



THE AUSTRALASIAN
COLLEGE OF
PHLEBOLOGY

Reconsideration, Review & Appeals Procedure

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| Policy Domain: | ACP Management |
| Policy Area: | All staff, Fellows, instructors, students, trainees, candidates |
| Policy Author: | ACP |
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| Related Policies / Regulations | Reconsideration, Review & Appeals Policy; Procedural Fairness Policy |

1. PURPOSE AND SCOPE

The purpose of this document is to provide procedures for the processes of reconsideration, review and appeal as per the Reconsideration, Review and Appeals Policy

2. INITIATION

2.1. As per Policy matters pertaining to disputed decisions should in the first instance be reconsidered by the same committee or body which made the disputed decision. This is to be followed by Review before any Appeal can be granted.

2.2. The Executive Manager (EM) in consultation with Board Members has discretion to allow the process to commence at the 'review' stage where he or she is satisfied there are clear circumstances which make it justifiable and appropriate to do so.

2.3. The initiation and raising of a matter by an appellant must be to the College EM so that the timeframes as per the Policy and procedure are managed.

2.4. The appellant will receive all correspondence of the outcomes of a reconsideration or a review process from the College Honorary Secretary, and the College Honorary Secretary in consultation with Board members deliberates over the granting of an appeal. If an appeal committee is constituted the outcome of the deliberation by the Chair will be to the EM who will communicate (see clause 5.7).

3. RECONSIDERATION PROCESS

3.1. Initiation of reconsideration

3.1.1 Any person who is dissatisfied with, and adversely affected by a decision referred to below may apply to have the original decision reconsidered by the same entity, Committee, group or decision maker who made the original decision.

3.1.2 The process of reconsideration of a decision allows an applicant to present additional information relevant to a decision, and to ensure that the decision maker has had the opportunity to receive and consider all relevant information.

3.1.3 It is not acceptable for an appellant to hold material for a later time or later into the process that could have been disclosed. If additional material comes to light during the process this can and must be brought forward immediately.

3.1.4 Failure to act in good faith and lodge all relevant material will be a breach of this policy and in such cases the EM may refer this procedural breach to the Board for consideration to cease the reconsideration, review and appeal process at any stage.

3.1.5 Any application to initiate the reconsideration must:

- Be in writing, and lodged with the EM
- Submit an application
- Specify the particular decision being contested and a brief outline of the matter in issue, stating reasons for the request.
- Specify the relevant ground(s) of appeal (Policy: Clause 7)
- Provide documented and verifiable evidence in support of the ground(s) specified by the appellant.
- The applicant should provide all additional material considered relevant to the decision being considered.
- The EM or nominee will ensure the Honorary Secretary is advised, and that the decision maker/Committee is advised so that it may convene for the purpose of conducting the reconsideration either at its next scheduled meeting, or by special arrangement.

3.2. Timeframe

3.2.1 A properly constituted application must be received within one (1) month of receipt of notice of such decision, by the EM.

3.2.2 Emails or correspondence stating a wish for reconsideration are not properly constituted unless they are accompanied by the relevant formal application letter (refer to 3.1.5).

3.3. Conduct of Reconsideration

3.3.1 The entity that made the original decision will consider:

- all the original material and documentation;

- all additional material and documentation supplied by the applicant considered relevant to the decision;
- any additional material and documentation considered relevant by the Chair.

3.3.2 The entity reconsidering the decision in question may exercise all of the powers and discretions that the entity was able to exercise when it made the original decision, and is not subject to the rules of evidence

3.3.3 The appellant does not have the right to attend any meetings of the entity that made the original decision or make any oral submissions to it, either personally or through any party.

3.4. Outcome of Reconsideration.

3.4.1 The original decision maker may make any one of the following reconsideration decisions

- Affirm its original decision
- Vary its original decision, or
- Set aside its original decision and make a new decision

3.4.2 Minutes of the Committee deliberations, whether as part of a scheduled meeting or specially convened, will be kept in accordance with the normal practice of the entity.

3.4.3 The decision maker must notify the Hon Sec of the reconsideration decision, including the reasons for the decision.

