

# **GUIDELINES FOR THE CONDUCT OF APPEALS**

## **Council on Podiatric Medical Education**

**CPME 935**

**April 2012**

The information appearing in this document is intended to instruct the Council, its staff, and appellants in the conduct of appeals related to adverse actions pertaining to colleges of podiatric medicine (hereinafter referred to as institution). Although the Council makes every effort to strictly adhere to the procedures and their associated timelines as identified in these guidelines, circumstances and factors beyond the control of the Council may alter the appeal process to the extent that these guidelines may need to be adjusted to complete the appeal. Irrespective of any adjustments made, the Council is committed to ensuring that the appeal process is conducted in an objective and fair manner.

### **1. Appeal Process: Overview**

When an adverse action is determined by the Council and if the adverse action has been sustained following a request by the institution for reconsideration, the institution is provided an opportunity to appeal the decision to the Ad Hoc Committee for Appeals. (Procedures for reconsideration of adverse actions are specified in CPME 130, *Procedures for Accrediting Colleges of Podiatric Medicine*.) To be eligible to appeal an adverse action, the institution must first utilize the reconsideration process.

The purpose of an appeal is to determine whether established standards, requirements, and procedures were applied properly as related to the adverse action and whether that action was supported by substantial evidence. The Ad Hoc Committee for Appeals is empowered to review substantive matters based upon information that was reasonably available to the evaluating team, committee, or Council at the time of the evaluation leading to the adverse action under review. The Committee also is empowered to determine whether CPME procedures were appropriately followed. The purpose of an appeal is not to re-evaluate the institution.

An appeal must be based upon specific grounds and supporting evidence and arguments, as described more fully below. An appeal based solely on the basis of dissatisfaction with the adverse action without citing specific grounds and supporting evidence consistent with these guidelines will be immediately rejected. With the exception of an appeal of a proposed adverse action related to a college of podiatric medicine based solely upon a failure to meet the standard pertaining to finances, an appeal will not be accepted on the basis of modifications made in the educational institution subsequent to the determination of the adverse action. The Ad Hoc Committee for Appeals will not consider measures taken by an institution to conform to Council standards, requirements, and/or procedures following determination of an adverse action.

## **2. Adverse Actions from Which Appeals May Be Taken**

The following list includes all possible adverse actions that are subject to appeal:

- ◆ Deny candidate status
- ◆ Deny provisional accreditation
- ◆ Withdraw candidate status
- ◆ Withdraw provisional accreditation
- ◆ Withdraw accreditation
- ◆ Withhold accreditation

To be eligible for an appeal, the institution must exhaust the reconsideration process. If the institution does not seek reconsideration, it may not pursue an appeal and the adverse action will be considered final. Otherwise, no adverse action shall be final or is published until the institution has been afforded an opportunity to request and complete the appeal process. If the institution does not timely request and pursue completion of the appeal process, the appeal rights of the institution will be deemed to be forfeited.

## **3. Notification of Adverse Action**

If the adverse action is sustained following the reconsideration process, the Council will so advise the institution in writing by certified mail (return receipt requested) within 30 days<sup>1</sup> following the decision. The notification will describe the reasons for the action and advise the institution of its right to seek an appeal of the adverse action.

## **4. Request for Appeal; Grounds**

An institution wishing to appeal an action must submit a Request for Appeal by certified mail (return receipt requested) such that it is received by the Council within 30 days following the institution's receipt of notification of the decision. The institution must submit six copies of the Request for Appeal. An appeal must be based upon either or both of the following grounds:

- (a) That the Council failed to follow its established published procedures in reaching its decision, and that this failure to follow procedures caused the decision to be unfair;
- (b) That the decision of the Council was arbitrary, capricious, or not supported by significant, relevant information or evidence, and that this oversight resulted in an unfair decision.

The Request for Appeal must state completely all procedural and/or substantive grounds for the institution's appeal, and it must be accompanied by all evidence contained in the official record upon which the program relies to support its arguments. (See "Written Materials and Documents" below.)

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<sup>1</sup> All references are to calendar days.

A Request for Appeal that is received after the 30-day period or that does not set forth facts and arguments in support of the institution's appeal will be rejected, and the adverse action will become final.

## **5. Status of the Institution Pending Appeal**

The institution must consult CPME publications 130 for applicable rules governing disclosure of the institution's status while an appeal is pending.

## **6. Appointment of an Ad Hoc Committee for Appeals**

Appeals of adverse actions are reviewed by an Ad Hoc Committee for Appeals, which shall be appointed by the Council chair after receipt of a properly submitted Request for Appeal. The Committee shall function as an independent body for the purpose of reviewing materials and hearing verbal presentations from representatives of the institution and, as deemed appropriate by the Committee, representatives of the Council and/or Accreditation Committee relative to the adverse action.

