

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #323 of the Academic Appeals Committee
March 13, 2008

To: Academic Board,
University of Toronto

Your Committee reports that it held a hearing on Friday, February 15, 2008, which continued on Wednesday, February 20, 2008, at which the following were present:

Professor Emeritus Ralph Scane (Chair)
Professor Jan Angus
Professor Douglas Reeve
Ms Lorenza Sisca
Ms Maureen Somerville

Secretaries: Ms Nancy Smart, Judicial Affairs Officer
Ms Mette Mai

Appearances:

For the Student:

Dr. C.B. (the Student)

For the Faculty of Medicine:

Ms Sari Springer (Counsel)
Dr. David Tannenbaum
Dr. K. Iglar

This is an appeal from the Appeals Committee of the Faculty of Medicine (the Faculty), dated October 26, 2006, which dismissed an appeal from the decision of the Board of Examiners – Postgraduate Programs (BOE) of the Faculty, dated April 24, 2006. The latter decision accepted a recommendation of the Residency Program Committee of the Department of Family and Community Medicine (the Department) that the Student be dismissed from the Family and Community Medicine Residency Training Program (the Program).

The Student received his basic medical degree abroad. He was accepted into the Program conditionally upon successful completion of a three month long Assessment Verification Period

(AVP), which candidates with such degrees must complete successfully as a pre-Program requirement. The Student did complete the AVP successfully, and commenced the Program proper on March 26, 2005. Most, but not all of the Student's clinical work took place at the Sunnybrook site of Sunnybrook and Women's College Hospital.

By mid-June, 2005, the director of the residency program at the Sunnybrook site was writing to the Department's Director of Postgraduate Education, Dr. Tannenbaum, of concerns observed by the staff physicians who were working with, training and evaluating the Student. These involved perceived weaknesses in his medical knowledge base, his ability to diagnose problems, his management of investigation and therapy, and his record keeping. A remediation program in family medicine during the months of July, August and September, 2005, at Sunnybrook, was proposed. This recommendation was approved by the BOE on June 28, 2005, and the Student commenced this remediation period accordingly.

Unfortunately, the remediation program did not go well for the Student in the eyes of the supervising physicians. In mid-September, 2005, the residency program director at the Sunnybrook site was reporting to the Department's Director of Postgraduate Education that the Student was still well below the expected level of first year residents at that stage of their residency. He also reported increasing confrontational problems with some staff, and lack of insight on the part of the Student as to the Student's problems. On October 25, 2005, the BOE directed that the Student enter a program of remediation with probation, for a period of three months. The direction of the BOE contained the following sentence. "The Board requires that this period of remediation with probation take place at a Family Medicine Training site other than Sunnybrook & Women's College Health Sciences Centre."

The formal decision of the BOE was in fact anticipated in part by the Faculty, in that a new period of remediation with probation started at the beginning of October, 2005. In case relations between the Student and some other staff were contributing to the Student's perceived problems, six doctors from other sites were brought into the Sunnybrook site at various times throughout October, 2005, to observe, evaluate and counsel the Student regarding his clinical work with patients. In November, 2005, the Faculty arranged that the Student undertake the Standardized Patient Program, in which students are observed and evaluated while interacting with "patients" who are in fact coached actors. The assessing physicians expressed concerns, particularly with respect to the Student's lack of self-insight in dealing with suggestions for improvement.

The Student alleges that he was suspended from the Program during December, 2005 and January, 2006. The Department denies that there was any formal suspension during this time. Dr. Tannenbaum stated that the Student was put on a self-study regime while the Department sought an appropriate site to resume the Student's active program. The Department hoped that the Student might be more at ease, and perform better, if some of his clinical work in the remediation with probation program could be carried out in a non-hospital setting. The Residency Program Committee had recommended that the remediation with probation period be extended by another two months, and on January 16, 2006, the BOE accepted that recommendation. Accordingly, in February, 2006, the Student was assigned to a doctor with a community medical practice for more clinical work with her patients, and evaluation and coaching thereon. Unfortunately, this did not

succeed. Although the BOE had granted a two month extension of the remediation with probation program, the doctor in question was unwilling to continue with the Student after a period of about five weeks. The residency terminated in fact on March 16, 2006, and the BOE formally accepted the recommendation for termination on April 24, 2006, as noted above.

Before your Committee, the Student divided his appeal into three basic sections, which he classified as academic, legal and humanitarian. For convenience, we will deal with the issues under the same classifications.

The principal argument of the Student is basically that the evaluations of him were wrong, and that in any event they were tainted with bias. Leaving aside the bias issue momentarily, the question of the correctness of the Faculty's overall evaluation of the Student's performance, and the evaluations made regularly throughout the program are issues into which your Committee will not enter, for the obvious reason of lack of competency. Your Committee has on many occasions indicated that it cannot and will not remark examinations or papers that have been evaluated by the examiners appointed by the University, and the same is true for clinical assessments when these are part of the evaluation process. Your Committee has in fact studied the various evaluation documents and reports to seek evidence of bias or lack of objectivity. In fairness to the Student, to your Committee, as lay persons in the medical field, these evaluation were not all bad, indeed some were good. The Faculty agreed that this was so, and particularly acknowledged the Student's hard work and motivation to succeed. However, the overall evaluation of the numerous individual appraisals is what matters, and your Committee cannot interfere with the judgment of the Faculty on the grounds that the judgment was wrong, if it has been fairly arrived at.