3.5. Notification of Outcome

3.5.1 The decision maker shall make the decision within thirty (45) days, but every attempt should be made for resolution as soon as in practicable.

3.5.2 The outcome shall be conveyed by the Hon Sec to the applicant in writing following the meeting.

3.5.3 Where possible, the decision maker/Committee should endeavour to provide the applicant with reasons for the decision via the Hon Sec.

3.5.4 The applicant should be advised of the opportunity to request a review of the decision should he/she be dissatisfied and adversely affected by the decision.

3.5.5 On receipt of notification by the Hon Sec of the reconsideration decision, the appellant may

- Accept the reconsideration decision, or
- Submit an application in writing to the EM for review, within two (2) weeks of receipt of the outcome

3.5.6 If no application is received by the appellant within two (2) weeks, they will be deemed to have accepted the reconsideration decision

4. REVIEW PROCESS

4.1. Initiation of Review

4.1.1 Any person who remains dissatisfied with the original decision and/or any reconsideration decision may apply to the EM to have the original decision reviewed by a review panel.

4.1.2 A review may only be sought in relation to the ground(s) of appeal considered in the original application for reconsideration. New or additional grounds may not be raised at this stage.

4.1.3 The request for review must:

- be made in writing and be lodged with the EM
- include the review application fee of \$AUD1,000.
- include any additional material or documentation not previously considered (if applicable)
- Where a request for review is accompanied by additional material deemed by the individual to be relevant and significant, but not previously considered by the body from which the decision originated, the material may, at the discretion of the EM and prior to the Review Committee being convened, be forwarded to the Chairperson of the originating body for possible comment, regardless of whether the matter has been previously considered pursuant to this policy.

4.2. Timeframe

4.2.1 The properly constituted request for review of a reconsideration decision must be received by the EM within two (2) weeks of the date of notification of the reconsideration decision.

4.3. Special Leave granted

4.3.1 Where the EM has exercised his or her discretion for a matter to proceed directly by way of review (rather than by reconsideration), the application for review must:

- include all the information and documentation required for the reconsideration of an original decision (see clause 3.1), and
- have been received by the EM within the same timeframe as that applicable to an application for reconsideration, being within four (4) weeks of the date of notification of the original decision (see clause 3.2).

4.4. Review Panel

4.4.1 The EM in consultation with the Board shall constitute a Review Committee of 3 to 4 Fellows not involved with the original decision making body, as follows:

4.4.2 Up to three (3) ACP Fellows one of whom may have expertise or experience in the area of practice in relation to which the disputed decision arose;

4.4.3 The College President-elect or nominee

4.5. Conduct of the Review

4.5.1. The Review Committee will consider:

- All the original material and documentation.
- All additional material and documentation supplied by the applicant.
- Any additional material and documentation considered relevant by the Chair.
- Whether the principles of natural justice and procedural fairness were followed when making the original decision or reconsidering that decision.
- College regulations, policies and procedures relevant to the decision

4.5.2. Where applicable, the review panel must not take into account evidence of further training, supervised practice or experience by the appellant obtained during the period between the making of the original decision and the review of that decision.

4.5.3. The appellant does not have the right to attend any meetings of the review panel or to make any oral submissions to it, either personally or through any other party.

4.5.4. The review panel may exercise all of the powers and discretions that the original decision-maker was able to exercise and is not subject to the rules of evidence. Subject to the rules of procedural fairness and except where otherwise provided by clause 4.5.3 above it may inform itself as it sees fit.

4.6. Outcome of the Review

4.6.1 The Review Committee may make any one of the following review decisions:

- affirm the original decision or reconsideration decision
- vary the original decision or the reconsideration decision
- set aside the original decision or reconsideration decision and refer the matter to the original decision-maker for further consideration in accordance with any directions or recommendations it may make, or
- set aside the original decision or reconsideration decision and make any further decision it thinks appropriate.

4.6.2 Minutes of the hearing of the Review Committee will be confined to a report listing the documentation presented and a report of the decision, including reasons for the decision, to the original decision maker.

