

REPORT NUMBER 83 OF THE ACADEMIC APPEALS BOARD

November 1st, 1984

To the Academic Affairs Committee,
University of Toronto.

Your Board reports that it held a hearing on Friday, October 19th, 1984 at 10:00 a.m. in the Conference Room, Faculty of Pharmacy and on Thursday, November 1st, 1984 at 9:30 a.m. in the Board Room, Simcoe Hall at which the following were present:

Professor J. B. Dunlop (In the Chair)	Mrs. Jovita Nagy
Professor Paul Aird	Mrs. Joan R. Randall
Professor William Callahan	
Professor J. T. Mayhall	Ms. I. Macpherson, Secretary

In Attendance (October 19th, 1984 only)

Dr. *A.*
and counsel
Mr. Daniel MacDonald

Dr. H. P. Riggins
Dr. J. T. Marotta, and
Dr. Robert R. Sheppard
for the Faculty

THE MEETING WAS HELD IN CLOSED SESSION

THE FOLLOWING ITEM IS REPORTED FOR INFORMATION

At meetings on October 19th and November 1st, 1984, the Academic Appeals Board heard and decided the appeal of *Dr. A.* against a decision of the Appeals Committee of the Faculty of Medicine denying her appeal from a decision of the Rehabilitation Medicine Residency Training Committee to terminate her post-graduate programme in Rehabilitation Medicine on June 30th, 1984. The principal argument advanced on behalf of the appellant was that she had not been given appropriate warning that her performance was unacceptable and had therefore not had adequate opportunity to improve. It was urged that this was an especially important requirement in the case of a marginal student such as the appellant, and it was said that the evidence did not show her work to be so unsatisfactory that a warning would have been redundant.

Notwithstanding the thorough and able presentation on the appellant's behalf by Mr. MacDonald, it is the conclusion of the Board that the appeal should be dismissed. The Board agrees that critical assessment is important during clinical training. In its view, however, the appellant was fairly treated in this respect.

FACTS

The appellant was born in *Asina*, obtained her medical degree there and became qualified to practice in that country. She emigrated to Canada in 1975. From mid-1978 until mid-1979 she was engaged in research in gastroenterology at the Toronto General Hospital. In 1978-79 she did a year of residence at St. Joseph's Hospital in obstetrics and gynaecology. She was recommended for a rotating internship but because of keen competition for such positions she had difficulty finding one. Ultimately she spent the year from July 1st, 1980 until June 30th, 1981 as an intern in the Moncton Hospital, Moncton, N.B. She applied to do graduate work in rehabilitation medicine at the University of Toronto. was accepted and commenced her programme in July of 1981.

The structure of the graduate programme is essentially clinical. It is a four-year programme during which the candidate serves as a resident in a number of clinical settings. The appellant spent the second half of 1981 at Toronto Western Hospital, and the first six months of 1982 at Sunnybrook. By the spring of 1982 she was in Academic difficulty. Her assessments indicated that while she was well motivated and responsible, she was well below average in fundamental skills. A decision was made to terminate the appellant's candidacy and her appeal of that decision was denied. The door was, however, left open as indicated in an excerpt from a letter April 21st, 1982 from Dr. John S. Crawford, Chairman of the Department of Rehabilitation Medicine.

FACTS (Cont'd)

As I advised you previously, it will be necessary for you to obtain further basic training in the medical discipline before we can consider an application to re-enter the Programme.

The appellant was able to obtain sufficient support to have her candidacy extended but at least one of the supporting evaluations indicated that she was being given the benefit of considerable doubt. Dr. J.G. Edmeads pointed out that her skills were not fully up to standard, that her undergraduate education had not equipped her to deal with the clinical problems she encountered, that her medical knowledge seemed to be that of a third-year Canadian medical undergraduate and that she thus had difficulty in discharging satisfactorily the duties and responsibilities of a first-year resident. However, Dr. Edmeads said that she was trying very hard to improve her knowledge and skills and because he was impressed with her motivation and energy, "I suggest that she be given another six-twelve months in an R1 capacity, to attempt to meet Ontario standards of knowledge and skill."

The appellant's residency was extended for six months and she spent the time at Mount Sinai Hospital. During this time she continued to be assessed as a first-year resident and her assessments were such that her programme was extended again for six months from January 1st, 1983 to June 30th, 1983. She was assigned to Toronto Western Hospital. However, following an examination on which she obtained only 45%, the decision was made on February 23rd, 1983 to terminate the appellant's candidacy. A letter from Dr. Crawford dated March 24th, 1983 read in part as follows:

I send this letter to you as a formal statement to confirm our discussions held in my office on February 23rd, 1983, at which time Dr. Jimenez, Chairman of the Post-Graduate Medical Education Committee was present. Your evaluations conducted by the Medical Staff of this Department, have been below a satisfactory level for a Post-Graduate Student at your level of training.

I am quite convinced that you are a conscientious well motivated physician, with a sense of responsibility for your patients, but your knowledge of basic science and physical examination make it difficult for you to arrive at a differential diagnosis and treatment plan, but I have concluded that the level of knowledge is well below the level of standard for an R1 level resident.

In April, however, the department reversed its decision and undertook to make a further evaluation of the appellant in early May. According to her own testimony, the appellant achieved a mark of 67% on this examination. Although a passing grade in a graduate programme is 70%, the department agreed to let the appellant continue. She was to serve from July 1st, 1983 to September 30th, 1983 in orthopaedics at Mount Sinai and from October 1st to December 31st in rehabilitation medicine, also at Mount Sinai, her rotations from January 1st, 1983 until June 30th, 1984 were to be assigned in the fall of 1983.

