

CPME 935a

GUIDELINES FOR THE CONDUCT OF APPEALS AND ARBITRATION BY COLLEGES OF PODIATRIC MEDICINE*

Council on Podiatric Medical Education

October 2021

* This document pertains to Colleges of Podiatric Medicine. For matters related to adverse actions pertaining to residency programs, fellowship programs, providers of continuing education, and specialty boards, please refer to document CPME 935b.

The information appearing in this document is intended to instruct the Council on Podiatric Medical Education (hereinafter referred to as “Council” or “CPME”), its staff, and institutions in the conduct of appeals and arbitration proceedings 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 necessitate altering the appeal and/or arbitration processes to ensure a fair and equitable proceeding. Irrespective of any adjustments made, the Council is committed to ensuring that appeal and arbitration proceedings are conducted in an objective and fair manner.

I. APPEALS

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 procedural reconsideration, if applicable, the institution is provided an opportunity to appeal the decision to the Ad Hoc Appeals Committee (hereinafter referred to as Committee). (Procedures for procedural reconsideration of adverse actions are specified in CPME 130, *Procedures for Accrediting Colleges of Podiatric Medicine*.)

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 Committee 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 Committee 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
- Withdraw candidate status
- Withdraw preaccreditation
- Withdraw accreditation
- Withhold accreditation

When the Council considers an adverse action, the action does not become final, nor is it published, until the college has been afforded opportunity to complete the processes related to procedural reconsideration and/or appeal. If the institution does not initiate the procedural reconsideration or appeal processes, the institution's rights to due process through the Council will be viewed to be exhausted.

3. Notification of Adverse Action

For adverse actions, the written communication to the affected institution contains the following information: (1) the specific reasons for taking the adverse action; (2) the date the action becomes effective; (3) invitation to the institution to initiate procedural reconsideration and appeal processes and the date by which such a request must be received by the Council; and (4) a reminder to the institution regarding its obligation to inform students and applicants to the program about the adverse action if no request for procedural reconsideration or appeal is made.

The Council advises the institution of the action within 30 days¹ of the date on which the Council completes its accreditation deliberations. Notifications of adverse accreditation actions are confidential and transmitted by electronic notice.

4. Request for Appeal; Grounds

An institution wishing to appeal an action must submit a Request for Appeal by certified mail (return receipt requested) and electronically such that it is received by the Council director within 30 days¹ following the date listed on the Council's decision letter. An appeal must be based upon either or both of the following grounds:

¹ All references are to calendar days.

- (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.)

A Request for Appeal that is received after the 30-day period or that does not set forth detailed 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 130, *Procedures for Accrediting Colleges of Podiatric Medicine* for applicable rules governing disclosure of the institution's status while an appeal is pending.

6. Appointment of an Ad Hoc Appeals Committee

Appeals of adverse actions are reviewed by the Committee, 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 chair and will generally take into consideration the nature of the appeal, and the content and scope of activities of the institution under consideration.

The Committee shall be drawn from a pool of eight or more candidates possessing knowledge of accreditation purposes and procedures and will be constituted to meet the panel composition requirements set forth in this document. This pool of candidates is appointed by the Council chair subject to approval by the Council.

Upon acceptance into the pool of Committee candidates and 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 15 of the *CPME Bylaws*.

One member of the Committee must be a public member as set forth in Chapter 3, Section 2 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*.

The names of the members of the Committee 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 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 detailed facts and arguments 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 Committee. 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, oral remarks of representatives who will speak on behalf of either party may be provided via electronic methods.

A list of all individuals who will provide oral remarks (in person or via electronic methods) 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 Committee 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 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.

10. Appeal Summary of Findings and Appeal Action

The Committee 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:

- Affirm the original Council action
- Amend 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 or amend 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 explain the basis for a decision that differs from that of the Council. 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. For appeals pertaining to

the withdrawal of accreditation that result in confirmation of the original decision by the Council, the institution may reapply for accreditation in accordance with the procedures for seeking 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.

11. Action of the Council

The Council will implement decisions of the Committee to affirm or amend the prior Council decision within 30 days of the date of the Committee's written decision. The Council will implement a decision to remand within 90 days of the date of the written decision by the Committee.

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, including the basis for the decision, within 45 days (unless the institution is notified of circumstances requiring a delay) of the appeal action. 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.