The size and composition of the Committee is determined by the Council, and will generally take into consideration the nature of the appeal, and the content and scope of activities of the institution under consideration. The Council has the prerogative of appointing, on an annual basis, a panel of individuals with varied expertise, from which the Council chair may select appropriate members to serve on the Ad Hoc Committee for Appeals when an appeal is filed. In any event, the Committee shall be drawn from a pool of candidates possessing knowledge of accreditation purposes and procedures and will be constituted to meet the panel composition requirements set forth in this document. Prior to the appeal hearing, the CPME director will conduct a formal training session for all members of the Committee. Topics of training include, but are not limited to, the appeals process as it relates to Committee member responsibilities, the relevant policies and procedures, the decision options available to the Committee, and information about CPME's current interpretation of the relevant evaluative requirements and standards.

The Committee may not include any member of the Council or other committee member or evaluator who was involved in the review of the institution leading up to the adverse action. The Committee must have a minimum of four members and a maximum of five members. The Council chair will designate one member of the Committee to serve as chair. Each member of the Committee is subject to the Council's Conflict of Interest Policy as stated in Chapter 14 of the CPME Bylaws.

One member of the Committee must be a public member as set forth in Chapter 3, section b of the *CPME Bylaws*. One Committee member must meet the criteria of an academic/educator, one member must meet the criteria of an administrator, and one member must meet the criteria of a practitioner as set forth in chapter 7, section 1 of the CPME bylaws.

In most cases, the names of the members of the Ad Hoc Committee for Appeals will be forwarded to the institution within 30 days following receipt of the Request for Appeal. The

appellant will be provided reasonable opportunity, but in no event more than ten days, to submit written objections to the appointment of one or more members of the Committee based upon an alleged conflict of interest. The Council will review the appellant's objection(s) and withdraw the member or member(s) if appropriate under the Council's Conflicts of Interest Policy. If one or more members are withdrawn, the institution will be provided the name(s) of an alternate member(s) within ten days following the Council's withdrawal decision. The foregoing procedures also will apply to the alternate appointees. The final composition of the Committee will be confirmed generally within 60 days following receipt of the Request for Appeal.

Alternatively, the Council may submit a list of potential Committee members to the institution from which the institution will be requested to identify within ten days those individuals the institution believes have a conflict, stating the basis therefore. In this case, the final composition of the Committee will be confirmed generally within 30 days following receipt of the Request for Appeal.

The Council will provide written confirmation of the final appointment and composition of the Ad Hoc Committee.

Expenses of the hearing committee, including the recording and transcription of proceedings and the meeting room, are shared equally by the appellant and the Council.

## **7. Written Materials and Documents**

At the time of its Request for Appeal, the institution shall submit facts and argument that support the basis for its appeal. The institution also may provide supplementary information following confirmation of the appointment of the Committee, provided the supplementary information (a) does not include facts related to events or developments that occurred subsequent to the adverse action, and (b) is received no later than 14 days prior to the hearing to allow sufficient time for review by members of the Committee. In its discretion, the Committee may alter the deadline for submission of supplemental information, and it may request that additional materials and documents be submitted after the deadline or after the hearing. However, in fairness to the Committee, information received after established deadlines cannot be considered.

## **8. Burden of Proof on Appeal**

The burden of proof is on the appellant to show by clear and convincing evidence that the action of the Council was inappropriate, i.e., that it failed to follow its established published procedures in reaching its decision, and that this failure to follow procedures caused the decision to be unfair; or that its decision was arbitrary, capricious, or not supported by significant, relevant information, or evidence, and that this oversight resulted in an unfair decision.

## **9. Appeal Hearing**

A hearing will be scheduled during which representatives of the appellant institution will be provided opportunity to present oral remarks in support of its appeal.

## **A. Time and Location**

In most cases, the appeal hearing will take place within 60 days following confirmation of appointment of the Ad Hoc Committee for Appeals. A date and time for the appeal hearing are determined by the staff of the Council in consultation with the affected parties. The site of the hearing is determined by the staff of the Council. In selecting the site, staff must ensure that the confidentiality of the process can be maintained.

The Committee will determine specific time limitations prior to the hearing in an effort to confine the hearing to a reasonable period of time. As a general rule, the Committee will set a two-hour time limit for the entire hearing.

