

## **Recommendation #1: NOSM Policy Regarding Academic Appeals**

### **Action/Motion:**

MOVED that the Senate approve the NOSM Policy Regarding Academic Appeals, effective May 1, 2014 as presented.

### **Background/Rationale:**

The Appeals Policy and Process Working Group (APPWG) was struck as an adhoc working group of the Governance and Nominations Committee of the Academic Council constituted on a time limited basis to oversee and coordinate the review of the role and function of the Appeals Committee of the Academic Council and bring forward any recommendations for revisions to documents related to academic and non-academic learner appeals.

After an extensive review, discussions with various programs and within the committee membership itself, it was the recommendation of the APPWG and the GNC committee to propose this new global policy for the School, with a scheduled effective date of May 1, 2014 to allow for the associated programs to make the necessary changes (if any) to policies, procedures or related documents as well as allow for any provisions within this NOSM Policy Regarding Academic Appeals to be adapted prior to implementation.

The Academic Council approved the Academic Council Appeals Committee revised Terms of Reference. The full document can be found here:

[http://www.nosm.ca/uploadedFiles/About\\_Us/Governance/Academic\\_Council/Academic%20Council%20Appeals%20Committee%20Terms%20of%20Reference.pdf](http://www.nosm.ca/uploadedFiles/About_Us/Governance/Academic_Council/Academic%20Council%20Appeals%20Committee%20Terms%20of%20Reference.pdf)

The membership of said committee is as follows:

### **Membership**

The membership of the committee will consist of four (4) elected members from Academic Council and one (1) learner. The process in determining this membership is described below:

- The four (4) members that will hear the appeal will be appointed from a pool of ten (10) elected members from Academic council who have agreed to serve on the committee should an appeal be presented. The rationale for having a pool of elected members is to ensure an expeditious hearing of the appeal while being able to select appropriate members should conflicts arise or should program specialty be required in the composition of the committee.
- The one (1) learner will be appointed from a program other than the one in which the appeal is being heard (e.g. a learner will be chosen from the Dietetic program if the appeals originates from the Medical program and vice versa).

The Committee is intended to be representative of the School aimed at balanced consideration of the appeal. The membership should provide for a diverse representation when available. The Chair of the Committee shall take appropriate action to ensure such diversity on the Committee.



# NOSM Policy Regarding Academic Appeals

**Approved By:** Lakehead and Laurentian University Senates

**Responsible Office(s):** Academic Council

**Responsible Officer(s):** Chair and Vice Chair of Academic Council  
Secretary of Academic Council  
Associated programs

**Effective date:** May 1, 2014

**Supersedes:** none

**Revised:** n/a

## 1.0 Definitions

For the purposes of this document, the following definitions will apply

“Appellant” a learner who appeals a decision

“Joint Senate Committee (JSC)” the Joint Senate Committee for NOSM “JSC” has been duly constituted by both Senates to review all academic recommendations from the Academic Council and make recommendations to both Senates for their approval. The Joint Senate Committee also has the jurisdiction to hear Appeals as outlined in their terms of reference.

“Learner” MD students, postgraduate residents (trainees), dietetic interns and/or any other learner in a Program governed by Academic Council

“Natural Justice” ‘Natural justice’ was developed in England in the 19th century to define the rules for decision-making. Having evolved overtime, the concept is now often described as ‘procedural fairness’ or just ‘fairness’. As a result, the terms natural justice, procedural fairness, and fairness are often used interchangeably.

The two basic components of natural justice are:

- 1) That the person affected by the decision:
  - Will receive notice that his or her case is being considered
  - Will be provided with the specific aspects of the case that are under consideration so that an explanation or response can be prepared
  - Will be provided with the opportunity to make submissions (written or oral) relating to the case
- 2) That the decision-maker(s) will be unbiased.

To be unbiased is to be and to be seen as objective of impartial about the matter you are considering. The best way for decision-makers to be unbiased is:

- To understand what bias is (i.e. if you have a firmly held, favourable or negative opinion about a matter or an individual). If you cannot be objective about a matter that is within your purview, you should remove yourself from the decision-making process.
- If you are part of a committee of decision-makers, each member must feel free to make his or her own decision. Therefore, each member of the committee must be free of influence from other committee members, from outside third parties, or from the influence of those who have designated them as decision-makers.

- Sometimes bias is alleged because it is believed the decision-maker knows too much about the matter under scrutiny. A well-informed decision-maker is not biased if she or he has an open mind and is open to persuasion by the information provided through the decision-making process.

“It is my firm belief that if all decision-makers abided by these basic principles when forming conclusions and making decisions there would be very few complaints about the fairness of decisions other than from those for whom any answer other than the one they want is unacceptable.”

*Text courtesy of Nora Farrell, Ombudsperson, Ryerson University*

“Notice” means any notice to be sent by any party under this policy to another party shall be sufficiently given if sent by email. Any notice duly sent in this manner shall be deemed delivered on the day next following the date of the sending of the email.

