

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 179 OF THE ACADEMIC APPEALS COMMITTEE

July 20th, 1994

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Wednesday, July 20th, 1994 at 9:30 a.m. in the Flavelle Room, Faculty of Law, 78 Queen's Park Crescent at which the following were present:

Professor David Beatty, Acting Chairman
Professor Joan Brailey
Ms Patti Cross
Ms Peggy Haist
Professor John Mayhall

In attendance:

Mr. G.F., the appellant
Ms Maureen Whelton, Downtown Legal Services, counsel for the appellant
Dr. Richard Swinson, on behalf of the Faculty
Ms Sari L Springer, Cassels, Brock & Blackwell, counsel for the Faculty

Mr. G.F. has appealed a decision of the Faculty of Medicine Appeals Committee which dismissed his appeal of the decision of the Board of Medical Examiners which had decided, at its meeting of May 27, 1994 that he should fail his fourth medical year and be required to undergo an assessment by the Board of Medical Assessors before being allowed to re-enroll in fourth year.

At the meeting of our Committee, Richard Swinson, who is the Chairperson of the Board of Examiners, explained the reasons for the Board's decision that Mr. G.F.'s overall performance in his fourth year was "well below the required level". From the Board's perspective, Mr. G.F.'s academic record in his time in the Faculty was a consistently marginal one. He had failed and had to repeat his first year. He had a large number of marginal and barely adequate (C) grades throughout his medical career. In his fourth year, he had failed his clerkship in paediatrics and surgery and had to take remedial rotations in both. In addition, his passing grades in two other courses were the lowest (Medicine) and the 5th lowest (Family and Community Medicine) in the class.

In reaching its decision that Mr. G.F.'s record in fourth year had not met the required academic level, Dr. Swinson explained the Board also had serious concerns about his attitude and his professional behaviour. From the reports it had received from some of his course supervisors, the Board concluded Mr. G.F. had exhibited serious attitudinal problems of reliability, professional interaction, and enthusiasm which had also been a matter of concern in his first academic year. Together with his marginal and barely adequate academic results Mr. G.F.'s

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failure to meet minimum standards of professional behaviour led the Board to its decision that Mr. G.F. should fail his fourth year.

Mr. G.F.'s position is that the decision of the Board of Examiners is seriously flawed in two fundamental respects. First, he contends the procedures by which the decision to fail him were made were deficient in a number of ways. He claims he was never given adequate information as to why he failed his year and he was never given a chance to present his side of the story and respond to the concerns on which the Board had based its decision. Because he was not allowed to participate effectively in the process, he says the Board made its decision on inadequate and irrelevant information and he was denied "natural justice" as a result.

In addition to his complaint about the procedures by which the decision to fail him was made, Mr. G.F. believes that, on the merits of the case, his failing fourth year is manifestly unfair. Indeed, from his point of view the unreasonableness of the Board's decision is largely the result of its procedural deficiencies. In his mind, had he been able to explain his record and respond to the criticisms about his professional attitude and behaviour, the Board of Examiners could not have come to the conclusion that it did.

In determining whether a student should pass or fail, the Board of Medical Examiners is bound by the Faculty's Academic Regulations and Procedures and in particular by its rules governing promotion. As set out in the Faculty's Calendar, the rules concerning promotion provide:

Promotion is dependent upon an acceptable standard of performance. While 60% is normally accepted as a passing grade in individual graded subjects, a minimum 65% overall average in a year will usually be required for promotion. The Board of Examiners, responsible for a complete review of a student's performance, may, after consideration of all the evidence, recommend promotion even though certain deficiencies have been identified, and conversely, in the light of all the evidence, recommend a student not be promoted even though the student may have achieved a passing grade in each subject.

The Board of Examiners is also responsible for assigning the overall year standing (Honours or Pass), after considering each student's performance in all subjects, appropriately weighted for the scheduled curriculum time in each subject.

Course Supervisors will not only submit student grades, but will be responsible for making recommendations to the Board of Examiners regarding failures and the awarding of supplemental privileges in their subject, and for providing the Board with such additional information (for example, raw scores, adjustments, data describing the performance of the entire class, observations by teachers who have taught the students during the year, etc.) which might help the Board reach its decision.

Although the Board of Examiners is given considerable discretion in exercising its powers with respect to promotions, it has a legal responsibility to exercise that discretion in a way that is reasonable and fair. To justify a decision that a student not be promoted, the Board is bound to establish either that the result is called for by a straightforward application of its rules or that there were exceptional and pressing reasons which mandated such a result. On the evidence that was presented to the Appeals Committee, we do not believe the Board's decision to fail Mr. G.F. can be explained on either basis.

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As noted above, the Faculty rules provide that normally students will be promoted when they receive a passing grade of 60% or more in all of their courses and when their overall average is more than 65%. In this case the Committee is of the view that the Board of Examiners had no reasonable basis to conclude that Mr. G.F.'s results were "well below" this minimal level. Although the Board purported to exercise its discretion to reject the recommendations of the course supervisors in paediatrics and surgery that Mr. G.F. be given a passing grade after he had successfully completed his remedial rotation, it provided our Committee with no reasons why Mr. G.F. should not be given the grade they recommended in each of these courses. Both course supervisors gave detailed reports to the Board as to what Mr. G.F. had accomplished in his remedial rotations and what his weaknesses were. Both concluded that he had demonstrated sufficient mastery over the relevant material such that he warranted being passed.