## **B. Identification of Representatives**

In the interest of reducing the expenses of the appellant, the institution may offer videotaped or audiotaped remarks of representatives on behalf of the appellant. Prerecorded remarks that will be part of the oral presentation of the institution are subject to the time limitations set by the Committee. If the appellant institution elects to prerecord oral remarks of its representatives, the authenticity of the prerecorded tapes must be certified.

A list of all individuals who will provide oral remarks (in person or prerecorded) on behalf of the appellant, and the identity of legal counsel who will be present, if any, must be submitted to the Committee at least 14 days prior to the hearing. No representatives of the institution who are not specifically identified prior to the deadline may participate in the hearing, with the exception of substitutes for participants who become ill or otherwise incapacitated.

## **C. General Rules for the Conduct of the Hearing: Rights of the Participants**

The chair of the Ad Hoc Committee for Appeals will preside over the entire hearing and his/her decisions pertaining to rules of order and procedures are final. All oral remarks are considered to be on the record and will be stenographically recorded.

At the hearing, the appellant institution has full opportunity to present documented facts and arguments in support of its appeal. The appellant institution, at its own expense, may bring faculty and administrative representatives and legal counsel. Issues that were not set forth in the institution's Request for Appeal may not be raised and will not be considered by the Committee. Organizational or programmatic modifications made to come into compliance with Council standards, requirements, criteria and/or procedures following determination of an adverse action are not deemed relevant and will not be considered by the Committee.

When the Council proposes an adverse action related to a college of podiatric medicine based solely upon a failure to meet the standard that includes the requirement pertaining to finances, the college may request a one-time review of significant financial

information that was unavailable to the college prior to the determination of the adverse action, and that bears materially on the financial deficiency(ies) identified by the Council. Either the appeal hearing committee (prior to the hearing) or the Council (after the hearing, but before the action becomes final) may determine that the new financial information submitted by the college is significant and material. The college cannot appeal separately any determination by the Council made with respect to the new financial information described above.

Issues regarding personalities, which may be subject to slander and libel laws, are explicitly prohibited. Specific allegations regarding individual performance also are prohibited unless actual documented evidence can be provided to substantiate these allegations. Provision for cross examination is not available.

The Council, at its own expense, may have members or representatives, consultants, and legal counsel in attendance at the hearing. At least one staff member of the Council will be present at the hearing and will act as a technical advisor to the Committee.

As part of the hearing, the Ad Hoc Committee for Appeals may meet with or conduct conference calls with representatives of the Council and/or Accreditation Committee, interviewing those individuals who were directly involved in the decision to take the proposed adverse action. Expenses of these individuals are the responsibility of the Council. Such discussions shall be transcribed and made a part of the appeal record.

## **10. Appeal Summary of Findings and Appeal Action**

The Ad Hoc Committee for Appeals will deliberate in executive session following the presentation of oral remarks. The Committee will determine significant areas of concern (if any), and develop the Appeal Summary of Findings, which will contain the Committee's action. The Committee Chair shall coordinate these efforts.

The Committee will take one of the following actions:

- Sustain the original Council action
- Amend the original Council action
- Reverse the original Council action
- Remand the original Council action back to the Council for reconsideration, with specific issues to be addressed by the Council based upon finding the presence of bias, injustice, error or departure from the standards and procedures.

A decision to affirm, amend or reverse the adverse action is implemented by the Council upon notification by the Committee. In a decision to remand the matter to the Council for further consideration, the Committee must identify specific issues that the Council must address. In a decision that is implemented by or remanded to the Council, the Council must act in a manner consistent with the Committee's decision or instructions. If the appeal is considering a Council decision to withdraw accreditation, and after the exhaustion of all administrative appeals, upon

formal disposition to uphold the Council decision, the institution may seek reinstatement of accreditation by complying with the requirements for eligibility and candidate status.

The Appeal Summary of Findings will be forwarded to the institution and to the Council as soon as practicable, but no more than 45 days after the hearing, unless the institution is notified of circumstances requiring a delay. The Appeal Summary of Findings cannot be modified, revised or changed, once completed.

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## **11. Action of the Council**

The Council will implement decisions of the Appeal Committee to affirm, amend, or reverse the prior Council decision within 30 days of receipt of the Committee's written decision. The Council will implement a decision to remand within 90 days of receipt of the written decision by the Appeals Panel.

## **12. Notification**

The Council will provide the chief executive officer, chair of the governing body, and the Chief academic officer of the institution a written decision within 45 days (unless the institution is notified of circumstances requiring a delay) on the appeal and statement of specifics supporting that decision. The Council will notify the Secretary of Education, the appropriate regional accrediting agency, and the relevant state licensing agency and other relevant regulatory bodies of the outcome of any appeal simultaneously with the issuance of its notice of the action.