a hearing *de novo*. To that extent, as in *Bastien* (see paras. 46-47), unless the FMAAC process was itself procedurally unfair, it must be taken to have cured any procedural defect in the BoE's process.

The Student's principal argument for the proposition that the FMAAC's process was procedurally unfair is that the grounds of appeal that it could consider were unfairly limited by its own terms of reference. This argument cannot succeed. As noted above, it is difficult, if not impossible, for your Committee to find that a divisional decision is procedurally unfair because a division followed its procedures. There may be reasons why a decision made in accordance with a division's own procedures is procedurally unfair or unreasonable. But the fact that it followed its own procedures cannot be one of them. Thus, the fact that the FMAAC considered only those grounds of appeal that are available to it according to its own Terms of Reference cannot be a basis for a finding of procedural unfairness.

Having said that, your Committee appreciates the Student's point that the FMAAC determined an issue of credibility adversely to the Student without hearing his sworn or affirmed testimony. It may be that the FMAAC had the power to receive such testimony on the basis that it would have been "relevant evidence [that] was not considered" by the BoE, particularly given the holding in *Bastien* that the FMAAC's proceedings are properly characterized as hearings *de novo*; on the other hand, for the FMAAC to have received sworn or affirmed testimony would be a significant departure from its usual practices and would create a number of legal and pragmatic difficulties. Your Committee also notes that there is nothing in the record to indicate that the Student requested an opportunity to testify before the FMAAC under solemn affirmation.

Whether the FMAAC has the power to hear testimony and whether it should on its own motion have offered the Student an opportunity to testify is a speculative question that your Committee does not need to answer. In his ruling of May 31, 2024, the Senior Chair directed that your Committee would, contrary to its usual practice, permit the parties to call affirmed testimony. Specifically, the Senior Chair ruled:

... the Student may, if he chooses, give oral evidence under oath or solemn affirmation before the AAC panel. Either party may seek permission from the Senior Chair to call additional witnesses in relation to issues arising from the Student's testimony. Counsel for each party will of course be entitled to cross-examine any witness called by the other party.

As noted above, the Student testified before your Committee, as did two witnesses for the Faculty. All three witnesses were examined in chief and were cross-examined. Your Committee has carefully considered their testimony in making its factual findings. If the proceedings before the FMAAC were unfair because of its failure to hear affirmed testimony from the Student and potentially other witnesses, which your Committee does not decide, the appropriate remedy would be to remit the matter to the FMAAC with a direction that it permit the Student to testify if he wished to. But such a remedy was not sought by the Student and, given that your Committee has itself heard the relevant testimony, ordering it now would serve no useful purpose.

### *The allegation of unconscious bias*

As noted, the Student is of West African (specifically, Cameroonian) origin. He alleges that the proceedings in the Faculty were tainted by unconscious bias against Black persons and immigrants from Africa. The Faculty concedes that unconscious bias “may play a role in the learning environment” and notes the steps that the Program has taken to combat it (Faculty’s materials, p. 010). But the Faculty denies that unconscious bias affected the proceedings involving the Student. Dr. You-Ten testified in cross-examination that in the summer of 2021 he had taken what he referred to as the “Harvard module,” a program designed to alert decision-makers to the possibility that unconscious bias might affect their decision-making. The Faculty submits that there is no evidence to support the Student’s allegation that unconscious bias played a role in the proceedings in the Faculty and accordingly argues that the allegation is speculative (Faculty’s materials, pp. 010-012).

The Student’s allegation that unconscious bias had affected the Faculty’s decision-making was made in two different ways in these proceedings. First, as originally framed, the Student argued that your Committee should infer from the unfairness of the proceedings in the Faculty that the decision-makers in the Faculty must have been affected by unconscious anti-Black racism (pp. 0245-0246). In this form, as counsel recognized in closing submissions, the Student’s argument was superfluous. If your Committee had found the proceedings to be unfair, then that would have justified a remedy for the Student, without the need for a finding either way as to whether unconscious anti-Black bias was a factor.

But in closing submissions, the argument was framed a second way. Counsel for the Student urged your Committee to find that the that unconscious bias had affected the Program’s decision-making on the basis of two remarks by faculty members in the Program.