“Respondent” a person or persons who respond or make a reply

“Working Day” means a day in which the Northern Ontario School of Medicine (NOSM) offices are open for business from Monday to Friday, excluding statutory holidays and any other day that the Northern Ontario School of Medicine is closed.

## **2.0 Purpose**

The Academic Council Appeals Committee (ACAC) will hear appeals based on an academic decision rendered by any Northern Ontario School of Medicine program or committee under the purview of the Academic Council making a promotion, withdrawal decision or finding of unprofessional behaviour.

A NOSM learner may first appeal to the Academic Council Appeals Committee (ACAC) if the matter relates directly to the course of study/training within the Program, and corresponds with the following:

### **1. Promotion and/or withdrawal from the Program**

The learner that has formally requested a reappraisal of a decision made regarding promotion or withdrawal from the program and is not accepting of the decision at the previous level.

### **2. Postgraduate Appeal**

The learner that has formally requested a reappraisal of a decision made by the Postgraduate Medical Education Committee (PGEC) and is not accepting the decision at the previous level.

Note: In a Postgraduate Appeal the ACAC is the final approving body.

### **3. Professionalism**

The learner that has formally requested a reappraisal of a decision made regarding Professionalism and is not accepting of the decision at the previous level.

## **3.0 Process**

### **3.1 Grounds for an Appeal**

A decision may be appealed only when a learner is able to establish:

- a) There is evidence of a factual error or procedural irregularity in the consideration of the appeal at a previous level of decision; and
- b) that the previous body did not adhere to the principles' of natural justice during the process..

### 3.2 Written Appeal to the Academic Council Appeals Committee

An appeal to the ACAC may be made only after a decision has been reached at the immediately preceding decision and/or level of appeal and communicated to the learner. The preceding decision must be included in any appeal to the ACAC.

A written submission requesting a hearing by the ACAC must be made on the "Request for Appeal Form" and submitted to the Chair of the ACAC c/o the Secretary of the Academic Council within 10 working days of receipt of the notice at the previous level.

If written submission to the ACAC is incomplete or is not made within this 10 working day period, in the absence of reasonable cause, the decision of the relevant lower level decision and/or appeal is final and binding and no further appeals shall be considered.

A submission that is outside the established time limits must include written reasons for the delay.

Reasonable cause for delay of proceedings may be found by the Chair of the ACAC to exist if the delay resulted from established incidents involving illness, accident, serious personal problems, or other circumstances which are beyond the control of the learner, trainee or faculty member and which, in the opinion of the Chair of the ACAC, are a substantial contributing factor to the delay.

The Chair of the Academic Council Appeals Committee and/or the Secretary of the Academic Council will contact the appellant within five (5) working days of reception of the appeal to confirm receipt of the appeal and provide hearing dates and additional information at that time.

### 3.3 Academic Council Appeals Committee Hearing and Procedures

The composition of the ACAC is outlined in the Academic Council Appeals Committee Terms of Reference.

Upon receipt of the Appellant's request for appeal, a copy of the appellant's written submission shall be sent by the ACAC Chair to the Chair of the relevant program.

A hearing shall be held within 20 working days following the receipt of the Appellant's Request for Appeal form. The Chair of the ACAC shall notify the appellant, the respondent(s) and all other related bodies in writing of the location, date and time. .

The Appellant must confirm attendance to the hearing with the Chair of the ACAC within two (2) working days of receipt of confirmation of the date of the hearing.

The Chair of the ACAC must be notified of any issues with respect to the proposed date for the hearing, and the individuals must notify the Chair of the ACAC, by contacting the Secretary of the Academic Council as soon as possible. Every reasonable effort will be made to reschedule to a date with reasonable lead time. The ACAC may proceed with the hearing in the absence of either of the parties involved or if there is delay in the proceedings without reasonable cause.

Hearings shall be closed (i.e., conducted *in camera*) and can be accommodated by video and/or telecommunications. The appeal hearing may be recorded and minutes will be taken.

(1) The order of proceedings during a hearing is:

- a) Introduction of ACAC members, the appellant, and respondent(s), recital of the decision being appealed, the redress being sought, and summary review of documentation provided by both the appellant and the respondent.
- b) Where either party has failed to appear, the ACAC shall proceed to consider the appeal on its merits.
- c) The ACAC shall hear and determine each case on the basis of the documentation and written argument submitted and, where one or both parties appear in person or with a representative, on the basis of oral clarification at the hearing. Such oral presentation shall address only those matters raised in the parties' written submissions previously filed.

(2) The following process at the hearing shall apply:

- a) Opening statements by the Appellant to establish the grounds for the appeal.
- b) Opening statements by the Respondent.
- c) Examination of the Appellant by the ACAC to clarify any points raised by his/her opening statement.
- d) Calling of witness(es), if any, by the Appellant, cross-examination, re-examination and examination of witness(es) by the ACAC to clarify any point raised in the evidence.
- e) Examination of the Respondent by the ACAC to clarify any points raised by his/her statement.
- f) Calling of witness(es), if any, by the Respondent, cross-examination, re-examination and examination of witness(es) by the ACAC to clarify any point raised in the evidence.
- g) Reply evidence, if any, on behalf of Appellant, including calling of witnesses by the learner, cross-examination, re-examination and examination of witnesses by the ACAC to clarify any point raised in their evidence. Such evidence in reply shall only be for the purpose of contradicting or qualifying new facts or issues raised in the Respondent's evidence. Summary remarks by the Appellant. Summary remarks by the Respondent.
- h) Reply, if any, by the Appellant to summary remarks by the Respondent(s) (evaluator(s)).

