

## **Hong Kong Academy of Medicine**

### **Procedural Guidelines on Appeals to the Academy**

#### **General**

1. These guidelines apply to appeals to the Academy against:-
  - (a) a result in an examination conducted by an Academy College the passing of which is required for admission to Fellowship of the Academy; and
  - (b) a recommendation of the Education Committee on certification for registration as a specialist (CSR) under the Medical Registration Ordinance or the Dentists Registration Ordinance.
2. An appeal is first considered by a panel, consisting of the Chairman and 4 members of the Appeals Committee of the Academy. Unless the appeal is dismissed summarily, the Appeals Committee will make a recommendation to the Academy Council. The appeal will then be determined by the Academy Council.
3. Members of the Appeals Committee are appointed by the Academy Council, and must not be current members of the Academy Council or the Education Committee.
4. No appeal may be instituted unless the appellant has requested the Academy College concerned or the Education Committee to review the decision to be appealed against and the review at the College level has been concluded. The appellant must set out in the request for review the specific issues which are intended to be raised in the appeal, so as to give the Academy College or the Education Committee an opportunity to deal with those issues during the appeal.
5. An appeal may be instituted only on the grounds that the process of an examination or certification assessment has been conducted improperly (such as procedural irregularity or bias), but not on matters of academic, clinical or professional assessment by the examiners or members of the Education Committee.
6. Matters of academic, clinical or professional assessment are entirely within the discretion of the examiners or persons conducting the assessment. If an examination or certification assessment is found to have been conducted improperly, the Academy will not usurp the function of the examiners or persons conducting the assessment to substitute a different result for the examination or certification assessment, but will remit the case back to the Academy College concerned or the Education Committee for re-assessment or other remedial measures.

#### **Institution of Appeal**

7. An appeal shall be instituted by the appellant:-
  - (a) giving to the Chief Executive Officer a notice of appeal in writing, and
  - (b) paying the administrative fee prescribed by the Academy,

within 30 days from the date of the letter notifying the appellant of the decision of (i) an Academy College on reviewing an examination result or (ii) the Education Committee for not recommending CSR.

8. Half of the administrative fee will be refunded if the appeal is allowed, and no refund will be given if the appeal is dismissed.
9. The notice of appeal must state clearly the decision appealed against and the specific grounds of the appeal. Supporting evidence, where available, should be submitted together with the notice of appeal.
10. Upon receipt of the notice of appeal, the Chief Executive Officer will acknowledge in writing receipt of the notice.

#### *Respondent's Submission*

11. The Chief Executive Officer will send a copy of the notice of appeal to the Academy College or Education Committee ("the respondent") whose decision is being appealed against, and invite the respondent to make written submission in response to the appeal. Any submission by the respondent will be copied to the appellant.

#### *Declaration of Interest*

12. The Chief Executive Officer will send to the Appeals Committee the notice of appeal and the written submission of the respondent. Any member of the Appeals Committee should immediately declare any conflict of interest to the Chief Executive Officer. The Chief Executive Officer will seek the direction of the Chairman of the Appeals Committee whether the member should withdraw from the appeal process. If the Chairman of the Appeals Committee declares conflict of interest, the other members of the Appeals Committee will elect one from among themselves to act in his place for that particular appeal.

#### *Summary Dismissal of Appeal*

13. If the Chairman of the Appeals Committee considers that no *prima facie* case for the appeal is disclosed in the papers, the Appeals Committee may by circulation of papers pass a resolution to dismiss the appeal summarily. The appellant and the respondent will be informed in writing of such dismissal.

#### **Consideration by Appeals Committee**

14. Unless the appeal has been dismissed summarily, it will be considered by the Appeals Committee at a meeting.
15. The appellant will be informed before the meeting of the membership of Appeals Committee. If the appellant objects to any member considering the appeal, he/she must give reason(s) for the objection. The Chairman of the Appeals Committee will consider and decide whether to accept the objection. If the appellant objects to the Chairman of the Appeals Committee considering the appeal, other members of the Appeals Committee will consider and decide whether to accept the objection, and to elect among themselves a member to act in his place when necessary. The appellant will be notified accordingly.

