

## **H. APPEALS**

### **H.1 Preamble**

The Appeals Process of the Australasian College of Dermatologists is intended to provide a means by which any person adversely affected by a decision of any Board or Committee of the College, can have their grievances addressed in a properly constructed and formal manner. Any person with such a grievance will however be encouraged to first seek a reconsideration of the adverse decision in an informal reconsideration and review process which involves the original Committee/Board making the decision.

The College recognises the importance of natural justice and of the avoidance of bias and conflict of interests in its dealings with all persons and aims for fairness in all its official processes.

Nevertheless it is recognised that there is always the potential for grievances to arise and it is for this reason that the Appeals Process has been established.

### **H.2 Appeals Committee**

H.2.1 There shall be a standing Appeals Committee of College.

H.2.1.1 The Appeals Committee will comprise as follows:

- (i) Three members nominated by the Australian Health Ministers' Conference (AHMC) (or a delegate)
- (ii) Two Fellows of the College who have been a Fellow for at least eight years
- (iii) An appropriately qualified medical specialist in another speciality
- (iv) A representative of a consumer association, (such as the Australian Consumers' Association, the Consumers' Federation of Australia or the Consumers' Health Forum of Australia) appointed by the College.
- (v) Chairman: The Chairman will not be a member of the College and will have appropriate legal qualifications and experience.

H.2.1.2 The College will write to the Health Ministers' Conference inviting it to nominate persons to sit on the Appeals Committee. At the same time, it shall nominate persons for consideration by the AHMC, which the AHMC may accept or reject.

H.2.1.3 If the AHMC nominates persons, the composition of the Appeals Committee shall comprise:

- (i) A majority of members nominated by the Australian Health Ministers Conference (or a delegates); and  
A minority of members who are College Fellows

The College will not accept as an appointed person to sit on its appeals committee, any person nominated by the AHMC who sits on any panel established to assess overseas trained specialists.

- H.2.2 Any individual who was a party to the decision to which the appeal relates will not sit on the Appeals Committee.
- H.2.3 The Honorary Secretary of the College will be the Secretary to the Appeals Committee. A Legal Adviser will be appointed to advise the Committee. The Honorary Secretary and the Legal Adviser may attend the hearing but will not form part of the Appeals Committee, nor vote on any resolution of the Committee.
- H.2.4 If any member of the Appeals Committee is unable to attend a hearing of the Committee, the Chairman will have the power to nominate a substitute member to attend at the appeal hearing. That substitute member must have equivalent qualifications of the first nominated member. The quorum shall be of 4 members including at least 2 non-College members to attend at each appeal hearing. All members of the Appeals committee will be entitled to vote on decisions. The Appeals Committee will reach decisions by majority vote, with the Chairman exercising a casting vote in the event of an equality of votes.

### H.3 **Grounds of Appeal**

- H.3.1 Any person adversely effected by a decision referred to in this clause 3 and clause 4.10 may, within 3 months of receipt of notice of such decision, apply to the Honorary Secretary to have the decision reviewed by the Appeals Committee.
- H.3.2 The decisions which may be reviewed by the Appeals Committee are:
- Decisions in relation to trainees regarding selection/non-selection, discipline, dismissal and recognition of training;
  - Admission/non-admission to Fellowship;
  - Decisions in relation to assessment of International Medical Graduates;
  - Decisions arising from College examinations;
  - Decisions in relation to Continuing Professional Development of Fellows;
  - Disciplinary decisions or actions in relation to Fellows;
  - Decisions in relation to the financial status of Fellows; and
  - Such other decisions as the Board of the College nominate for the purpose of this regulation.
- H.3.3 An appellant may ask the College to explain the original decision that is being appealed. This request must be in writing. The College, within two weeks of receiving the request, will write to the appellant to explain the reasons for the original decision.
- H.3.4 The decisions which may be reviewed by the Appeals Committee are:
- (i) That an error in law or in due process occurred in the formulation of the original decision;
  - (ii) That relevant and significant information, whether available at the time of the original decision or which became available subsequently, was not considered or not properly considered in the making of the original decision;

- (iii) That irrelevant information was considered in the making of the original decision;
- (iv) That procedures that were required by College policies to be observed in connection with the making of the decision were not observed;
- (v) That the original decision was made for an improper purpose;
- (vi) That the original decision was made in accordance with a rule or policy without regard to the merits of the particular case; and
- (vii) That the original decision was clearly inconsistent with the evidence and arguments put before the body making the original decision.

H.3.5 Before the Honorary Secretary convenes an Appeals Committee, the Chairman of the Appeals Committee shall be entitled to enquire whether the applicant has explored all avenues of informal reconsideration and review of the relevant decision reasonably open to him or her. An applicant has the right however to request a hearing of the Appeals Committee if he or she does not wish to participate in an informal reconsideration and review process.

H.3.6 The onus of proof to establish the grounds of any appeal is on the applicant.

#### H.4 **Consideration of Appeals**

H.4.1 A fee to be determined from time to time by the Council is payable by the applicant on lodgement of an appeal (**Application Fee**). The current Application Fee is \$5,250 plus GST.

H.4.2 The appeal hearing will be held within three months of the appeal being lodged.