Again leaving aside for the moment the issues which the Student has characterized as legal, your Committee examined the evidence placed before it for evidence of bias which might make the evaluation of the Student unreliable. The Student alleged that the doctor who had been assigned as his supervisor throughout the Program had told him that he was too old, and that persons of his age should not be in the program. The Student stated that he had requested a transfer to a different supervisor, but that such transfer had been refused by the Program Director at the Sunnybrook site. The doctor who had been the direct supervisor of the Student was not called to give evidence before your Committee. Your Committee does not find bias on the part of this doctor which would impair the validity of the Faculty's decision to terminate the Student. Your Committee notes that, from a lay person's perspective, the first evaluation by this doctor, made during the AVG period, was very favourable. Whether the doctor was expressing a general view against older students or was simply expressing the view that the Student was demonstrating evidence of the truth of the adage about old dogs and new tricks is speculative. There were a large number of clinical evaluators during the various stages of the Student's program. Assuming the strongest position from the Student's viewpoint, this one relationship does not persuade us that the overall evaluation was suspect. The Student was asked point blank by your Committee whether he relied on any other evidence to establish bias or unfairness in the evaluations, and stated that he did not.

The Student also argues that his performance was adversely affected by the degree of stress which he was undergoing as his relations with some of the staff deteriorated and he became increasingly aware of the academic jeopardy of his position, and that this should be considered in discounting

the adverse assessments he was receiving in some cases. Your Committee accepts that the Student was under increasing stress as he continued to be made aware of adverse aspects of the evaluations of his clinical performance, with which he largely disagreed. However, as a matter of policy, your Committee will not consider stress and its secondary manifestations as mitigating factors to poor academic performance when the stress arises from a student's awareness of the fact the she or he is receiving adverse evaluations which are putting the student's future at the University in jeopardy. Your Committee is aware that the Student was also suffering serious personal family problems during the residency periods, but it is unable to conclude that the undoubted stressful and distracting effects of these could excuse the types of performance difficulties noted by the Faculty's evaluators.

The Student also points out that he did not have the benefit of the pre-residency program currently offered to international medical graduates. The Faculty notes that this program was not in place when the Student started his own residency program. Your Committee dismisses this issue as a valid ground of appeal.

Turning to the issues characterized by the Student as legal, the BOE, in its order of October 25, 2005, directed that the period of remediation with probation that it was then directing take place away from the Sunnybrook site, as noted above. As acknowledged by the Faculty, this did not happen. The Faculty explained that it had in fact started this second program prior to the meeting of the BOE in late October, at the Sunnybrook site, and that when this aspect of the BOE's decision became known, it was impracticable to change the site arrangements. The Faculty points out that it had attempted to deal with the dangers to which this part of the BOE order was directed by bringing in evaluators from outside the site during this period.

The Student also points out, and the Faculty acknowledges, that the Faculty breached s.5.2.5 of the *Guidelines for the Evaluation of Postgraduate Trainees of the Faculty of Medicine at the University of Toronto*, adopted June 10, 1996. This section requires, *inter alia*, that all periods of remediation must include a written mid-point evaluation. This did not occur during the remediation period from July to September, 2005, inclusive. The student also states that he did not receive a written mid-point evaluation for the period of remediation with probation.

Your Committee does consider these issues as serious. Deviation from a BOE stipulation as to a particular student is a grave matter, and in establishing the *Guidelines*, the Faculty must have considered the mid-point evaluations to be important for residents who, by virtue of being in remedial programs, are especially vulnerable. However, even serious breaches of this type do not necessarily warrant an academic verdict being overturned. With respect to the BOE decision, the Faculty, in getting the student started on the remediation with probation program in anticipation of the decision, did try to address the same concern as apparently motivated the BOE in ordering a change of site. If the BOE is to meet only at fairly distant intervals, the Faculty should establish a formal mechanism for dealing with situations, ordinarily dealt with by the full BOE, which may arise when the BOE is not scheduled to meet in the immediate future. No explanation was offered for the failure to provide mid-point evaluations, and your Committee attributes this to administrative oversight, which should be remedied, rather than an attempt to hamper the Student. Your Committee considers that the evaluations communicated to the Student during the

remediation periods made the Student well aware of his evaluators' concerns during this time. Indeed, the Student attributes the stress which he claims mitigates his perceived failings largely to these evaluations. Overall, your Committee does not find that the effect of these breaches by the Faculty of its own procedures is a sufficient ground to reinstate the Student in the program, in the face of the other evidence. The Faculty should not assume that your Committee will always come to this conclusion in other cases.

The Student also complained that he did not get the full three month period of remediation with probation specified by the BOE in its decision of October 25, 2005, referred to above. This is because of what the Student alleges, and the Faculty denies, was his period of "suspension" in December, 2005 and January, 2006, which was mentioned above. It was not in dispute that the Student was not undergoing clinical training with patients during this time, but your Committee was not directed to any regulation of the Faculty which requires all training during these periods to be clinical in nature. Your Committee does not find this to be a valid ground of appeal.

Finally, your Committee considered the grounds of appeal that the Student classified as "humanitarian". The circumstances of the Student's private life which afflicted the Student during his residency, and still do, will not be set out here, but your Committee accepts that these caused him much distress, and, as mentioned above, no doubt contributed significantly to the stress to which he pointed in mitigation. In addition, the results of the University's decision are grave for the Student. His temporary licence to practice medicine in this Province was withdrawn upon his termination, and it may very well be true that he will never get a second chance to obtain it. However, while individual members of the University community may feel compassion towards one adversely affected by its decisions, the University does not act upon, nor modify its decisions, on this ground. When it does grant relief on what are frequently called "compassionate grounds", it does so because the effects on the student concerned are such as to cause the University to conclude that they have so affected the academic evaluations in question that it is no longer proper and just to visit the normal consequences of such evaluations upon the student. As discussed above when we were considering the effects of the alleged stress upon this Student, your Committee could not so conclude in this case.

The appeal is dismissed.