

5.3. Application to Appeal Decisions

- a) The decisions which may be Appealed to an Appeals Committee are: decisions of the:
- i. Registrar or Assistant Registrar in General Dental Practice; or
 - ii. Registrar or Assistant Registrar in Specialist Dental Practice; or
 - iii. Registrar in Oral and Maxillofacial Surgery Training Program; or
 - iv. Boards of Studies (General Dental Practice); or
 - v. Boards of Studies (Specialist Dental Practice); or
 - vi. Board of Studies, OMS; or
 - vii. Committees of a Board of Studies (General Dental Practice); or
 - viii. Committees of a Board of Studies (Specialist Dental practice); or
 - ix. Committees of the Board of Studies, OMS; or
 - x. Various examining bodies; or
 - xi. Directors of Training (OMS),
in relation to the assessment of progress of candidates or trainees of the College (including selection into training, dismissal from training or recognition of training); or
- b) decisions of the Chair of a Board of Studies, Registrar or Assistant Registrar in relation to applications for admission to Fellowship or Membership; or
- c) decisions of the Selection Committee of the Board of Studies in Oral and Maxillofacial Surgery with regard to the appointment of accredited trainees; or
- d) decisions of the Chair of the Board of Studies, OMS in relation to applications from Overseas Trained Oral and Maxillofacial Surgeons (OTOMS) for assessment for specialist recognition on behalf of the Australian Health Practitioner Regulation Agency / Medical Board of Australia / Dental Board of Australia through the Australian Medical Council or the Australian Dental Council; or
- e) decisions of the Chair of the Board of Studies, OMS or a Committee in relation to examinations or training required to be undertaken by OTOMS for assessment as set out above; or
- f) decisions of a Continuing Professional Development ('CPD') Committee (General Dental Practice or Specialist Dental Practice) in relation to participation in the CPD programs and the statement of participation or compliance; or
- g) decisions of the Chair of a Board of Studies in relation to accreditation for training positions, hospitals, units, teaching centres, directors of training or supervisors; or
- h) decisions of the Board or its appropriate Committee in relation to the financial status of Fellows, trainees, or other members; or

- i) such other decisions of the College Board, or College Committees as the Council may determine from time to time.

5.4. The grounds under which an Appeal can be made are:

- a) That an error in law or in due process occurred in the formulation of the original decision.
- b) 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. (*Note: evidence of further training and experience by the appellant during the period between the making of the original decision, the subject of the appeal, and the date of the hearing of the appeal, shall not be considered as information that becomes available subsequently).
- c) That the original decision was clearly inconsistent with the evidence and arguments put before the body making the original decision.
- d) That irrelevant information was considered in the making of the original decision.
- e) That procedures that were required by College policies to be observed in connection with the making of the decision were not observed.
- f) That the original decision was made in accordance with a rule or policy without regard to the merits of the particular case.
- g) That the original decision was made for an improper purpose.

5.5. Application for Appeal

- a) Any person adversely affected by a decision;
 - i. referred to in Rule 5.3,
 - ii. which has not been resolved through Reconsideration or Review, may, within 30 days of notification of the outcome of a request for Review, request to Appeal the decision to an Appeals Committee.
- b) The CEO will respond to this request within 7 days, and will request an Application for Appeal. The application must:
 - i. be in writing;
 - ii. clearly state out the grounds for Appeal of the decisions;
 - iii. be accompanied by all relevant information upon which the person seeks to rely in respect of the Appeal;
 - iv. state the remedy sought;

- v. provide an outline of the issues in dispute;
- vi. be accompanied by the application fee payable under Rule 5.7(b);
- vii. be received within 90 days of the date of request to Appeal.

5.6. Consideration of Appeals

- a) At least 14 days before an Appeals Committee hearing, the CEO will advise the applicant in writing of:
 - i. the date, time and place of the hearing; and
 - ii. the applicant's right to appear before the Appeals Committee and to seek leave to have legal representation.
- b) In any Appeal, the applicant will have the onus of proof to establish the grounds of the Appeal.
- c) Subject to these Rules, an Appeals Committee has full power to regulate its conduct and operation as it thinks appropriate.
- d) An Appeals Committee will:
 - i. conduct the hearing with as little formality and technicality, and with as much expedition, as a proper consideration of the matters before the Appeals Committee permit;
 - ii. to the extent it thinks appropriate – conduct the hearing in accordance with the 'Procedures for the Conduct of Appeals Committee Meetings' below;
 - iii. act according to the rules of natural justice; and
 - iv. decide each Appeal on its merits.
- e) An Appeals Committee:
 - i. is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate;
 - ii. may consider all relevant information that it thinks appropriate; and may invite any person to appear before it or to provide information.
- f) The Appeals Committee shall be entitled to consider all relevant information which it thinks fit, and may invite any person to appear before it or to provide information.
- g) A personal advocate, colleague or mentor may represent the appellant in those cases where the Appeals Committee considers that an appellant could not present, or would be disadvantaged in his/her appeal if required to present in person. Such a request for an appellant to be so represented must be made in writing to the Chairperson of the Appeals Committee no later than seven (7) days prior to the date of the appeal hearing. In those cases where the appellant is granted leave to be so represented by an advocate, the Appeals Committee may appoint a person to act as counsel assisting in the hearing of the appeal.