H.4.3 An applicant will have the right to appear and address the Appeals Committee at the hearing of their appeal. The applicant may be accompanied by another person, who may be a legal representative or any other person but that person will not be entitled to present arguments on the applicant's behalf. Any applicant who believes that exceptional circumstances exist that necessitate a lawyer or any other person speaking on their behalf as an advocate must apply in writing, specifying the special circumstances to the Chairman of the Committee at least 10 days prior to the Committee being convened. Any decision of the Chairman in that regard is final. Unless directed by the chairman to the contrary, Appeals Committee hearings will be conducted in Sydney.

H.4.4 At least 30 days prior to any Appeals Committee hearing the Honorary Secretary will advise the applicant:

- (i) Of the date, time and place of the hearing.
- (ii) Of the right of the applicant to appear before the Appeals Committee and to be accompanied by another person who may be a lawyer.
- (iii) That any person accompanying the applicant cannot act as an advocate but can attend purely in an advisory role unless prior permission of the Chairman of the Committee has been given in writing.
- (iv) That the Application Fee payable by the applicant on lodgment of the appeal will be refunded if the appeal is successful. In the absence of a decision of the Council to the contrary, the applicant will bear his or her own costs associated with attending the Appeals Committee hearing.

- (v) That, at the request of the chairman, a solicitor may attend the hearing for the purpose of giving advice to the Appeals Committee. This solicitor shall not be the College Solicitor and will have no other involvement in the College's business.

H.4.5 The appellant must lodge any written submission they wish to make to the Committee at least 14 days before the appeal hearing.

H.4.6 The Appeals Committee must act according to the rules of natural justice and decide each appeal on its merits. The Appeals Committee is not bound by the rules of evidence and, subject to the rules of natural justice, may inform itself on any matter and in such manner as it thinks fit.

H.4.7 The Appeals Committee will be entitled to consider all relevant information which it thinks fit and may invite any person to appear before it or to provide information to it.

H.4.8 The Appeals Committee will conduct its affairs with as little formality as possible but otherwise, subject to these rules, will have full powers to regulate its conduct and operation.

H.4.9 Except where otherwise required by law, a transcript of the hearing of the Appeals Committee and any other information provided to the Appeals Committee will be kept confidential (save that information may be released with the consent of the applicant) and a report of the Appeals Committee hearing may be issued by the Appeals Committee to the Council.

Appeals concerning Area of Need Positions:

H.4.10 A sponsoring hospital may appeal a College decision concerning an Area of Need position on behalf of an overseas trained dermatologist they are seeking to employ. The procedures set out in clause 4.3 shall apply to such applications.

## H.5 **Decisions of the Appeals Committee**

H.5.1 The Appeals Committee may, upon considering an appeal:

- (i) Confirm the decision which is the subject of the appeal;
- (ii) Revoke the decision which is the subject of the appeal and refer the matter back to the College Board or Committee who made the original decision for further consideration (upon such terms or conditions as the Appeals Committee may determine);
- (iii) Revoke the decision and make recommendations to the College Board as to an appropriate alternative decision;
- (iv) If it considers it appropriate to do so, revoke the decision which was the subject of the appeal and make a new decision in substitution for the original decision.
- (v) Recommend to the College Board whether part or all of the Application Fee for the Appeals Committee hearing should be refunded.

H.5.2 The Appeals Committee shall reach a determination and shall issue a written decision within three weeks of the appeal hearing, along with the reasons for its decision. The decision will be publicly available on the College's website.

## H.6 **Procedure for the conduct of Appeals Committee hearings**

- H.6.1 The Appeals Committee will not, except in exceptional circumstances, consider a matter de novo.
- H.6.2 The Appeals Committee may meet alone at the commencement of each meeting to review the matter before it.
- H.6.3 The applicant and any other parties attending to provide information to the Committee will be admitted together.
- H.6.4 Any legal or other adviser permitted to be present with the applicant or on behalf of the applicant will only be able to give advice to the applicant and will not be able to directly question the Committee or other advisers unless written permission for this has been obtained from the Chairman prior to the meeting.
- H.6.5 A solicitor will attend to provide legal advice to the committee.
- H.6.6 The Honorary Secretary of the College acts as secretary to the Appeals Committee and will take minutes of the proceedings as well as being available to provide advice on aspects of College policy, practice and procedures but is not considered to be a member of the Appeals Committee and has no voting rights.
- H.6.7 The Appeals Committee may request, or permit, other parties to appear before it strictly in the role of providing information to the Committee.
- H.6.8 The Chairman will invite first the applicant then any other party appearing before it to summarise their submissions and/or responses to the Appeals Committee prior to the formal presentations.
- H.6.9 The Chairman will then invite the applicant to present their submissions and may at any time direct the applicant to any point of that submission or invite questions on any point of that submission and may request the applicant to bring their submission to a close if the presentation is too protracted.
- H.6.10 The Chairman will then invite members of the Appeal Committee to seek clarification from the applicant on any matters raised.
- H.6.11 The Chairman will then invite any person attending to provide information to the Committee to comment on the submission of the applicant.
- H.6.12 The Appeals Committee may direct questions to any person attending to provide information to the Committee.
- H.6.13 The applicant will be asked to respond or to make submissions in relation to material presented by other parties or participants.
- H.6.14 The Appeals Committee will reach a determination within 15 working days. That determination will be conveyed to the applicant in writing by the Honorary Secretary of the College within 21 working days, together with a summary of the reasons for the determination.