II. ARBITRATION

1. Arbitration Process: Overview

An adverse decision is a ruling by the Ad Hoc Appeals Committee ("the Committee"), which results in denial of candidate status, withdrawal of candidate status, withdrawal of preaccreditation, withdrawal of accreditation, or withholding of accreditation. Binding arbitration pursuant to these guidelines is the exclusive remedy for an institution which has received an adverse decision and such arbitration shall govern any and all claims arising out of the appeal decision including the predicate actions of the Council and its Accreditation Committee.

An accredited institution shall remain in accredited status during the pendency of the arbitration proceedings and until the arbitrator issues a final decision in the matter. The arbitration proceeding shall be considered confidential and the parties and the arbitrator shall preserve the confidentiality unless required by law or disclosure is ordered by a court of competent jurisdiction.

2. Standard of Review in Arbitration

The arbitrator's review of the adverse decision by the Ad Hoc Appeals Committee is limited to the question whether the decision of the Committee was supported by substantial evidence in the evidentiary record before the Committee at the time that it made its decision. It is not a *de novo* review and the arbitrator may not take into account evidence, documents, testimony, or other materials that were not in the record before the Committee. Accordingly, depositions, interrogatories, requests for admission, and other forms of fact discovery cannot be utilized by any party during the arbitration proceeding. The burden of proving that the decision of the Ad Hoc Appeals Committee was not supported by substantial evidence on the record rests exclusively with the institution.

3. Authority of the Arbitrator

In the arbitration proceeding, the arbitrator shall only have the authority to affirm or reverse the decision of the Committee. The arbitrator shall have no power to amend or remand the Committee's decision nor shall the arbitrator have the authority to order any actions reserved to the Council such as mandating an on-site visit, requiring the filing of reports, or submission of information or data to the Council.

If the arbitrator reverses the decision of the Committee, the Council shall execute the decision in a manner consistent with the decision. The arbitrator has no power to grant accreditation to the appealing institution because by federal regulation that power is the exclusive province of the Council.

If the arbitrator affirms the decision of the Committee, the Council's action shall become final immediately.

4. Initiation of Arbitration Proceeding

The arbitration permitted by these guidelines shall be conducted and decided by a single independent and impartial arbitrator chosen from the National Roster of Commercial Arbitrators maintained by the American Arbitration Association ("AAA").

In order to initiate arbitration of an adverse decision by the Ad Hoc Appeals Committee, an institution must submit a written Notice of Intent to Arbitrate to the Council along with all applicable fees as specified by the Council. The Notice of Intent to Arbitrate and requisite fees must be submitted within 10 business days of receipt of the final adverse decision. The notice must include a concise statement of the contentions that the institution intends to advance during the arbitration proceeding as well as the relief or remedy which it will request.

Within 20 days of receipt of the institution's Notice of Intent to Arbitrate, the Council shall request arbitration services from the American Arbitration Association and furnish the AAA with a copy of the Notice of Intent to Arbitrate; the names, addresses, and contact information for all of the parties; a statement of the arguments that the Council will advance during the arbitration; a copy of these Guidelines; and the applicable AAA fees.

After receiving the requisite information from the Council, the AAA shall provide a list of five proposed arbitrators (along with biographies for each) from the National Roster to the institution and to the Council. The institution and the Council may each object to two of the arbitrators on the list; any such objection must be lodged with the AAA within 7 business days of receipt of the list from the AAA. The AAA shall select the arbitrator for the proceeding from the list of arbitrators to whom no objection was lodged. The appointment of the arbitrator by the AAA shall be in writing to both parties and is final and not subject to review.

Ex parte communications by either party or by anyone acting on behalf of either party with the arbitrator or any candidate to be an arbitrator are expressly prohibited.

5. The Arbitration Record

The arbitration record constitutes the complete evidentiary record upon which the arbitrator shall make her/his decision. Within 30 calendar days of receipt of the notice of appointment of the arbitrator by the AAA, the Council shall transmit to the arbitrator and institution a true and complete copy of the record which was before the Ad Hoc Appeals Committee when it made the decision for which review by the arbitrator has been sought. The record shall include the prior relevant decisions and actions of the Council, all documents, correspondence, spreadsheets, and other materials, as well as the institution's pleadings before the Committee including its grounds for appeal and any exhibits, the transcript of the hearing before the Ad Hoc Appeals Committee (if a hearing was held), and the final appeal decision. Within 10 business days of receipt of the arbitration record, the institution may request the arbitrator to include in the record any material which the Council did not include in the arbitration record. Such additional materials may not be included in the record unless it is shown that they were included in the record before the Committee at the time it made its decision.