First, in an email to Dr. You-Ten and Dr. Fiorellino, dated September 16, 2021, Dr. Katherine Marseu stated that in Block 2 the Student “was up to his old tricks again” (p. 0960). Counsel for the Student submitted that this remark was indicative of the assumptions about Black people that were at play in the Program at the relevant time. Counsel for the Faculty urged your Committee to interpret the remark as an expression of frustration over rotations that the Student had previously missed, his failures to communicate with the Program, and the prospect that he was about to miss another rotation (as indeed he did, as a result of his unfortunate exposure to COVID-19).

In the fall of 2021, Dr. Marseu was a member of the RPC and was present at its meeting of October 14, 2021, when Dr. You-Ten first presented the case for dismissing the Student. The record does not indicate whether she was present at the meeting of April 14, 2022, when the RPC decided to recommend the Student’s dismissal. She was not a member of the BoE, who made the decision to dismiss the Student. She was not a member of the FMAAC panel that dismissed the Student’s appeal from the BoE. Your Committee is inclined to agree with the Faculty that Dr. Marseu’s remark should be interpreted as an expression of frustration rather than as a manifestation of unconscious bias. But regardless of how exactly it should be interpreted, your Committee notes that Dr. Marseu was only one member of one of the three committees that considered the Student’s situation. She was not a member of either committee whose decision is under review (the BoE or the FMAAC). In this respect, this case is quite different from *Vento Motorcycles, Inc. v. Mexico*, 2025 ONCA 82, relied on by the Student, where the person found to have a reasonable apprehension of bias was a member of the tribunal who made the decision under review. There is no evidence that anyone other than Dr. You-Ten and Dr. Fiorellino was aware of Dr. Marseu’s remark. Your Committee finds that Dr. Marseu’s remark falls very far short of establishing that all the proceedings in the Faculty were tainted by unconscious bias.

Second, in the draft dismissal report, Dr. You-Ten noted that the Student was an international medical graduate (IMG) (see pp. 0996, 1022). This note did not appear in the final dismissal report. In cross-examination, Dr. You-Ten rejected the suggestion that this piece of information could have biased the RPC against the Student. As he explained, all residents in PGME are (by definition) either Canadian medical graduates or international medical graduates. This classification refers to the location of their training, not to their nationality, race, or ethnicity; Canadian citizens and permanent residents may be IMGs just as physicians who are neither Canadian citizens nor permanent residents may be Canadian medical graduates. Your Committee accepts Dr. You-Ten’s explanation of the meaning of the term IMG and rejects the suggestion that it would evoke any form of bias at all.

## **Conclusion**

The Student was dismissed from the Program for unprofessionalism. Your Committee finds that the factual basis for the Program's conclusion is, for the most part, clearly established. Your Committee will not second-guess the BoE's and FMAAC's conclusion that these incidents constituted unprofessional behaviour and, considered cumulatively, justified his dismissal from the Program. Your Committee rejects the Student's allegations of procedural unfairness, except in relation to the apparent failure of the BoE to give his written submissions proper consideration. While in other circumstances that failure might justify an order requiring the BoE to reconsider the Program's dismissal report, such an order was not sought and would serve no purpose at this point in the proceedings since both the FMAAC and your Committee have fully considered the Student's submissions. The appeal is dismissed.

**UNIVERSITY OF TORONTO  
GOVERNING COUNCIL**

**BETWEEN:**

**DR. [REDACTED]**

Appellant

**AND**

**THE FACULTY OF MEDICINE**

Respondent

**Reasons for Motion Decision**

**Senior Chair:** Professor Hamish Stewart

**For the Appellant:**

Lisa Constantine, Constantine Legal

**For the Faculty of Medicine:**

Sari Springer, PembertonLane PC

The narrative of events provided in this ruling is based on the Senior Chair's reading of the materials filed by the parties to date and does not constitute a set of factual findings of your Committee.

The parties' materials are to be revised and resubmitted in accordance with this ruling.

The Student is a medical doctor. During the 2020/21 academic year, he was in the first year (PGY-1) of the Anesthesiology Residency Program (the Program) in the Faculty of Medicine. There is no dispute that the Student has ADHD and has received a number of accommodation plans to enable him to continue in the program. There is no dispute that, during the period of time that the events giving rise to this appeal occurred, there has never been any concern with the Student's clinical performance. At a meeting of the Program's Residency Program Committee (RPC) on October 14, 2021, Dr. Eric You-Ten, the program director, presented the case for the Student's dismissal on grounds of lack of professionalism. On October 26, 2021, the program director provided the

Student with a draft dismissal report and suspended him from the program, pending dismissal, for “critical professionalism lapses” (Student’s Motion Record, p. 176). These alleged lapses occurred between July and September 2021. The RPC met again on April 14, 2022. The Student was invited to attend but chose not to. The RPC recommended that the Student be dismissed and the program director brought that recommendation to the Faculty’s Board of Examiners (BoE). On April 29, 2022, the BoE accepted that recommendation and dismissed the Student from the program. The BoE’s decision was communicated to the Associate Dean for Postgraduate Medical Education on May 3, 2022. The Student appealed the BoE’s decision to the Faculty’s Academic Appeals Committee (FAAC). On February 27, 2023, the FAAC dismissed the Student’s appeal.

