

UNIVERSITY OF TORONTO

THE GOVERNING COUNCIL

REPORT NUMBER 204 OF THE ACADEMIC APPEALS COMMITTEE

February 9, 1996

To the Academic Board,  
University of Toronto.

Your Committee reports that it held a hearing on Friday, February 9, 1996, at 1:15 p.m. in the Flavelle Room, Faculty of Law, 78 Queen's Park Crescent, at which the following were present:

Professor Alan Mewett, Acting Chairman  
Mrs. Margo Coleman  
Mr. Earl Dumitru  
Professor Laszlo Endrenyi  
Professor John Mayhall

Ms Susan Girard, Acting Secretary

In Attendance:

Mr. D.B., the appellant  
Ms Diedre Newman, counsel for the appellant  
Dr. Rick Frecker, Faculty of Medicine  
Dr. Anita Rachlis, Faculty of Medicine  
Dr. Ted Ross, Faculty of Medicine  
Mr. Timothy Pinos, counsel for the Faculty

**1. The Appeal**

This student appealed from a decision of the Board of Examiners of the Faculty, dated Friday, Nov. 10, 1995, that the student fail Remedial Surgery and fail Remedial Medicine and thus fail Third Year and be given an opportunity to repeat Third Year. The minutes of that meeting of the Board are not as clear as one might wish, but it is apparent that the meeting commenced with the Board having before it the results of Remedial Surgery, and that the meeting adjourned with no final decision being made, pending receipt of the results of the Remedial Medicine, later that day. Upon those results being received, members of the Board were notified by fax mail and the final decision then made.

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### 2. Factual background

The background leading up to this decision is as follows. In his regular Third Year, the student failed the Rotations in Surgery and Medicine and the Board of Examiners passed the following resolution:

That [the student] fail in Surgery and Medicine, that [the student] be required to successfully complete a 6-week remedial program in Medicine and a 6-week remedial program in Surgery, with suitable reassessment in both. [August 18, 1995]

Accordingly, the student undertook the two remedial programmes.

In regular rotations, the Faculty adheres to the University Grading Practices Policy in all essential matters and the Faculty Rules and Regulations are clearly set out in its Curriculum Directory. In respect of remedial courses, however, the Directory is vague as to what is expected of students, particularly in respect of two essential details of the evaluation, namely, the weight to be given to each component of the remedial course (that is, the written examination, the oral assessment and, where applicable, the ward assessment) and whether a student is required to achieve a passing mark in each individual component as well as an overall passing mark. The Committee does not dispute the Faculty's position that no rigid rule would meet the objective of remedial courses, which is to strengthen the student's particular weaknesses. Each remedial course, including assessment methods, must, therefore, be tailored to the individual student's needs.

The student was informed, in writing, by the Surgical Clerkship Coordinator on August 18, 1995, that "your examination will be a short written and a structured oral and will take place at the end of the six weeks." The position in respect of the remedial medicine course is less clear. Certainly, a letter was written by Dr. Rachlis to Associate Dean Frecker that "[the student] will be evaluated on the basis of ward assessment, a written examination and a structured clinical oral examination", but the student denies receiving a copy of this letter and there is nothing in the material suggesting that he did. He may have assumed, with some justification, that the method of assessment would be the same as that for the regular rotation, namely,

|                 |      |
|-----------------|------|
| Ward Assessment | 50%  |
| Written Exam    | 25%  |
| Oral            | 25%. |

There is, however, a further complication. Sometime during the second week of remedial Surgery, the student was informed over the telephone by someone that the oral examination had been cancelled, but that he should nevertheless sit the three "practice oral examinations" that had been scheduled by his preceptor since they would be of benefit to the student. The student thus took at least one of the practice orals under the impression that they did not form part of the assessment process, but he was then informed, again by telephone, that there would be a formal oral examination in about 10 days time.

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As is so often the case in these circumstances, people have different recollections of what precisely did occur. It may well be that whoever informed the student of the cancellation of the oral examination had no authority to do so, but from the student's point of view, it would be reasonable to assume that the person had at least ostensible authority to pass on to the student the information, mistaken or not, that the oral had been cancelled. At any rate, the Committee must assume that there was at least a period of time when the status of the oral examination was, in the student's mind, in doubt.