Dr. J.T. Marotta assumed responsibility as acting head of the Department of Rehabilitation Medicine in September, 1983. At the time the appellant's further placements had yet to be made and Dr. Crawford said that he did not know what to do with her. Dr. Marotta met the appellant in October and discussed her situation with her. He pointed out shortcomings in what he called "the tools of the trade", and in her synthesis. He spoke to six doctors about her and the summary of their views was that she lacked the essential features to carry on. Nevertheless Dr. Marotta decided to grant her request that she be allowed to try again. Dr. Jimenez agreed to take the appellant for a three-month trial and on December 1st, 1983 Dr. Marotta wrote to her

FACTS (Cont'd)

to confirm that your request for further training to take place in Mount Sinai Hospital has been granted, and you will be at that hospital, Department of Rehabilitation Medicine, under the direction of Dr. J. Jimenez, for the period January 1st to March 31st, 1984.

Although the appellant was already working in the department of which Dr. Jimenez was training director, her immediate supervisor at the time was Dr. M. Devlin. According to her testimony, the appellant was with Dr. Devlin six hours a day for a period of nine weeks. This involved ward rounds, bedside teaching and ward work. The appellant testified that on two occasions when she asked Dr. Devlin how she was doing he told her not to worry. She said he never expressed concern about her performance.

In the third week of January, 1984, Dr. Jimenez called the appellant in and informed her that she was not progressing satisfactorily and that her programme would be terminated at the end of the current rotation. A joint evaluation by Dr. Jimenez and Dr. Devlin, for the period October 1st, 1983 to January 31st, 1984 rated her as below average in overall competence. She was unsatisfactory in "clinical judgment and decision", below average in "history and physical examination", "comprehensive continuing care", "records and reports" and "team relationships". She was average in "laboratory utilization", "physician patient relationships" and "self assessment ability". Only in "sense of responsibility" was she rated on the borderline between average and above average.

After arguing the propriety of her assessment with Dr. Devlin, the appellant met with Dr. William Geisler, the Director of Post Graduate Medical Education in Rehabilitation Medicine, and Dr. Marotta to ask for another opportunity to prove herself. They declined to grant her request.

The appellant appealed this decision to the Appeals Committee of the Faculty of Medicine. The decision of that Committee was communicated to her orally without reasons in May. On June 15th, 1984, Dr. R.R. Sheppard, Associate Dean of Post Graduate Medical Education wrote to confirm that the decision of the department to terminate her programme had been upheld.

ARGUMENT

The gist of Mr. MacDonald's argument was that, while the department had the right to terminate the programme of the appellant it was under an obligation to do so fairly. Focussing on the period during which she was supervised by Dr. Devlin he argued that she had been led to believe that she was doing things right, and thus did not have an opportunity to rectify her errors and improve her performance. That she might have been able to accomplish this was demonstrated by the significant improvement she had made after her disastrous examination of January 1983.

Dr. Marotta, who represented the Faculty, argued that the appellant had been adequately informed, and that her improvement in May of 1983 had been much less significant than claimed. The decision to allow her to continue at that time and on other occasions had been a generous one based on concern over the inherent difficulty presented by her apparently inadequate medical education.

REASONS

It is the Board's view that the appellant's termination was fair. On several occasions it had been brought home to her graphically that she was in serious difficulty. Apart from the specific circumstances already described in the narrative of facts, there had been a number of occasions on which the appellant had been evaluated and the evaluation communicated to her. Most of the evaluations identified significant problems. The only two areas in which she scored consistently well were "motivation" and "sense of responsibility". To allow her to continue as long as she did was to give her the fullest opportunity to prove herself.

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REASONS (Cont'd)

The Board was not persuaded that it should isolate a brief period during the latter part of 1983 and say that because she was not warned of her shortcomings during that period her termination was unfair. The evidence indicated that her shortcomings were not of a sort that could have been corrected quickly if only Dr. Devlin had given her a critical appraisal. Dr. Devlin's own view expressed in a letter to Dr. Jimenez dated December 23rd, 1983, bears this out. In part it read

I found her to be a keen and eager resident, who performed her work diligently, read up the literature about her patients and made a real effort to learn.

Unfortunately, this resident does not have enough basic knowledge of anatomy, physiology, and basic disease processes and their treatment in order to effectively function independently as a physician, certainly not at an R3 level. Her ability to assess a patient, formulate a list of what the patient's problems are, and to come up with a plan as to how to deal with these problems is not adequate for an R3 level.

This further comment: I should point out that to do rehabilitation medicine entails the ability to work in a team setting, and I have had comments from both nurses, speech pathology, physiotherapy, and occupational therapy, about this resident's performance which were not complimentary.

As Dr. Sheppard testified, residents are post-graduate students who are regularly observed and evaluated. The staff with whom they work are slow to criticize, and tend to try to stress the positive. In light of all this the Board was unable to attach great significance to the failure of Dr. Devlin to be critical prior to the occasion on which his assessment was shown to the appellant in January 1984.

POST SCRIPT

The Board draws the attention of the Faculty of Medicine to the following provision of the guidelines for academic appeals within divisions:

The Divisional Committee should give appellants a concise and complete statement of reasons for the decision at the time the decision is handed down.

It is much easier for an appellant to understand a decision when reasons are given. Reasons can be of assistance, as well, to this Board. The Board regards this guideline as a fundamental aspect of fairness in the appeal process.

The appeal is dismissed.

Secretary
December 5th, 1984

Chairman