The Student now appeals to your Committee. The principal remedy he seeks is reinstatement in the program.

The specific allegations of unprofessional behaviour fall into two major categories: first, intentional falsification of evaluations; second, unexplained absences and other failures of communication concerning scheduling of work.

The first allegation is that on August 19, 2021, the Student had submitted two Entrustable Professional Activities (EPA) assessments through the Faculty’s Elentra platform, without the knowledge and consent of the supervising physicians who were responsible for approving them. In his letter to the College of Physicians and Surgeons of Ontario (CPSO) of October 27, 2021, the program director stated that these two EPAs “are inaccurate and are a surreptitious attempt to embellish his performance,” that the Student “has attempted to mislead the program about his competencies,” and that his “actions are an egregious breach of professionalism and are not remediable” (Student’s Motion Record, p. 201). At the BoE meeting on April 29, 2022, the program director described this incident as constituting “egregious unprofessionalism” (Student’s Motion Record, p. 239). The Student maintains that he prepared the two EPAs as drafts with the intention of sending them to his supervising physicians and that he accidentally submitted them to the program as final EPAs (Student’s Record of Appeal, p. 130). The FAAC did not believe the Student’s account and found that the EPAs had been submitted intentionally, describing them as “fraudulent” (Student’s Record of Appeal, p. 024).

The second set of allegations involves a number of issues relating to the scheduling of the Student’s work (see Student’s Motion Record, pp. 243-247). The Faculty alleged that the Student missed two call shifts during his Obstetrics training block (August 8 and 12, 2021) without explanation in advance and without responding to text messages during those absences. The Student offers a number of explanations for these events and disputes some of the facts asserted by the Faculty (Student’s Record of Appeal, pp.

096-106). The Faculty also alleged a number of problems of communication in relation to other incidents, notably the timing of the commencement of the Student's Pediatric Emergency training block in early July 2021 and the Student's late return to work from travel abroad in September 2021. Again, the Student offers explanations for these events and disputes some of the facts asserted by the Faculty (Student's Record of Appeal, pp. 136-142). The BoE evidently found these matters to be very concerning. In his letter to the CPSO, the program director stated that the Student "has engaged in a consistent lack of communication regarding work assignments and absences from work, despite previous reminders that untimely communication is regarded as unprofessionalism"; "has a pattern of absenteeism", and has "demonstrated a failure to comply with known on-call obligations" (Student's Motion Record, p. 197). The FAAC found no error in the BoE's treatment of these issues.

The Student has filed a motion requesting permission to tender evidence to your Committee and seeking disclosure of certain information from the Faculty. The Student's Notice of Appeal also raises an issue that needs to be determined before your Committee hears the appeal. On January 29, 2024, the Senior Chair met on Zoom with counsel for the Student and for the Faculty to hear submissions about these issues. In order to facilitate the scheduling of the hearing of the main appeal, on April 19, 2024, the Senior Chair released a "bottom-line" ruling to provide decisions on all the issues. This ruling provides the Senior Chair's reasons for decision, to the extent that those reasons were not apparent from the bottom-line ruling. The Senior Chair regrets the delay in releasing both the bottom-line ruling and these reasons for decision. The delay was largely due to a very serious illness in the Senior Chair's immediate family.

On May 1, 2024, following the release of the bottom-like ruling, the Senior Chair met on Zoom with counsel for the parties to discuss the scheduling of the appeal. At that meeting, counsel for the Faculty raised an additional issue that needs to be resolved in advance of the hearing, namely, whether the Committee needs to be aware of the Student's entire history at the Faculty, as recounted at pp. 029 to 233 of the Student's Record of Appeal, or whether it would be appropriate for the Committee to focus specifically on the period beginning in January 2021 (pp. 088-223). This ruling deals with that issue as well.