As noted above the position of the Board was not that the recommendations of the course supervisors in paediatrics and surgery were inappropriate or inaccurate in any way, but rather that Mr. G.F.'s record was inadequate overall. As Dr. Swinson testified, this was the record of a consistently marginal student. However, once it is accepted that Mr. G.F. was entitled to receive passing marks in paediatrics and surgery as recommended by his instructors, in the absence of the Faculty demonstrating that they were deficient or defective in some way, Mr. G.F.'s record in his fourth year is clearly above the Faculty's required level of an overall average of 65%. Even with minimum marks of 60% in paediatrics and surgery, Mr. G.F.'s overall average comes out to 67.9% which not only exceeds the Faculty's rules, but is almost identical to the average he got in his third year. With this average, unless the Board could point to some exceptional or compelling reason as to why the Faculty's rule ought not to be applied, Mr. G.F.'s overall performance entitled him to be passed clear in his fourth year.

Both from Dr. Swinson's testimony at our hearing and from the documentation submitted by the Faculty it is apparent that a major factor in the Board's decision was its belief that Mr. G.F. had not only performed below the required standards academically but that he had not met the minimum standards of professional behaviour either. According to Dr. Swinson, the Board based its opinion about Mr. G.F.'s professional qualifications largely on the report of the Associate Dean, Student Affairs, concerning Mr. G.F.'s history in first year and on the evaluations sent in from the course supervisors in medicine, surgery and paediatrics.

On the evidence that was presented to us, we do not believe the Board's conclusions about Mr. G.F.'s behavioural and ethical performance were justified. Most of the Board's concerns were based on Mr. G.F.'s rotations in medicine and paediatrics. Although Mr. G.F. conceded that his rotation in medicine was not a strong one, he pointed out it was his first clerkship and that he corrected the behaviours for which he had been criticized. The reports of subsequent rotations make no reference to his not being punctual and for the most part show his interpersonal skills with patients and other members of his teams were satisfactory and on occasion worthy of quite positive notations.

The other rotation which caught the Board's attention was the remedial month he spent in paediatrics where the course supervisor noted a general lack of interest and enthusiasm and a specific complaint about Mr. G.F.'s failure to advise someone on the team when he was absent. The evidence concerning Mr. G.F.'s performance in his remedial rotation in paediatrics is somewhat conflicting. When he testified at our hearing, Mr. G.F. told us that he had in fact advised Dr. Schneider of when he would be absent to conduct his residency interviews and that

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he did leave a message on Dr. Driver's answering machine when he took a week off to study for the remedial exam (which was the primary objective of the rotation).

Although there is some ambiguity in the evidence concerning Mr. G.F.'s sense of responsibility and enthusiasm for his remedial rotation in paediatrics, we do not believe that it affects the outcome of this appeal. As serious as it is for a clerk not to keep the members of his team advised of his schedule, failure to meet this professional standard on an isolated occasion can not, standing by itself, justify failing a student who otherwise would pass his final medical year. Whether it be described as punitive or remedial, it would be draconian and out of all proportion to require a student to repeat an entire year for an isolated behaviour of this kind.

On the evidence we heard, whatever deficiencies Mr. G.F. demonstrated in his enthusiasm and sensitivity to the needs of the team, they were not of the kind of behaviour that are listed in the Faculty's Academic Rules as examples of behavioural and ethical misconduct which can result in a student being denied promotion or being dismissed from the programme. Even Dr. Schneider noted that his enthusiasm and interest did pick up during the second part of the rotation and it did not prevent him from achieving the major objective of the rotation.

In the result, this Committee is of the view that the Board of Medical Examiners did not have reasonable and sufficient grounds to justify its refusal to apply the 60-65% rule in the normal way and to fail Mr. G.F. in his fourth year. Having accepted Mr. G.F.'s position on the merits of the case there is no need for the Committee to address the procedural arguments he raised. However, the Committee does think it appropriate to make two general comments on this aspect of the case.

In the first place, the Committee thinks it is important to echo and encourage the Faculty to take seriously its own Appeals Committee's recommendation to review the way standards about professional ethics and behaviour are defined and enforced. Some of the difficulty of the present case can be attributed to a lack of clarity and precision in the Faculty's current method and approach.

In addition to supporting the Appeals Committee's motion of June 22, 1994, we would also encourage the Faculty to reconsider the role and jurisdiction of the Appeals Committee itself. Specifically, we would suggest that the Faculty should consider expanding the jurisdiction of the Appeals Committee to review decisions of the Board of Medical Examiners on the merits of the case, in addition to ensuring all the procedural and regulatory provisions are adhered to. Especially on issues like grades and promotions, where students are effectively precluded from participating in the initial decision, it is important each Faculty has a place where students can seek a review on the merits of the case and be involved as full participants. Again, our Committee believes that had such a hearing been conducted before the Faculty's Appeals Committee, there is a good chance this case could have been resolved by the Faculty on its own.

In the result, this Committee has come to the conclusion that Mr. G.F. is entitled to succeed on his appeal and to be passed clear in his fourth medical year.

Appeal allowed.

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Secretary

Professor David Beatty
Acting Chairman

August 4th, 1994