

UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL
REPORT NUMBER 142 OF THE ACADEMIC APPEALS COMMITTEE

September 13th, 1991

To the Academic Board,
University of Toronto.

Your Committee reports that it held a hearing on Friday, September 13th, 1991 at 9:30 a.m. in the Board Room, Simcoe Hall at which the following were present:

Professor A. Weinrib (Acting Chairman)
Professor W. R. Cummins
Mrs. D. Hellebust
Mr. A. Lim
Professor J. T. Mayhall

Ms S. Girard, Acting Secretary

In Attendance:

Mr. S₁, the the appellant
Mr. J. Morton, of the firm of Solmon Rothbard Goodman,
counsel for the appellant
Dr. W. H. Francombe, for the Faculty of Medicine
Ms L. Cameron, of the firm of Cassels, Brock & Blackwell,
counsel for the Faculty

On September 13th, 1991, the Academic Appeals Committee of the Governing Council heard the appeal of Mr. S₁, a third-year student in the Faculty of Medicine. The Board of Examiners of the Faculty had decided that the appellant, having failed his third year, was required to repeat that year. According to the Faculty's regulations, the appellant failed because his overall average for the year was below 65% and because he received below 60% on the written examinations in Medicine and Surgery. The appellant's marks in Medicine and Surgery were both above 60% if the clinical gradings were combined with the exam gradings.

The Appeals Committee of the Faculty of Medicine upheld the Board of Examiners' disposition of the appellant's case. The appellant then appealed to the Academic Appeals committee of the Governing Council of the University.

The appellant has requested that he be awarded a pass in his third year with a directed Surgery elective in his fourth year. In the alternative, he has asked to write supplemental examinations in Medicine and Surgery.

The appellant argued (1) that the Faculty misapprehended his abilities in clinical settings; (2) that his grades in Medicine and Surgery had been calculated incorrectly; and (3) that the Faculty gave insufficient weight to temporary medical and stress-related problems which he suffered during the examination period.

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(1) The Committee unanimously rejects the appellant's contention that the Faculty misapprehended his abilities in clinical settings. The appellant produced a number of letters from the doctors who led some of his clinical groups. One of them, Dr. Ian Quirt, testified before us that the appellant performed in a competent manner in his Haematology clinical group. Dr. Quirt was of the opinion that the appellant ranked somewhere in the third quartile of students he has worked with in his capacity as a clinic teacher. However, the Committee accepts the evidence of Dr. William Francombe, Chair of the Board of Examiners, that the appellant performed poorly overall as compared to the rest of the class. For instance, in the third-year Medicine/Surgery Clinical Oral, the appellant's grade was very close to the bottom of the class. The Faculty acted appropriately in taking into account the totality of the appellant's record.

(2) The Committee also rejects the appellant's complaint about how his grades in Medicine and Surgery were calculated. Two issues were raised in this regard. First, the appellant claimed that the Faculty improperly used the results of the so-called Q-4 questions in Medicine and Surgery. The Q-4 questions were new to the third-year examination scheme this year. The Committee is aware that most educational reforms do not work smoothly at the beginning. Indeed, because of the pressures of time, the Q-4 results were dropped in the Obstetrics/Gynecology portion of the examinations. The appellant's Q-4 mark in Medicine was lower than his mark on the rest of the examination, and his Q-4 mark in Surgery was higher than the rest of that examination. There was no evidence that the appellant was treated differently than any other student. The Faculty was entitled to take his Q-4 marks into account.

Second, the appellant argued that he had, in fact, passed both Medicine and Surgery since the combined marks in each course when the respective clinical marks are taken into account, were 61%. The Faculty argued that he failed both Medicine and Surgery, since he did not receive a passing grade (60%) in the written examinations in either of those courses. He received 57% on the written exam in Medicine and 53% on the written exam in Surgery. The appellant claims that he had no notice of the Faculty rule that students had to receive more than 60% in each of the two elements of the courses, i.e., the clinical portion and the examination. It was explained by Dr. John Ross, Director of Education in the Department of Medicine, that the two portions of the course test different facets of a student's abilities. Hence the Faculty regulation is that a student must pass both portions. We have no doubt that the Faculty from the beginning of the 1990-91 academic year thought that the rule about passing both portions of the courses was clear. Dr. Ross indicated that he had explained the situation to the two relevant Faculty committees containing student representation. However, the Faculty failed to make its understanding known to the third-year class until April 25th, 1991, when Dr. Ross addressed the class. The Faculty also failed to put its understanding of the double-pass rule in writing in any of its official documentation. This is a matter of great importance to the Faculty and its students. It would not be overly expensive in the circumstances for students to receive written notice from the Faculty in a matter as important as this, where there is no official documentation, in the calendar or otherwise, setting out the rule. The Committee hopes that the Faculty will take steps to ensure that this situation does not arise again.