All materials in the arbitration record shall be prepared and distributed in electronic format.

When the arbitrator is satisfied that the record is complete and accurate, the Council and the institution shall be notified in writing that the record for the arbitration is finalized.

6. Arbitration Briefs

The institution shall submit its arbitration brief to the arbitrator and the Council within 20 calendar days of receipt of the notice from the arbitrator that the arbitration record is finalized. The brief shall set forth the institution's arguments why the decision of the Committee was not supported by substantial evidence on the record.

The Council may submit a response to the institution's arbitration brief within 20 calendar days of receipt of the institution's brief.

All briefs and accompanying documents shall be filed and distributed in electronic format.

7. Hearing

At the request of either the institution or the Council, a hearing shall be held before the arbitrator (which will entail additional fees to the AAA and compensation for the arbitrator). The hearing may be in-person, video, or telephonic as may be agreed to by the parties and approved by the arbitrator. Conversely, the institution and the Council may agree to waive a hearing before the arbitrator and submit the matter for decision based exclusively on the arbitration record and the parties' briefs. In the case of an in-person hearing, the hearing shall be held a location selected by the Council.

The arbitrator, after consultation with the parties, shall set the date, time, and length of the hearing whether it be in-person, by video, or telephonic. The hearing shall be held within 45 calendar days of the arbitrator's receipt of all of the briefs in the matter.

Within 15 calendar days of the scheduled date of the hearing, the parties shall notify (in writing) the arbitrator and the opposing party of the names and titles of all of the individuals who will represent them at the hearing. The parties may be represented by legal counsel.

The arbitrator shall conduct the hearing, set the procedures for the hearing, establish the order of proof, and question the parties as appropriate.

An arbitration hearing, regardless of the platform, is confidential and not open to the public. A stenographic transcript of the hearing shall be made and will be available to the parties upon request and payment of related costs.

8. Arbitrator's Decision

The arbitrator shall render her/his decision expeditiously after the conclusion of the hearing or, if there is no hearing, after receipt of all of the briefs of the parties. The decision shall be in writing, include a detailed statement of the reasons for the decision, and be signed by the arbitrator.

As described more fully in Section 3 above, the authority of the arbitrator is limited to affirming or reversing the decision of the Ad Hoc Appeals Committee; the arbitrator can neither remand the matter to the Council nor amend the decision of the Committee.

9. Arbitration Fees

The institution's Notice of Intent to Arbitrate must be accompanied by payment of a non-refundable fee of \$2,000 to cover the administrative expense of the Council in connection with the proceeding.

The AAA charges a fee for providing administrative services for an arbitration proceeding for which the institution requesting arbitration is entirely responsible. The amount of the fee is specified in the current schedule of fees maintained by the AAA.

The AAA may require a deposit prior to any hearing to account for the expense of the arbitration as well as the arbitrator's fee. Such deposit shall be paid by the institution. However, the AAA shall provide an accounting to the institution and the Council and return to the institution any amount remaining in the deposit after the conclusion of the arbitration proceeding.

The failure to pay any of the required fees or make the required deposit will suspend the arbitration proceeding until the fees are paid. Upon request of the Council or upon her/his own volition, the arbitrator may terminate the proceeding for non-payment of fees.

Expenses of the arbitration proceedings, including the recording and transcription of proceedings and the meeting room or the video/audio platform for a virtual proceeding, are shared equally by the appellant and the Council.

III. VENUE OF CLAIM OR PROCEEDING

By applying for accreditation from the Council, the institution agrees to exhaust all appeal opportunities and to submit fully and faithfully to final, binding arbitration proceedings as set forth in CPME 935a before filing any suit, claim or proceeding relating to accreditation or accredited status, whether a claim for damages or injunctive or declaratory relief, and brought against the American Podiatric Medical Association ("the Association"), the Council or a member of the Council, the Accreditation Committee or a member of the Accreditation Committee, a member of an appeal panel, member of a visiting team, or other agent or employee of the Association, Council, or Accreditation Committee because he or she acted on their behalf and in the discharge of his or her duties. Jurisdiction and venue of any suit, claim, or proceeding shall only be in the U.S. District Court for the District of Columbia.