4.7. Notification of Outcome

4.7.1 The decision made by the Review Committee will be conveyed to the applicant in writing following the meeting within 10 weeks of the request

4.7.2 The decision made by the Review Committee will be conveyed to the original Committee in writing following the meeting within 10 weeks of the request.

4.7.3 The Review Committee is not required to furnish the applicant with reasons for the decision but, where changing the decision, should endeavour to provide reasons to the original Committee.

4.7.4 The applicant should be advised of the availability of Appeal.

4.7.5 On receipt of notification from the EM of the review decision, the appellant may:

- accept the original decision and the result of the review, or
- within two (2) weeks of the date of notification, submit an application to appeal the decision.

4.7.6 If no correspondence is received from the appellant within two (2) weeks, they will be deemed to have accepted the review decision.

5. APPEALS PROCESS

5.1. Initiation of Appeal

5.1.1 Any person who remains dissatisfied with the decision on any reconsideration/ Review may submit an application to the EM to appeal the decision.

5.1.2 The application for appeal made in writing must:

- state the decision in respect of which the appeal is made;
- clearly state the grounds for the appeal;
- provide a brief outline of the matters in issue;
- state the remedy sought; and
- provide payment of the applicable appeal fee.

5.1.3 Formal appeals must be lodged in writing to the EM within three (3) months of the original decision being made (or any Review decision, whichever is the later).

5.2. Appeals Committee

5.2.1 The Appeals Committee is convened by the EM in consultation with the Board as required to hear appeals in accordance with the Appeals, Reconsideration & Review Policy. **Appeals Committee** means an ad hoc panel of the Board convened for the purpose of hearing a formal appeal. The College has two committees 1) the Academic Appeals Committee which reports to the Board of Education and responds to academic appeals and complaints 2) the Professional Conduct, Ethics & Appeals Committee which reports directly to the Board of Directors and considers appeals and complaints related to professional conduct and ethics.

5.2.2 An Appeals Committee comprises up to four (4) members

- A chair who is appropriately qualified and appointed by the Dean of Education

- Three (3) College Fellows and/or ACP Teaching Faculty with knowledge and expertise relevant to the matter who were not party to any decision to which the appeal relates (in the event of an appeal involving a subspecialist, one of the Fellows should be a subspecialist from that particular subspecialty).

None of whom otherwise has or is perceived to have a conflict of interest.

5.2.3 A quorum shall be the Chair and two (2) other members

5.2.4 All Appeals Committee members shall be entitled to vote with a simple majority of those present being required to pass a decision. If votes are tied for any reason the Chair shall have a casting vote.

5.3. Non Member Attendees

5.3.1 The EM will attend meetings of the Appeals Committee, but is not a member of the Committee and shall not vote

5.4. Notification of hearing and submissions

5.4.1 After determining that the appeal will proceed, the EM or nominee shall:

- Acknowledge receipt of the appeal, including receipt of payment of the appeal fee.
- Convene the Appeals Committee.
- Determine the date of the appeal hearing, which shall be held within three (3) months of the lodging of a formal appeal.

5.4.2 At least 4 weeks prior to the hearing date the EM or nominee

will advise the appellant in writing of:

- the date, time and location of the hearing;
- the right of the appellant to appear before the Appeals Committee; and
- the right of the appellant to have a support person present;
- the right of the appellant to submit a request that they may be accompanied by a legal representative to act as an advisor, and the timeframe for submitting such a request shall be no later than seven (7) working days prior to the date of the appeal hearing, and
- all relevant documentation held by the College.
- That the Appeals Committee may appoint a person to act as counsel assisting in the hearing of the appeal where the appellant requests they be accompanied by a legal representative.

5.4.3 At least 3 weeks (21 days) prior to the hearing, the original decision-maker and the appellant will provide the EM with written submissions and copies of any documents and records relevant to the original decision being subject of the appeal and upon which he/she wishes to rely

5.4.4 Additional information provided after the submission will only be considered if the Chair of the Appeals Committee considers that the material is of significance to the matter.