### **Standard of review**

The Student's Record of Appeal argues that your Committee should review the decisions of the FAAC and the BoE on the standard of correctness. The issues he raises before your Committee are matters of procedural fairness that he characterizes as questions of law. He submits further that, according to the leading case of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, questions of law are

generally reviewable on the standard of correctness (Student's Record of Appeal, pp. 226-232). The Faculty submits that the standard of review is reasonableness.

*Vavilov* is undoubtedly a landmark case in Canadian administrative law. It deals with numerous issues that arise in judicial review of administrative decisions. Among other things, it provides an approach to determining whether the standard of review is correctness or reasonableness, and it provides some insight into the substance of the reasonableness standard. But *Vavilov* does not mandate a correctness standard of review for questions of law or for questions of procedural fairness. In *Vavilov* itself, the Court applied the reasonableness standard of review to an administrative decision on a question of law (the Registrar of Citizenship's interpretation of s. 3(2)(a) of the *Citizenship Act*, R.S.C. 1985, c. C-29). As for procedural fairness, the Court nowhere suggests that all questions of procedural fairness are reviewable on the correctness standard; to the contrary, the Court explicitly recognizes that questions of procedural fairness are relevant to review on the reasonableness standard (paras. 76-81).

More fundamentally, the proper interpretation of *Vavilov* is not relevant to this appeal. University policy explicitly provides that the standard of review on an academic appeal is reasonableness (Policy on Academic Appeals Within Divisions, article 2.ii). Where the governing law or policy explicitly mandates a standard of review, it is unnecessary to apply the *Vavilov* methodology to determine what the applicable standard of review should be. Your Committee will be required to determine whether the decisions under review were reasonable applications of the relevant Faculty policies. The Senior Chair notes that your Committee has previously applied the reasonableness standard in appeals from the FAAC (see, for example, Report #416; Report #420).

Having said that, the Senior Chair of your Committee recognizes that allegations of procedural unfairness are central to the Student's appeal and that, in determining whether the decisions below were reasonable applications of the relevant University policies, the Committee hearing this appeal will have to consider whether, in all the circumstances, the Student was treated fairly.

#### **(a) Request to tender evidence**

The Student asks the Senior Chair to receive the following evidence, for your Committee's consideration at the hearing:

- (i) Clinical reports concerning the Student's ADHD. The Faculty's position is that "[t]hese reports could have been provided at the FAAC hearing but were not" (Faculty Submissions, p. 15). The relevance of these reports is not apparent to the Senior Chair, as there is no dispute between the parties that the Student has ADHD. They are therefore not admissible at this time. The Senior Chair is willing to reconsider this issue if necessary.

- (ii) An expert report “from Dr. Corey Sawchuk regarding a teaching program’s responsibilities to residents in difficulty”. The Faculty’s position is that Dr. Sawchuk is not an expert on that issue, that his views are irrelevant, and that in any event his report “could have been tendered at the FAAC hearing but was not.”

The Senior Chair finds that Dr. Sawchuk’s report, whether or not it be characterized as expert opinion, is of marginal relevance to the issues before your Committee and on that basis declines to receive it. To a large extent, Dr. Sawchuk’s report appears to be intended to support the Student’s position that the Faculty should have handled his case differently. But that is just a recharacterization of the very issue that the AAC panel will need to decide—whether University policies were applied reasonably in the Student’s case. That issue is for the Committee to decide on the basis of the record and the parties’ submissions. Opinion evidence is not necessary to determine it.

- (iii) “Expert opinion report from Professor Lorne Foster regarding the impact of implicit racial bias and racial stereotyping” and
- (iv) “Expert opinion report from Dr. K. Osei-Tutu regarding the challenges faced by black residents in residency training”. The Faculty’s position is that Dr. Foster’s report “does not address any matters that are specific to this case” and that Dr. Osei-Tutu’s report is “replete with opinions and analogies that are without foundation”. The Faculty also submits that both reports could have been produced to the FAAC but were not.

