# Procedure for Conducting Resident Appeal

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| **Procedure:** | Procedure for Conducting Resident Appeal |
| **Policy reference:** | Resident Appeal |
| **Contact:** | Coordinator for Academic and Non-academic Processes  306-966-6145 |
| **Last update:** | December 2020 |

## 1. PURPOSE

To establish the procedure for initiating, conducting and resolving Resident appeals at the College (Postgraduate Medical Education) level.

**2. INTRODUCTION**

The Residents have the right to appeal when their performance has been judged unsatisfactory, but only on the grounds pertaining to alleged process irregularities, alleged differential treatment in the program, alleged intimidation and harassment and alleged failure to implement the approved policy and procedures dealing with the accommodation of students with disabilities, and not the academic judgment or the validity of the educational assessment, pursuant to the University of Saskatchewan policy, *Student Appeals of Evaluation, Grading and Academic Standing*, and the *Procedures for Student Appeals in Academic Matters*.

**3. SCOPE**

This document applies to all Residents in all residency training programs at the College of Medicine, University of Saskatchewan.

**4. DEFINITIONS**

## Appellant refers to the Resident making the appeal.

## Respondent refers to the residency training program (represented by the Program Director or a delegate) which is responding to the appeal.

## Standing Committee for Appeals (SCA) refers to the committee made up of Faculty members from the College of Medicine, including the Program Directors and Residents representing Resident Doctors of Saskatchewan, according to the *Terms of Reference for the PGME Standing Committee for Appeals*.

## Appeal Adjudication Board (AAB) will be composed of four members of the Standing Committee for Appeals- one of the two Co-Chairs, one Faculty member, one (former or current) Program Director, and one Resident Representative.

**5. RESPONSIBILITIES**

n/a

**6. SPECIFIC PROCEDURE**

1. **Initiating an appeal**
2. Prior to initiating an appeal, Residents are encouraged to attempt to informally resolve the issue by communicating with the individual/academic body above the decision-maker (e.g. Program Director, Department Head, Associate Dean, and PGME). The Resident should take note of the timelines for submitting requests for appeal.

The Resident may also request to meet confidentially with the Associate Dean, PGME or delegate, prior to the 30-day appeal deadline, to review the process and to discuss their concerns prior to making a final decision about whether or not to appeal.

In case that the Resident and program are willing to seek resolution through an informal process, the appeal may be deferred pending the outcome of informal resolution processes.

* 1. The appeal process is officially initiated when the Resident submits a written and signed notice of appeal form identifying the grounds for the appeal. This notice of appeal will be supported by a written statement outlining the information the Resident wishes to be considered. The written statement shall:
     1. identify the grounds for the appeal;
     2. clearly outline the rational for each identified ground of appeal;
     3. provide all relevant supporting documentation.

Organizing the information and submissions (according to the grounds for appeal) will assist the appeal review process.

* 1. The notice, supported with the written statement, must be delivered no later than 30 calendar days from the date the decision has been communicated in writing to the Resident (in electronic or paper format). It is the responsibility of the Resident to review on-line evaluations in a timely manner.
  2. The notice of appeal and the written statement may be submitted by email or hard copy, and in case when both formats are used, the earliest version received by the Associate Dean, PGME will delineate the timelines.
  3. The notice and the written statement must be addressed to the Associate Dean, PGME. The PGME office will provide a copy of the appeal submission to the Program Director upon receipt.

1. **Forming the Appeal Adjudication Board (AAB)** 
   1. Upon receipt of the notice of appeal, the Postgraduate Medical Education Office will notify the (one of the two) Chair of the Standing Committee for Appeals (SCA), of the notice of appeal. The Chair of the SCA will make a recommendation to the Associate Dean, PGME for individual members of the Appeal Adjudication Board.
   2. An Appeal Adjudication Board will be appointed for each appeal and will include four members of the Standing Committee for Appeals:
      1. two Faculty members of the College of Medicine, at least one of which is a current or former Program Director;
      2. one Resident member;
      3. one of the two Co-Chairs of the Standing Committee for Appeals based on availability (non-voting).
   3. The AAB should be formed and begin its work as soon as practicable.
   4. The Resident will be notified of the membership of the AAB, and the Resident may then inform the Associate Dean, PGME, or delegate, of any member believed to be in a position of conflict of interest (e.g. have been involved in their supervision or assessment). The Resident must communicate this including the reasons in writing to the Associate Dean, PGME, or delegate, within 7 days of being notified of the AAB membership, otherwise the membership stands.
   5. No new information or documentation should be presented once the AAB has been formed.

In exceptional circumstances, if new information directly relevant to the decision being appealed and the alleged process irregularity comes to light after the AAB is convened, this information must be submitted in writing to the PGME Office and a decision as to admissibility will be made in collaboration with the Chair of the AAB. In such a case, the AAB may need to adjourn for sufficient time to allow the other party to review the information and respond in writing.