- h) An applicant may make written submissions to an Appeals Committee. The applicant must give any written submissions to the CEO at least 7 days before the Appeals Committee hearing.
 - i. An applicant may appear in person and address the Appeals Committee in relation to his or her written submissions. The applicant shall be entitled to have a legal representative as an observer to the Appeals Committee, who may with the consent of the Appeals Committee, act as an advocate.
 - ii. An applicant may be represented by a personal advocate colleague or mentor in those cases where the Appeals Committee considers that the applicant could, or would, be disadvantaged in his or her Appeal if required to present in person.
- i) The Appeals Committee must keep confidential:
 - i. any transcript of a hearing; and
 - ii. any other information relating to an Appeal that the Appeals Committee receives.
- j) However, the Appeals Committee may disclose the above matters:
 - i. if required to do so by law or a government body; or
 - ii. in a report prepared under Rule 5.6(k).
- k) An Appeals Committee will prepare minutes of the hearing setting out:
 - i. a report of the Appeals Committee's decision; and
 - ii. the Appeals Committee's recommendations, if any, to the Board.
- l) The Appeals Committee may give the Board a copy of the minutes. The Board may publish all or any part of the minutes if it thinks such publication is appropriate.
- m) The Appeals Committee will issue a written decision, with reasons for the decision, within 21 days of the Appeal hearing or within 21 days of receiving written submissions after the Appeal hearing, whichever is the later.

5.7. Fees

- a) No fee is payable on request for Reconsideration or for Review.
- b) The College requires the applicant to pay an Appeals application fee before an Appeals Committee is convened. The Appeals process will only be initiated upon payment of the Appeals fee.
- c) The Board may waive all or part of the application fee and costs if it thinks appropriate.
- d) In the case of a successful Appeal where the initial outcome has been overturned a full refund of the Appeals fee will be made.

5.8. Delegation

The CEO may delegate his or her powers and duties in respect of any Appeal to such person as he or she determines.

5.9. Decisions of the Appeals Committee

- a) An Appeals Committee may, upon considering all submissions:
 - i. confirm the decision under Appeal; or
 - ii. revoke the decision under Appeal; or
 - iii. revoke the decision under Appeal and refer the decision back to the relevant College Officer, Board or Committee for further consideration in accordance with the Appeals Committee's directions; or
 - iv. revoke the decision under Appeal and make recommendations to the Board on an alternative decision; or
 - v. recommend to the Board whether part or all of the costs associated with the Appeals Committee should be waived.

5.10. In all cases the Appeals Committee's decision is final.

5.11. The Chief Executive Officer, on behalf of the Appeals Committee, will notify the appellant in writing of the decision, and reasons for the decision, within 21 days of the appeal hearing.

5.12. Neither a Review Committee nor the Appeals Committee may make a decision to:

- a) elevate an appellant above others in a competitive selection or assessment process without reference to the scoring process;
- b) recommend a pathway to Fellowship for an IMG without reference to a new IMG assessment by a new assessment panel or committee;
- c) revoke a clinical or examination assessment and replace the assessment with a decision of its own; or
- d) award a Fellowship to any appellant.

5.13. Annual Report

The College will publish annually a report on the activities of the Appeals Committee including the number of Appeals lodged and the result of Appeals.

6. PROCEDURES FOR THE CONDUCT OF APPEALS COMMITTEE MEETINGS

- 6.1. An Appeals Committee will meet alone for up to one hour at the commencement of each meeting to Review the matter before it.
- 6.2. The applicant and other parties attending to provide information to the Appeals Committee will be admitted together.
- 6.3. The Appeals Committee may request, or permit, other parties to appear before it to provide information to the Appeals Committee.
- 6.4. The Chairperson will first invite the applicant and then any other party appearing before it to summarise their submissions and/or responses to the Appeals Committee prior to their formal presentation.
- 6.5. The Chairperson will then invite the applicant to present their submissions and may at any time direct the applicant to any point of those submissions or invite questions on any point of those submissions and may request the applicant to bring their submissions to a close if the presentation is too protracted.
- 6.6. The Chairperson will then invite members of the Appeals Committee to seek clarification from the applicant of any matters raised.
- 6.7. The Chairperson will then invite any person attending to provide information to the Appeals Committee to comment on the submissions of the applicant.
- 6.8. The Appeals Committee may direct questions to any person attending to provide information to the Appeals Committee.
- 6.9. The applicant will be asked to respond or make submissions in relation to material presented by other parties or participants.
- 6.10. The Appeals Committee will then adjourn. The parties participating in the Appeal will remain available to clarify any further matters as requested by the Appeals Committee.
- 6.11. The parties involved in the Appeal will, if the Appeals Committee requires such further clarification, re-join the meeting and provide the clarification sought.
- 6.12. The applicant will be asked if they have any further submissions or wish to make any further comments or responses before the formal proceedings are closed.
- 6.13. The applicant may be given an opportunity to make any further written submissions necessary within a short period of time following the close of the meeting.
- 6.14. The Chairperson will thank all parties for their attendance and dismiss them.

7. Review of Policy

This policy will be subject to regular review and evaluation every five (5) years.

Complaints and/or applications made under this policy will be subject to regular evaluation and assessment, on a de-identification basis, to consider: -

- effectiveness
- trends/common issues
- whether it is contemporary

A register will be maintained by the College of all complaints and/or applications made under this policy.