These two reports are not admissible. The Senior Chair does not doubt the expertise of Dr. Foster and Dr. Osei-Tutu concerning the matters discussed in their reports. However, the Senior Chair finds, for two reasons, that their reports are not necessary for the resolution of the issues before your Committee. First, as the Student submits in another part of his submissions, the potential effect of implicit racial bias is notorious in the University community. Your Committee can notice it and therefore does not need evidence to establish it. Indeed, the Student submits that the FAAC should have done just that (Student’s Record of Appeal, p. 236). Second, and more fundamentally, the Student’s appeal does not depend on establishing implicit racial bias, with evidence or otherwise. The Student does not argue that the decisions below were procedurally flawed because of implicit racial bias; rather, he argues that implicit racial bias explains the procedural flaws in the decisions below. He lists nine instances of alleged procedural unfairness and asks your Committee to infer that the explanation for this unfairness is anti-Black racism and bias (Student’s Record of Appeal, pp. 263-4). As the Student’s counsel explained at the meeting on January 29, 2024, she intends to urge your Committee to infer from the way the Faculty treated the Student

- that the process was profoundly affected by unconscious racial bias and stereotyping. That argument is certainly open to the Student, but the proffered reports are not needed to support it. If the Student can satisfy your Committee that those decisions were indeed procedurally flawed, it will not be necessary for your Committee to find that those flaws were due to implicit racial bias; on the other hand, if your Committee finds no procedural flaws, the basis for the Student's argument that there was implicit racial bias will be undermined.
- (v) "a letter from the Professional Association of Residents of Ontario" (Motion Record, p. 085). This letter appears to be irrelevant and inadmissible at this time. The Senior Chair will be willing to reconsider this decision if appropriate.
  - (vi) "Additional relevant documents listed in the attached "Schedule A". The only additional document in Schedule A is a medical report from 2018 concerning the Student's ADHD diagnosis. Same ruling as under (i).
  - (vii) Other relevant documents. These documents are considered under (c) below.

**(b) Order permitting the Student to tender oral testimony at the hearing before your Committee**

- (i) The Student

The Student wishes to have the opportunity to give oral evidence at the hearing before your Committee. The Student notes that the consequences of the FAAC's decision are very serious, that he has been accused of fraud and unprofessionalism, and that he has "had credibility findings made against him in circumstances where he did not have the right to examine and cross-examine witnesses and tender *viva voce* evidence" (Student's Motion Record, p. 006). He states that while he could, and did, make oral submission to the FAAC, those submissions were limited to 30 minutes, that he was not at that time represented by counsel, and that he was not aware that he could testify in the more formal manner that he now requests.

The Faculty asserts that the Student has been provided with many opportunities to put forward his version of the facts. In particular, the Faculty notes that the Student was provided with a draft dismissal report on October 26, 2021, and was invited to attend the meeting of the RPC on April 14, 2022, but chose not to do so. The Faculty also notes that he did make oral submissions to the FAAC.

The AAC's function is to review, on the standard of reasonableness, the application of academic standards and regulations to students. For this reason, hearings before the AAC are normally conducted on the basis of a paper record without oral evidence. The Senior Chair recently refused a request to summons witnesses on the basis that their anticipated evidence would not assist the AAC in its resolution of the issues before it (Report #429). There is, however, no doubt that the AAC has the power to hear oral evidence if a Chair is satisfied that it would assist the AAC in its task. All chairs of the

AAC are legally qualified and are capable of controlling the course of oral testimony. Many of them are members of the Law Society of Ontario and are therefore entitled to administer an oath or solemn affirmation.

The findings of the program director, the RPC, the BoE, and the FAAC all turn critically on their rejection of the Student's account of the circumstances in which he submitted the incomplete EPAs as final and in which he missed on-call shifts and failed to communicate in other respects. All of these decision-makers have found him not to be credible without having heard his explanations for his conduct under oath or solemn affirmation. In the context of this pre-hearing decision, the Senior Chair does not intend this observation as a criticism of any of those decision-makers. The program director was not adjudicating a dispute but was making a recommendation about the application of academic standards to the Student. Similarly, the RPC and the BoE are not bodies designed to resolve disputes through an adversarial process; their role in this case, like the program director's, was to apply the Faculty's academic standards to the Student. On the other hand, the FAAC is a dispute resolution body, and while its usual processes do not appear to be well-suited to making credibility determinations, they could perhaps be adapted for that purpose. These observations do not constitute a finding that these decision-makers failed to discharge their duty of fairness; that is for the AAC to determine. Moreover, the Senior Chair does not decide whether the duty of fairness required any of these decision-makers to have heard sworn or affirmed testimony from the Student in a formal setting. The point is simply that their processes did not provide the Student with the opportunity to give such testimony.