The Chair of the ACAC shall have the right to alter this order and process in the interest and fairness of any or all parties.

The Chair of the ACAC may consider and grant a recess or adjournment at any time during the hearing to ensure a fair hearing.

Persons appearing before the ACAC may be required to give evidence under affirmation or oath.

The Chair of the ACAC shall have the discretion to limit the testimony and questioning of witnesses to those matters it considers relevant to the disposition of the case.

The parties are responsible for producing their own witnesses and for paying the costs associated with their appearance before the ACAC.

The ACAC shall have the power to request written or documentary evidence by the parties or by any other source.

The Chair of the ACAC has the power to rule on the admissibility of evidence.

#### **4.0 Notice of Decision**

At the conclusion of the hearing, the ACAC will deliberate in closed session for the purpose of arriving at a decision. Within five (5) working days of the conclusion of the hearing the Chair of the ACAC shall supply a written report of its decision to the Appellant, the Respondent, the appropriate Associate Dean, the Dean of the Medical School and to other individuals as the ACAC deems appropriate and/or necessary.

The written report of the ACAC must include

- a. the membership of the Appeals Committee
- b. the background of the appeal
- c. a summary of the case of the appellant and the respondent
- d. the findings of fact
- e. the decision, recommendations (if any) and the reasons for its decision.

#### **5.0 Further Appeals**

With regards to an appeal related to a program whose credentials are not granted under the authority of Lakehead University or Laurentian University, the decision of the ACAC in this regard shall be final and binding.

For learners whose credentials are granted under the authority of Lakehead University or Laurentian University, in the event that the ACAC denies the appeal, the Appellant, may submit a new Request for Appeal application to be heard by the Joint Senate Committee for NOSM (JSC) and follow the procedures set out in the Joint Senate Committee Appeals Process.

**6.0 Conflict of Interest**

The issue of impartiality during the Appeal process is considered crucial. Therefore, a member of the Committee will be excluded from the appeal hearing(s) when:

- (1) that member has any emotional or financial interest in the outcome of the appeal hearing;
- (2) that member has any affiliation with either party of such a nature or proximity as to give the appearance of partiality or bias;
- (3) that member has been privy to information about the case obtained by means other than through the presentation of evidence at the appeal hearing or in documents filed by the parties.

Should a Committee member discover that he or she is in one of the positions described above; the member should inform the Chair and not be present at the hearings or in the deliberations.

**7.0 Related Policies/References**

- Request for Appeal Form
- Appeal Process Overview Chart

**8.0 Getting Help**

Learners are encouraged to contact the Learner Affairs office.

Queries regarding interpretations of this document should be directed to:

Governance Office – Office of the Dean  
Northern Ontario School of Medicine  
(705) 662-7206

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Version	Date	Authors/Comments
V1.0	October 25, 2013	Approval at Academic Council with effective date May 1, 2014

**Stage 1 - Previous level Decision has been rendered and Determination of Grounds for Appeal**  
 Learner decides to appeal decision by committee (any committee under the purview of Academic Council making a promotion/withdrawal decision or finding of unprofessional behaviour)

**Stage 2 - Written Appeal to the Academic Council Appeals Committee**  
 Learner must submit a written appeal [on the Request for Appeal form] to the Chair of the Academic Council Appeals Committee within **10 Days** of receipt of the decision at the previous level.

**Stage 3 - Academic Council Appeals Committee Hearing and Procedures**  
 Hearing to be set within **20 days** of the receipt of the Request for Appeal. ACAC hearing and procedures as set out in Policy.

**Appeal upheld**  
 See Policy & Recommendations from Chair

**Appeal denied**

**Stage 4 -Joint Senate Committee for NOSM Final Hearing and Procedures**  
 Learner submits written new Request for Appeal to the JSC - Must be filed within **10 Days** of receipt of the decision at the previous level

**JSC Subcommittee hearing**  
 The JSC Chair shall set a hearing and notice with procedures as set out in Policy

**Appeal upheld**  
 See Policy & Recommendations from Chair

**Appeal denied**  
 The decision of the JSC in this regard shall be final and binding to all parties involved

The following instructions are excerpted from the **NOSM Policy Regarding Academic Appeals** which can be found on the website or by contacting your Program.

This Chart outline does not include all that you need to know about the process or the specifics within the policy. Please review the policy and if necessary contact your Program and/or NOSM Learner Affairs.

For information on the policy, please contact the Secretary to Academic Council  
 gkennedy@nosm.ca

NOSM – Northern Ontario School of Medicine  
 ACAC – Appeals Committee of the Academic Council  
 JSC – Joint Senate Committee for NOSM