

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 131 OF THE ACADEMIC APPEALS COMMITTEE

February 26th, 1990

Your Committee reports that it held hearings on Friday, October 13th, 1989 at 1:30 p.m. in the Council Chamber, Simcoe Hall and Monday, December 4th, 1989 at 4:30 p.m. in Room 201, 65 St. George Street and Monday, February 26th, 1990 at 1:15 p.m. in the Council Chamber, Simcoe Hall at which the following were present:

Professor J. B. Dunlop (Chairman)  
Professor D. Craig  
Ms C. Moroz  
Dr. D. I. Murdy  
Professor D. Perrier

Ms I. Birrell, Secretary (October 13th and December 4th, 1989)  
Ms D. Petersen, Governing Council Secretariat (February 26th, 1990)

In Attendance:

Mr. *R.* the appellant  
Mr. Marshall Swadron, Swadron & Associates, counsel for the appellant  
Dr. Miriam F. Rossi, for the Faculty  
Ms Beverley Harris, Cassels, Brock & Blackwell, counsel for the Faculty

At meetings on October 13th and December 4th, 1989 and February 26th, 1990, the Academic Appeals Committee heard the appeal by *MR. R.* from a decision of the Appeals Committee of the Faculty of Medicine, refusing to set aside the decision of the Board of Examiners that the appellant had failed third-year Medicine for the second time and should be required to withdraw from the medical program. The time lapse between meetings of the Committee was the result of the difficulty in finding dates acceptable to counsel, to the large number of witnesses, and to the members of the Committee. The ideal of consecutive days is seldom realized, but dates closer together can usually be managed and are preferable from every point of view.

The appellant, in repeating the third year, had obtained passing grades in all individual subjects except surgery in which he obtained a grade of 59%. His overall average was 64%. Sixty percent is normally accepted as a passing grade in a course while 65% is the minimum overall average for promotion. Thus the appellant was below the line in two respects. Two of his other grades, medicine and the clinical oral, were 61%, falling within the "satisfactory" range of 60-69% but borderline nonetheless. Thus, he missed a subject and missed the overall average, representing a failure for the second time through.

Faculty regulations provide that a student repeating a year who fails a subject will be asked to withdraw and will not be allowed supplemental privileges "except in unusual circumstances". A student will be allowed to repeat a second time only "in very unusual circumstances". The implication is that a second attempt should be a clear-cut pass and a student who fails a second time, even narrowly, will not be given the same opportunity to remedy the situation as is permitted on a first occasion.

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The appellant based his appeal on extenuating circumstances which, he submitted, should lead the Committee to decide that he had satisfied the requirements of the third-year program and should be permitted to proceed to the fourth (clinical clerkship) year. The comprehensive examination, which is the principal examination covering most subjects of the year, had been unfair in two respects: it was too long and some members of the class had advance knowledge of some of the questions from having seen a stolen copy of the previous year's examination. The failure in surgery, a part of the comprehensive exam, should not be allowed to stand. It should be treated as a pass, he argued. Alleged irregularities in the assessment of his clinical performance in surgery, the difficulty involved in studying while observing the requirement of his religion that he fast each day during the month of Ramadan, and his dramatic improvement over his earlier failure of the third year should all be taken into account in deciding that he should be promoted.

The decision of the Committee is that the appeal must be dismissed. Although no one can be happy about the failure of a student who has invested so much time in the study of medicine, we could not conclude that the decision of the Board of Examiners, upheld by the Appeals Committee of the Faculty, was in error.

The first day of the hearing involved presentation of the appellant's case as his counsel, Mr. Marshall Swadron, called as witnesses the appellant himself and three classmates as well as Dr. T. Babiak, from the Clarke Institute, assistant professor of psychiatry and director of the undergraduate program in psychiatry who was partly responsible for evaluating the appellant's performance in psychiatry.