However, in the circumstances of this case, the Committee does not think that the appellant was adversely affected by the Faculty's application of the double-pass rule. Whether or not the appellant passed Medicine and Surgery, his average was still under 65%, the overall average which medical students must attain to pass the year. As we said earlier, the Faculty was entitled, and indeed obligated, to take into account the totality of the appellant's record. Dr. William Francombe, Chair of the Board of Examiners of the Faculty of Medicine, gave evidence that twelve of the students in third year had some form of academic difficulty. Each of them either failed a subject, or obtained an average of less than 65%. The bottom student in the class

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had an average of 60%. That student failed and had to withdraw. The next three students had averages of 62%, 63% (the appellant) and 65%. They were failed, but were allowed to repeat the year. The next five students had averages of 67-69%. They were given an eight-week remedial supplemental programme in Medicine and Surgery. If they passed the remedial programme, they would be allowed to proceed into fourth year. The Committee feels that on the academic merits, the appellant was treated fairly.

(3) The appellant gave evidence that at the time the third-year examinations were written, he was under severe emotional stress due to his family's financial problems. He had co-signed a loan for over \$200,000 on behalf of his parents. The stress caused by his parents' situation, on top of the usual stress involved in the third-year examinations, also resulted in the re-appearance of a urinary problem that had previously been under control. One of the drugs prescribed to control the problem caused him to become light-headed. The appellant gave evidence that he almost fainted prior to the Day 1 and Day 3 examinations. The appellant did not tell anyone at the Faculty about these problems. He simply hoped for the best on the examinations. As we indicated above, the Board of Examiners' decision to fail the appellant and allow him to repeat the year, was a reasonable one. The appellant then brought his medical condition and the effect of the medication to the attention of the Board. At a second meeting of the Board of Examiners, it was decided that the appellant's personal and medical circumstances were not significant enough to reverse the earlier decision. The Appeals Committee of the Faculty upheld the decision of the Board of Examiners.

The Academic Appeals Committee of the Governing Council had a difficult time in deciding about the significance of the appellant's medical condition and the effect of the medication on his ability to perform on the examinations. Two members of this Committee thought that the appellant was not sufficiently affected to influence his exam results in a significant way. However, the majority of the Committee agreed that the appellant may have been affected by his medical condition and should be given additional consideration.

No member of the Committee thought that the appellant should be allowed into fourth year, either unconditionally or with a directed elective in Surgery. The solution of the majority of the Committee is that the appellant be allowed to write supplemental examinations in Medicine and Surgery and that the appellant be given approximately one month from the date of this decision to prepare for the examinations. The Faculty should then substitute the marks the appellant receives on the supplementals in Medicine and Surgery for the marks which he received on the written examinations last Spring. The Board of Examiners should then decide, based on the appellant's amended academic record and any other circumstances which seem relevant, whether or not the appellant should be allowed to proceed into fourth year. The Committee wishes to emphasize that this decision does not mean that the appellant need only attain a mark of 60% in each of his supplementals in order to pass the third medical year. The Board of Examiners ought to treat the appellant the same way it would have treated him, had he received the new marks in the original exams last Spring. If the appellant's new overall average after the supplementals is less than 65%, the Board should exercise its discretion as it ordinarily does in deciding whether or not the appellant should be promoted.

This leaves the problem of the year in which the appellant should be enrolled over the next month or so, prior to the Board of Examiners' determination. Out of fairness to the appellant, the Committee determined that the appellant should be allowed to register provisionally in fourth year, pending the outcome of the process outlined above. If the Board of Examiners determines that the appellant passes after the supplementals are written, then there is no problem. If the Board determines that the appellant fails, then the appellant will revert to third year.

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Unfortunately, this is not a tidy solution. It is brought about by the fact that this Committee was only able to hear the appeal on September 13th, 1991, rather than during the summer. Because the solution is not a tidy one, the Committee will retain jurisdiction over this matter to deal with any problems that might arise in the implementation of this decision.

In attendance:

Mr. S, the appellant
Mr. James Morton, counsel for the appellant
Dr. William H. Francombe, for the Faculty
Ms Lesley Cameron, counsel for the Faculty

Secretary
September 19th, 1991

Acting Chairman