The assessments made at these "practice" orals were unsatisfactory and yet were admittedly "before the Board" when it made its decision. In the absence of any transcript it is, of course, impossible to determine what, if any, weight was given to them, but it is sufficient that they were "before the Board" to cast some doubt on the fairness of the process.

At any rate, the results of the oral examinations in both Surgery and Medicine were reported by the examiners to the Faculty and in both cases they were unsatisfactory, resulting in a failure in those individual components of the remedial course examinations. However, if they were combined with the results achieved in the written and ward assessment components and that total mark averaged out, the student would have attained a passing grade. The Board of Examiners decided that the student had failed both courses. It is from this decision that the student appeals.

Other matters were raised in support of the student's appeal, namely that the student's overall record in the Faculty is such that this should have been taken into account by the Board in reaching its decision and would have resulted in a more favourable disposition. The student also raised the financial hardship that would result if the Board's decision were to be upheld and personal circumstances involving the illness of his mother during the course of some of these events. In view of the results we have reached on other grounds, it is not necessary to deal with them in detail. However, we see no error on the part of the Board of Examiners in dealing with any of these issues. The student's overall record is not bad, but nothing that would put him in any special category. The financial and personal circumstances of the student were addressed by the Board and a reasonable conclusion reached.

### **3. Reasons**

The Committee understands and accepts the Faculty's position that hard and fast rules cannot be applied to all students in all remedial courses, given that they are designed to remedy shortcomings in each student. What each student must remedy depends, obviously, on the weaknesses he or she has demonstrated as a result of the regular rotations. But all students must be entitled to due process in the evaluation process -- remedial students no less than others, indeed, perhaps more than others. There is no reason why some guidelines could not be adopted by the Faculty that are at least consistent with the University Grading Practices Policy. What those guidelines are to be is a question for the Faculty, but we offer, for its consideration the following:

*No assessment criteria can be established that are applicable to all remedial courses since such courses are tailored to the needs of the individual student. However, before the commencement of the course, if that is possible, but in*

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*any event, no later than the end of the first week of the course, the student will be notified in writing as to the method of assessment. This will include a statement of the required components of the assessment, the criteria for the establishing of the final mark given in the remedial course and whether or not the student will be required to attain a passing mark in each individual component. Thereafter, there shall be no changes made in the method of assessment in that course, save in writing, and with the written consent of the student.*

There is nothing inherently objectionable in a student being given oral examinations during the course of remedial courses as part of the assessment process, so long as the student is informed in the written instructions that this will be the case. If some sort of oral examinations are given during the course that are called "practice" orals or have some such designation, it is unfair that they should be used as part of the assessment process and they should not be considered by the Board in making its final determination, unless the student is so informed in writing.

It will be seen, of course, what our concerns are in this particular case. We do not doubt the *bona fides* of the Faculty, nor indeed, do we dispute the substantive merits of the Board's decision, but the student has not been perceived to have received due process, or, more accurately, he has raised the issue that he has not received due process and there is insufficient evidence before us that would rebut that claim.

### **4. Decision**

As a result of the Board of Examiners' decision, the student is currently enrolled in Third Year but is auditing, as far as is possible, the relevant Fourth Year courses in case this appeal is successful. Although we are not disposed to second-guess the Board's academic judgment that the student has failed in both Surgery and Medicine, if the procedures adopted in both those courses are improper, as, in our judgment, they have been, then the student must be given an opportunity to take those subjects again and be given the chance successfully to complete Third Year.

The Committee's decision is that the student be permitted to repeat the regular rotation in Third Year Medicine and Surgery as immediately as is possible. If the student successfully passes both those courses, he will be deemed successfully to have completed Third Year. We have no information as to whether he has paid fees for the repetition of Third Year in which he is currently enrolled, but, if so, we have no doubt that some appropriate accommodation will be made.

Ms Susan Girard  
Acting-Secretary

Professor Alan Mewett  
Acting Chairman

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