The meeting on December 4th commenced at 4:30 p.m. and adjourned at 10:35 p.m. Counsel for the Faculty, Ms Harris called a witness, Dr. Timothy Winton, who had written one of the letters submitted by the defendant on behalf of the appellant. She also called witnesses, Dr. N. P. Byrne, a educational psychologist and Acting Director of the Centre for Studies in Medical Education and Dr. R. Fleming, professor of surgery and Associate Dean, Undergraduate Medical Programme, responsible for the curriculum and the assessment procedures.

On February 26th, Ms Harris called Dr. W. H. Francombe, professor in the Department of Medicine and Chairman of the Board of Examiners and Dr. W. M. Paul, Chairman of the Appeals Committee.

#### THE APPELLANT'S CASE

The appellant testified that after successful completion of the first two years of Medicine he had lost the third year because of a personal crisis. Permitted to repeat as a result of the extenuating circumstances, he had passed in everything except surgery, which was examined as most subjects in the third year were, during the final comprehensive examination. The comprehensive, using multiple choice questions, is written in three parts on three days and covers the fields of surgery, medicine, paediatrics, psychiatry, obstetrics/gynecology and ophthalmology. The examination was controversial, the appellant said, for two reasons. First, copies of the previous year's examination had, quite improperly because students are not supposed to have access to previous examinations, been circulated among members of the third year prior to the 1989 examination and since there were questions common to the two, those who had seen it had an advantage over those who had not. The examination was, the appellant said, "compromised".

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Second, the first two days of the examination, which contained most of the surgery questions, were excessive in length, with most of the surgery questions coming towards the end. In 1987-88 there had been an average of 45.3 questions per hour on the first day, 43.3 on the second, whereas the 1988-89 averages were 51 and 53. As a result not enough time was available to answer all the multiple-choice questions. This added another element of unfairness.

The appellant argued, in addition, that the method of evaluating surgery was in breach of the Grading Practices Policy because only one evaluation was performed rather than the two or more envisaged by the Policy, and his lack of knowledge as to how the Faculty intended dealing with the disclosure of the 1987-88 exam, created stress that inhibited optimal concentration on his studies. And finally, during the month of Ramadan, as a practising Muslim, he was required to fast from dawn to sunset and this factor added to his difficulty in concentrating on studies.

The appellant presented four letters (Appendix 'D' to the appeal submission), from clinicians in Endocrinology, Surgery (Trauma/Critical Care Medicine), Thoracic Surgery, and Rheumatology who had contact with the appellant during the clinical aspects of the program, indicating that he was "about average competence", that his performance was "satisfactory", and he "responded to direct questioning in a tentative but reasonable and logical fashion" and that on three written patient histories he got marks of 6/10, 8/10 and 10/10 thus demonstrating "persistent improvement". One of the referees was Dr. Winton.

Dr. Babiak testified that he had observed the appellant's interviewing skills in class and discussed his evaluation with other instructors, concluding that he was "above average to superior in medical knowledge in psychiatry" and that he possessed above average "interactive skills".

The classmates testified as to the widespread use of the "illicit" examination and to the length and difficulty of the 1989-90 exam, although one student said it had not personally bothered him and all indicated that they were able to finish.

Dr. Winton, called by counsel for the Faculty at the December 4th session, said that his letter of recommendation, based on his own experience with the appellant, did not necessarily contradict the result of the oral examination in surgery. He had had limited contact with the appellant and was not in an evaluative setting. The clinical oral was a more reliable determinant of the appellant's skills.

**THE FACULTY'S RESPONSE**

When Dr. Byrne testified, he explained the elaborate process for setting the third-year comprehensive with each course supervisor being asked to contribute multiple choice questions in the appropriate areas. A committee or individual within each subject area reviews the questions for content and degree of difficulty and Dr. Byrne reviews them for clarity, the final product being sent back for approval. The exam is intended to resemble the licensure examination.

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Dr. Byrne disputed the appellant's figures and asserted that in each year average time per question was 1.38 minutes. In 1989 there was a modest increase over 1988 on the first and second days and a modest decrease on the third. The examination was within normal limits in length (40 - 60 questions per hour) and degree of difficulty. Dr. Byrne's opinion was that the examination had been fair.