The most serious allegation against the Student is that he fraudulently submitted two EPAs. While that behaviour has been characterized in this case as a failure to meet academic standards, it is also in substance an allegation of academic misconduct. Had this matter been pursued under the *Code of Behaviour on Academic Matters*, and assuming the matter went as far as a hearing before the University Tribunal, the Faculty would have borne the burden of proof to establish that allegation on a balance of probabilities, using clear and convincing evidence, and the Student would have had the benefit of a much more formal process, including the right to testify under oath or affirmation, than the process he received in the Faculty. How to proceed is, of course, the Faculty's decision, and it is not the role of an AAC chair to direct a division how to proceed. But the fact remains that, because of the Faculty's choice to allege a lack of professionalism rather than an academic offence, the Student has not yet had the opportunity to give his explanation under oath or affirmation in a formal setting, in circumstances where his credibility is very much in issue.

The other allegations against the Student also depend on credibility assessments, in that the decision-makers' rejections of the Student's explanations for his behaviour affected their characterization of its seriousness.

The Faculty will, of course, have an opportunity to respond to the Student's testimony, both by cross-examining him and also by calling its own witnesses, subject to the Senior Chair's approval.

For these reasons, the Student may, if he chooses, give oral evidence under oath or solemn affirmation before the AAC panel. Either party may seek permission from the Senior Chair to call additional witnesses in relation to issues arising from the Student's testimony. Counsel for each party will of course be entitled to cross-examine any witness called by the other party.

**(c) Request for disclosure of documents**

In his motion record, the Student asks for an order requiring the Faculty to produce the following documents:

- (i) 13 EPA's submitted by [the Student] to his assessors and that expired without the assessors submitting them to the Program;
- (ii) Information about the number of residents that have erroneously submitted draft EPAs to a program as "complete" ...
- (iii) Meeting minutes notes and/or relevant email communications between [two academic administrators concerning the Student's suspension];
- (iv) A copy of [a letter from one of those administrators to the other];
- (v) Information about the number of residents that have erroneously missed an on-call shift ...; and
- (vi) Full communication between the [program director] and ... clinicians regarding the issues on appeal.

The Faculty submits that the documents under point (i) are not relevant, that the documents under point (vi) have already been provided to the Student, and that no documents under points (ii) through (v) exist.

At the meeting on January 29, 2024, it appeared to the Senior Chair that counsel for the Student accepted the Faculty's position on points (ii) through (vi). Therefore, no order is needed in respect of these documents.

As for point (i), it is doubtful whether the Chairs of your Committee have the power to compel production of documents. Some Chairs have explicitly stated that they do not have this power (see, for example, Report # 359-1). For this reason, at the meeting on January 29, 2024, the Senior Chair suggested resolving this issue as follows: counsel for the Faculty could provide him with those documents so that he could determine their relevancy and, if they were relevant, in turn provide them to the Student to be included in his appeal materials. At the meeting on May 1, 2024, the Senior Chair reminded counsel for the Faculty of his proposed resolution of this issue. The parties made brief submissions as to the relevancy of the draft EPAs. These submissions reinforced the

Senior Chair's sense that the draft EPAs probably have some relevancy and should probably be included in the materials before the Committee. To date, counsel for the Faculty has not provided them to the Senior Chair. As indicated, the Senior Chair is uncertain whether he has the power to compel production of documents and would therefore reiterate his suggestion that counsel provide them voluntarily for his consideration. The Senior Chair also observes that failure to provide them might lead the AAC panel to draw an inference adverse to the Faculty's position that the Student intentionally submitted fraudulent EPAs.

### **Scope of the narrative**

The submissions of the parties on this issue were brief. As noted above, the Student's Record of Appeal contains a fairly complete narrative of his professional history, beginning with his undergraduate education in 1996 through his admission to the Faculty in 2012 and concluding with the events at issue in this appeal (pp. 029-223). This narrative includes a description of a previous dismissal from the Program followed by a successful appeal to the FAAC, resulting in his reinstatement (pp. 042-070). The Faculty notes that the events relevant to this appeal occurred in 2021 and questions the relevancy of the earlier narrative. The Senior Chair understood the Faculty to suggest that pp. 029-070 of the Student's Record of Appeal should be removed. The Student's counsel submitted that the earlier part of the narrative provides context for the current appeal.

The Senior Chair notes that the outline of the Student's argument (Student's Record of Appeal, Schedule H) refers only briefly, if at all, to any events that occurred before the Student's reinstatement. The relevance of the pre-2020 narrative as context is unclear at best. Your Committee will certainly not reconsider the merits of FAAC's decision of 2019, including the merits of the remedy that it gave. Accordingly, the Senior Chair agrees with the Faculty that the narrative in the Student's materials should begin when he was reinstated into the program and should not refer to earlier events.