16. If there are insufficient members to form a quorum, the Chairman can appoint ad hoc members to the Appeals Committee. An ad hoc member shall have the same powers as a member. The meeting may be postponed until a quorum is formed.
17. A member of the Appeals Committee shall not communicate privately with any person on matters relating to the appeal.

*Notice of Meeting*

18. The appellant and one representative of the respondent will be invited to attend the meeting of the Appeals Committee. Legal representation is not allowed.
19. Notice of an Appeals Committee meeting shall be given by the Chief Executive Officer in writing at least 7 days before the day of the meeting, unless the Chairman of the Appeals Committee directs that shorter notice may be given. The notice shall state the date, time and place at which the meeting is to be held.
20. The appellant and the respondent may be asked to furnish evidence or other information in advance of or at the meeting in such form approved by the Appeals Committee.
21. Notice and documents of a meeting will be sent by double-registered mails to the address provided by the appellant in his letter of appeal if it differs from the gazetted address. The proceedings at a meeting of the Appeals Committee shall not be invalidated by non-receipt of such notice or document by any person entitled to receive it.

*At the Meeting*

22. At a meeting of the Appeals Committee, 5 members shall be a quorum. A quorum must be maintained throughout the meeting.
23. If a quorum is not present within 30 minutes of the time appointed for the meeting, the meeting may be dissolved. In that case another meeting shall be convened as soon as practicable.
24. The Appeals Committee may hold a preliminary discussion before the appellant and the respondent are called in.
25. The appellant and the respondent are then called in. They shall be invited to address the Appeals Committee in the following order:-
  - (a) the respondent, in response to the stated grounds of appeal;
  - (b) the appellant, in response to the written submission and the oral address of the respondent;
  - (c) where there are new matters raised by the appellant, with the permission of the Chairman the respondent may further address those new matters, in which case the appellant may also make a reply.
26. The Chairman may limit the time allowed for each party's oral address.

27. The Appeals Committee may put questions to the appellant and the respondent.

*Recommendation by Appeals Committee*

28. The Appeals Committee shall not commence deliberation on the appeal until both the appellant and the respondent have left the meeting.

29. The Appeals Committee shall consider all written submissions and oral addresses before making a recommendation on the appeal.

30. On any question to be determined by the Appeals Committee, each member present (including the Chairman) shall have one vote and the question shall be decided by a majority of the votes. No member shall abstain from voting on the question.

31. The Appeals Committee shall make a recommendation to the Academy Council on whether the decision appealed against should be affirmed or revoked and, in the case of revocation of the decision, what remedial measures should be taken. An adequate statement of the reasons for the recommendation should be given.

32. The Appeals Committee shall report in writing to the Academy Council its recommendation and the reasons.

**Determination by Academy Council**

33. The Academy Council shall determine the appeal in its monthly meeting, having regard to the documents in the case and the recommendation of the Appeals Committee. The Academy Council shall not be bound by the recommendation.

34. A member of the Academy Council shall not communicate privately with any person on matters relating to the appeal.

35. Any member of the Academy Council should declare any conflict of interest to the Chairman of the meeting before the appeal is considered. The Chairman of the meeting will decide whether the member should withdraw from the appeal process. If the Chairman of the meeting declares conflict of interest, other members of the Council will elect one from among themselves to act in his place for that particular appeal.

36. The Chairman of the Education Committee or the President (or representative) of the Academy College concerned, as the case may be, shall not take part in the appeal.

37. The Academy Council shall determine the appeal by simple majority of the members adjudicating on the appeal. Each member (including the Chairman) shall have one vote. Method of voting will be determined by the Chairman at the meeting.

38. The burden is on the appellant to prove that the decision appealed against should be revoked. If the votes are equally divided on whether the decision should be revoked, the Academy Council should dismiss the appeal as the appellant has failed to prove his case to the majority of the Council.

39. The Academy Council should make a determination on the appeal and give reasons for the determination.

40. The Chief Executive Officer shall notify in writing the appellant and the respondent of the determination of the Academy Council and the reasons thereof.
41. The determination of the Academy Council shall be final.

- End -

Approved by Council on 19-02-2009