The Faculty administration had learned of the breach of security on the 1987-88 examination prior to the 1988-89 examination but too late to withdraw and replace the latter. The Dean's office made clear that the Faculty regarded not only the theft but the use of the paper by students preparing for the comprehensive as serious breaches of ethical standards but had no option but to continue with the exam. The announcement to the class said that the examination would be graded with and without the replicated questions and both sets of grades would be passed to the Board of Examiners with the recommendation that the grades excluding the replicated questions be assigned to each student. In the end the scores which included the answers to the replicated questions were adopted. This evidently benefitted the appellant in some subjects and was a disadvantage in others, but even the overall average arrived at by using the higher of the two marks in each case was still below 65%.

Dr. Fleming explained the third-year program and the examination system. The comprehensive covers all subjects save paediatrics. A number of the subjects have a clinical component as well and it is separately assessed, but added to the comprehensive result to give the final grade in each such subject. The clinical oral assessment shown in the statement of the appellant's grades relates to medicine and surgery. This is the second element required by the Grading Practices Policy and it has, for historical reasons been dealt with in this fashion (that is, reported separately in the statement of results) rather than in the manner of the clinical components of the other subjects.

The appellant's surgery oral on the first occasion proved unsatisfactory. The appellant was deprived of ten minutes of the regulation 90 minutes because of an overriding hospital consideration and the patient was unco-operative. This surgery oral was a failure and comments of one of the examiners were particularly harsh. He called the appellant "dangerous". But even if one could build a successful appeal on this foundation, the appellant was not assessed on the basis of this oral alone. A second oral was conducted. Although it had only one examiner rather than the usual two, the appellant passed and the result of the first oral was not factored into the final grade. His passing grade on the oral was borderline but consistent with his performance generally.

Dr. Francombe, who chaired the Board of Examiners, testified that the appellant's performance, particularly in light of it being the second time around in third year, had to be regarded as poor. Below a passing average overall, falling short of a passing grade in surgery, it was not a record about which Dr. Francombe was prepared to say anything positive. There was no basis, in his view, for a recommendation that the appellant be allowed to repeat or write a supplemental.

Dr. Paul explained in detail the way the Appeals Committee dealt with the appeal. Appellant's cross-examination was directed at the issue of completeness of information possessed by the Committee. This Committee is satisfied that the Faculty Committee did not lack any material information. Appellant also raised the matter of how other students had been dealt with: 1) whether there was an inordinate number of appeals in 1989 and 2) whether any

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appellants had been successful. There was not an inordinate number according to Dr. Paul and there were appellants who were granted relief although he could not remember details of the cases. The Committee could see no significance in this evidence as the appellant's position had to be judged on the basis of its own circumstances. Dr. Paul also addressed the effect of the appellant's fasting on examination results. It was something the appellant had coped with before. It was also something from which he could have been relieved by virtue of a dispensation. Further, any examination which had fallen on a day when the appellant's religious observances would seriously handicap him could have been rearranged provided advance notice had been given to the Faculty. The religious issue was not raised until the appeal. Fasting probably was a factor affecting his performance, the Faculty Appeals Committee thought, but not an unusual circumstance within the regulation as to supplementals or other relief.

Notwithstanding the various difficulties by which the appellant was beset, none seemed so grave as to deprive him of a reasonable opportunity to pass third year and thus demonstrate that his first failure was, indeed, an aberration attributable to uncontrollable and overwhelming circumstances. The appellant should have been able to pass on the second opportunity and pass convincingly. Pointing to negative conditions that might have influenced the appellant's performance by a mark or two here or there, marks which might have been obtained by the appellant had all circumstances been ideal, is not in the circumstances the foundation of a persuasive case. The Board's overall judgment did not turn on one or two marks only, but also on the performance of the appellant generally.

The Board of Examiners and the Academic Appeals Committee of the Faculty were convinced that the appellant had failed and that the failure could not be attributed to unusual circumstances. This Committee sees no reason to disagree with that conclusion. The appeal must, therefore, be dismissed.

Secretary  
April 18th, 1990

Chairman