5.4.5 A copy of these submissions and the original decision-maker's submissions will be provided to:

- The appellant and any representative
- Any representative of the original decision-maker nominated or asked to attend the hearing
- the Appeals Committee

5.4.6 Should the appellant have late documentation prohibited by clause 5.4.2 the request will be considered by the Chair of the Appeals Committee, whose decision will be final.

5.4.7 The Chair may request that a representative of the original decision-maker be asked to attend and address the Appeals Committee on matters relevant to the Appeal. The representative will be given the opportunity to comment on submissions of the appellant and the original decision-maker

5.5. Conduct of appeal

5.5.1 The Appeals Committee must act according to the rules of procedural fairness / natural justice and decide each appeal on its merits.

5.5.2 The Appeals Committee is not bound by the rules of evidence and, subject to the rules of procedural fairness / natural justice, may inform itself on any matter and in such a manner as it thinks fit, may consider all information which it thinks fit, and invite any person to appear before it in person or to provide information.

5.5.3 The appellants support person, and if the appellant has approval, legal advisor may not act as an advocate for the appellant, but the legal advisor (if any) may be invited to address the Appeals committee regarding any particular legal issue that the Appeals Committee believes cannot be adequately addressed by the appellant.

5.5.4 In such cases the College Solicitor may be invited to attend meetings of the Appeals Committee to assist the committee in the hearing of the appeal.

5.5.5 All proceedings shall remain confidential, save for information relating to decisions distributed as outlined below.

5.6. Outcome of Appeal

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

5.6.2 The Appeals Committee may:

- Confirm the decision which is the subject of the appeal.
- Revoke the decision which is the subject of the appeal and refer it back to the appropriate College body or committee for the making of a fresh decision (upon such terms and conditions as the Appeals Committee may determine).

- Revoke the decision and refer the original decision to an appropriate external body or authority: or
- Revoke the decision which is the subject of the appeal and make an alternative recommendation to the Board for final determination by the Board.

5.7. Notification of Outcome

5.7.1 The Appeals Committee shall issue a written decision (the report of the decision), with reason(s) for the decision, as soon as practicable after the completion of the appeal hearing to enable the EM, on behalf of the Appeals Committee, to notify the appellant and other relevant parties in writing within three (3) weeks of the appeal hearing, subject to the Committee completing its written decision.

5.7.2 The report of the decision shall be submitted to the next meeting of the College Board scheduled to occur

5.7.3 The report of the decision of the Appeals Committee will be conveyed to the Chair of the governing body that oversees the entity responsible for the original decision and the Chair of such other entity(ies) as the Board or relevant governing body may determine, to enable facilitation of any further processes required as a result of the decision, as well as review of processes surrounding the original decision. The Chair may choose to share the report of the decision with members of the governing body and/or entity(ies) identified.

5.7.4 Where an appeal decision is determined by the College President or EM to have direct relevance and ramifications beyond the entity that made the original decision, and where it is considered necessary in order for College process to be altered as a result of the decision of an appeal, and with the agreement of the Chairperson of the Appeals Committee, the decision of the Appeals Committee, along with information relating to the summary of the reason(s) for the decision that is considered to be of direct relevance, may be conveyed to such other bodies or staff as is considered necessary, provided that the information conveyed is first de-identified to protect the confidentiality of the appeal proceedings.

5.7.5 Except where otherwise required by law, or otherwise determined by the Appeals Committee, any transcript of the hearing of the Appeals Committee and other information provided to the Appeals Committee shall be kept confidential (save that information may be released with the consent of the appellant).

5.7.6 Minutes of hearings of the Appeals Committee shall be confined to a report of the decision forwarded to the Board pursuant to clause 5.7.2 of this policy.

5.8. Fees and Costs

5.8.1 The EM will advise the appellant of the applicable fee prior to lodgement of the review or formal appeal. The application fee is \$AUD1,000 for a review and \$AUD5,000 for an appeal.

5.8.2 The appellant shall submit payment of the fee with the formal request for the review / appeal.

5.8.3 The EM of the College in consultation with the Board has the power to waive the application fee in appropriate circumstances.

5.8.4 An appellant requiring a face-to-face hearing will meet all costs that they incur, including, but not limited to, legal costs, travel and accommodation, regardless of the outcome of the appeal.