

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 185 OF THE ACADEMIC APPEALS COMMITTEE

October 7th, 1994

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Friday, October 7th, 1994 at 9:30 a.m. in the Council Chamber, Simcoe Hall, at which the following were present:

Professor D. Beatty (Vice-Chair)
Professor B. Brown
Professor J. T. Mayhall
Mr. M. Teper
Mr. A. Waugh

Ms L. Snowden, Secretary

In attendance:

Mr. A.W., the appellant
Mr. A. Lewis, Downtown Legal Services, counsel for the appellant
Dr. R. Swinson, for the Faculty
Ms S. Springer, Cassels Brock & Blackwell, counsel for the Faculty

Mr. A.W. has appealed the decision of the Faculty of Medicine Appeals Committee which dismissed his appeal of the decision of the Board of Examiners which had decided, at its meeting on July 29th, 1994, that he be required to repeat his entire second medical year with the exception of the course in the Pathobiology of Disease.

At the meeting of our Committee on Friday, October 7th, 1994, Dr. Jones, who was a member of the Board of Examiners, explained the basis on which the Board came to its conclusions and, specifically why it had rejected other possible alternative dispositions of Mr. A.W.'s case including having him take remedial courses and/or write supplemental exams. Although our Committee heard a lot of evidence about the details of Mr. A.W.'s performance, from the evidence of Dr. Jones, it seems clear that the essence of the decision that was made by the Board of Examiners was based on Mr. A.W.'s overall performance in three of the four courses (Foundations of Medical Practice (FMP), the Art and Science of Clinical Medicine (ASCM) and Health, Illness and Community (HIC) that students are required to take in their second year.

While Mr. A.W. was able to achieve passing grades in the first two courses and secured an overall average in excess of the Faculty's 65% cumulative rule, he failed the course in Health, Illness and Community with a mark of 58% and the Board of Examiners was told by the Directors of the FMP and ASCM courses that his performance was only barely adequate and that questions had been raised by his instructors and tutors about his knowledge and suitability. According to Dr. Jones there was a common theme in the remarks of three course directors which raised concerns in the minds of the members of the Board about Mr. A.W.'s interest and aptitude in organizing and applying the knowledge that was covered in these courses. In all

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three courses, questions had been raised by his tutors and instructors about how focused he was (in terms of his attendance and the effort he put into his presentations and clinical examinations) and about various difficulties he experienced in situations which called for self-directed study and independent judgement. According to Dr. Jones, it was significant that the only course in which Mr. A.W. performed at or above the average in the class was the Pathobiology of Disease where the skills of independent analysis and judgment counted the least.

In making its decision that Mr. A.W. should repeat the second year program (excepting the course in the Pathobiology of Disease), there is no question that the Board of Examiners was acting within the scope of its authority as set out in the Faculty's rules governing promotions. Although Mr. A.W.'s grades met the Faculty's 65% cumulative rule, he did not receive a passing grade in Health, Illness and Community and so did not meet the stated requirements for promotion. Moreover, even if, as he argued he should, he had passed the latter course, in our view, there would have been no basis for this Committee to interfere with the decision of the Board of Examiners.

Even when a student passes all of his or her courses and meets the Faculty's requirement of achieving a 65% average overall, the rules provide that the Board of Examiners has a discretion whether to promote a student or not. Indeed we were advised that the Board held back a classmate of Mr. A.W.'s in exactly these circumstances. Although, as this Committee noted in Report 179, the discretion of the Board is not absolute and must be exercised in a fair and reasonable fashion, in this case the Board's judgement that Mr. A.W.'s performance was only barely adequate in three of the four courses that make up the second year easily meets that test.

While Mr. A.W. did claim that he had been unfairly graded in the Health, Illness and Community course and felt he had been responsive to some of the criticisms he had received in the Art and Science of Community Medicine, he did not seriously challenge the Board's characterization of his overall performance as barely adequate. The evidence the Faculty presented was unambiguous and he acknowledged in our meeting that he had been warned by at least two of his instructors that he was in danger of losing his year and that various members of the Faculty and teaching staff had talked to him and met with him with a view to helping him remedy the situation. On the evidence before us, it cannot be said either that Mr. A.W. was lulled into a false sense of security or that the Faculty had not made sufficient effort to assist him overcome his difficulties.

In the result, there is no basis on which this Committee could conclude that either the Board of Examiners or the Faculty's Appeal Committee acted arbitrarily or improperly. On the evidence before us the Board of Examiners had a reasonable basis on which to conclude that Mr. A.W. should not be promoted to the third year until he demonstrated that his skills and ability were something more than marginal or just barely adequate. In contrast with the circumstances in Report 179, Mr. A.W. did not produce any evidence which contradicted the Faculty's characterization of his overall performance as barely adequate. We do not think the Faculty can be said to have acted arbitrarily or unreasonably in refusing to promote Mr. A.W. when his performance in three of his four courses raised legitimate concerns about his mastery of the skills and judgement which are the central focus of the second year program. Given that the Faculty's concerns cut across three of the four courses in the curriculum it was not unreasonable, in our

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view, for the Board to have concluded that remedial programs and/or supplemental examinations were not appropriate alternatives in Mr. A.W. 's case.

On the evidence we heard, neither the Board nor the Appeals Committee based their decision on extraneous or improper considerations and indeed we were advised that the Appeals Committee did conduct a full review of the merits of Mr. A.W. 's case in coming to the conclusion not to disturb the decision of the Board. Although the Appeals Committee is not required to undertake a substantive review according to the Faculty's rules, the fact that it did in this case (which also stands in contrast to Report 179) makes any claim that the decision not to promote Mr. A.W. was arbitrary and unfair much more tenuous and difficult to sustain. In the circumstances, the Committee is of the view that there is no basis on which the decision to require Mr. A.W. to repeat three of his four courses in second year can be impugned and his appeal must therefore be denied.

Before concluding this award, we think that it is important to add that some of the frustration and uncertainty that Mr. A.W. has felt since he was told he had failed his year at the end of June might have been alleviated if he had been told why the Board came to its decision on June 17th. If the Faculty adopted the practice of explaining to students the reasons for the decisions they take, and continued to allow its Appeal Committee to review the decisions of the Board on their merits, we are confident that there would be far fewer occasions on which our Committee would be called in to intervene and students would feel their cases had received a full and fair resolution within the Faculty itself.

David Beatty
Vice-Chair

October 11th, 1994