1. **Response from the program** 
   1. The Resident’s notice of appeal and written statement will be provided to the Program Director (or designate) who will prepare a written response to be submitted along with any supporting information. In the case of an Investigation Committee decision, the Department Head (or designate) shall be the respondent.
   2. The program’s response should be received as soon as practicable. The timeline for the submission of the response will be set by the Chair of the AAB and confirmed by the PGME Office.
2. **Appeal process**
3. The AAB is not bound to observe strict legal procedures or rules of evidence, and shall establish its own procedures and rule of matters of process including the acceptability of evidence before it.
4. The AAB will receive the written submissions from the Resident and response from the program at least a week before the scheduled meeting, and review it. It is anticipated the AAB will meet at least twice, once to review the written submissions, and the second time to conduct a hearing.
5. In the event that both parties agree on the facts of the matter and a decision can be made without further information, the AAB may deem oral presentations/hearing to be unnecessary and render a decision based on the written submissions.
6. The AAB will provide both the Resident and the Program Director with reasonable notice of the hearing. If either of the parties fails to appear at a scheduled hearing, the AAB has the right to proceed with the hearing.
7. The Resident and the Program Director (or designate) may bring one accompanying person when meeting with the AAB. The appellant can be accompanied by another Resident, Faculty member, legal counsel or other support person.

Accompanying persons can speak on behalf of the Resident but the Resident appealing the decision should be the one to take primary responsibility to make opening statements, present arguments and answer questions. Similarly, the program representative whose decision is being appealed has the primary responsibility to make opening statement, present arguments and answer questions, although the accompanying person can speak on their behalf.

1. If deemed necessary, the AAB may request further information in the form of written or oral presentations and may call such individuals to provide such information as they deem necessary. In all such cases, both parties shall be informed of such requests and provided an opportunity to review written statements or attend oral presentations. The Resident/Program Director/accompanying persons may not question individuals who are asked to present information. The AAB may ask the Resident or the Program Director to respond to information provided by such individuals to the AAB.
2. Proceedings of the AAB shall be informal. A person presenting information to the AAB may be questioned by members of the AAB but may not be subjected to cross examination by the other party.

Direct questioning by each party of the other party will be allowed at the discretion of the AAB.

Neither the Resident or the program representative or their accompanying persons can question the members of the AAB.

1. **Assignment of Resident duties during an appeal process (excluding appeal of dismissal)**
   1. In the event that the decision under appeal would normally be followed by the implementation of a remediation or probation plan, it is recognized that the outcome of the appeal may determine whether or not a plan is required and therefore work on development of the plan will be deferred until the appeal is concluded (including any university-level appeal). However, the Resident and Program Director are encouraged to work together and with the PGME Office to identify interim strategies to support and optimize the Resident’s ongoing learning.
   2. Occasionally, circumstances may dictate assignment to an alternative clinical service or rotation- such a decision would be at the discretion of the Residency Program Committee (RPC) and the Program Director.
   3. Where serious performance concerns result in significant challenges to ongoing productive training in the absence of a remediation or probation plan, or where there are significant patient safety concerns, the RPC and the Program Director may recommend interruption of training. This would normally occur through a “leave with pay”. In this situation the PGME Office will notify relevant stakeholders that the Resident’s training has been interrupted; the PGME Office will not be making any recommendation to these bodies regarding the status of the Residents with any of them.

No clinical activities are permitted during a leave unless the Resident is in possession of an unrestricted license. Unless otherwise determined by a decision of the program, Residents would be encouraged to continue to attend educational activities of the program where patients are not involved.

1. **Confidentiality and reporting**
2. All information submitted by one party to the AAB shall be shared with all parties to the appeal.
3. All communication and documentation pertaining to the appeal must flow through the PGME Office. Appellants and respondents may not contact AAB members directly or submit written information to the AAB.
4. All material submitted to the AAB is confidential and must not be forwarded to or discussed with any third party, apart from reporting to the PGME Office.
5. AAB deliberations are confidential. Verbatim minutes of the AAB meetings will not be taken but AAB members may take personal notes. These notes are confidential and not to be disclosed to third parties.
6. Patients’ medical records or patient identifying information are not admissible in the appeal proceedings.
7. The AAB shall report its decision and the reasons for the decision to the Associate Dean, PGME in writing within seven days from the concluding day of the AAB’s hearing. The AAB will not communicate its decision directly to the Resident, Program Director or any third party. The AAB will report any process irregularity that are identified and record the evidence leading to a determination of a process irregularity. The record of the decision and the reasons will be maintained; although verbatim minutes of the AAB meeting will not be taken, a summary of the proceedings may be kept.
8. All written materials must be returned to the PGME office once the appeal is concluded.
9. The Associate Dean, PGME or the Vice Dean, Medical Education will communicate the decision and reasons for the decision to the Resident, with copy to the program and any other party involved in the appeal, in writing within 14 calendar days from the concluding day of the AAB’s hearing.
10. **Post-appeal procedures**
11. If the Appeal Adjudication Board determines that a significant process irregularity has occurred and requests the RPC (or relevant subcommittee) or Investigation Committee to modify the decision and this is declined, the matter shall be referred to the Associate Dean, PGME who will review all of the evidence and make a recommendation to the Dean, College of Medicine. The Dean of Medicine will review all of the evidence and render a decision.
12. If the Resident is dissatisfied with the decision reached by the College of Medicine, an appeal can be made through the Office of the University Secretary to the University of Saskatchewan as per *Procedures for Student Appeals in Academic Matters, Section V (Appeals Dealing with Matters Other Than Substantive Academic Judgment).*
13. If the Resident has filed an appeal to the University but the Resident and program are willing to seek informal resolution, a request for deferral may be made to the Office of the University Secretary.

# 7. FORMS AND TEMPLATES

Resident Appeal Form

**8. REFERENCES**

Resident Appeal Policy

University of Saskatchewan Student Appeals of Evaluation, Grading and Academic Standing policy and Procedures for Student Appeals in Academic Matters

**9. CHANGE HISTORY**

November 2018

December 2020