

# CPME 935b

## GUIDELINES FOR THE CONDUCT OF APPEALS AND ARBITRATION BY RESIDENCIES, FELLOWSHIPS, PROVIDERS OF CONTINUING EDUCATION, AND SPECIALTY BOARDS\*

### Council on Podiatric Medical Education

October 2021

\* This document pertains to residency programs, fellowship programs, providers of continuing education, and specialty boards. For matters related to adverse actions pertaining to Colleges of Podiatric Medicine, please refer to document CPME 935a.

The information appearing in this document is intended to instruct the Council on Podiatric Medical Education (hereinafter referred to as “Council” or “CPME”), its staff, and entities in the conduct of appeals and arbitration proceedings related to adverse actions pertaining to residencies, fellowships, providers of continuing education, and specialty boards (hereinafter referred to as “entity”). Although the Council makes every effort to strictly adhere to the procedures and their associated timelines as identified in these guidelines, circumstances, and factors beyond the control of the Council may necessitate altering the appeal and/or arbitration processes to ensure a fair and equitable proceeding. Irrespective of any adjustments made, the Council is committed to ensuring that appeal and arbitration proceedings are conducted in an objective and fair manner.

### I. APPEALS

#### 1. Appeal Process: Overview

When an adverse action is determined by the Specialty Board Recognition Committee (SBRC), the Residency Review Committee (RRC), or the Continuing Education Committee (CEC), and if the adverse action has been sustained following a request by the entity for reconsideration (except for appeals pertaining to specialty boards, as no reconsideration process exists), the entity is provided an opportunity to appeal the decision to the Ad Hoc Appeals Committee (hereinafter referred to as Committee). (Procedures for reconsideration of adverse actions are specified within the procedural documents related to the area under review, i.e., CPME 230, *Procedures for Recognition of a Specialty Board for Podiatric Medicine*; CPME 330, *Procedures for Approval of Podiatric Medicine and Surgery Residencies*; CPME 730, *Procedures for Approval of Providers of Continuing Education in Podiatric Medicine*; or CPME 830, *Procedures for Approval of Podiatric Fellowships*.) To be eligible to appeal an adverse action, the entity must first utilize the reconsideration process (except for appeals pertaining to specialty boards).

The purpose of an appeal is to determine whether established standards, requirements, and procedures were applied properly as related to the adverse action and whether that action was supported by substantial evidence. The Committee is empowered to review substantive matters based upon information that was reasonably available to the evaluating team, committee, or Council at the time of the evaluation leading to the adverse action under review. The Committee also is empowered to determine whether CPME procedures were appropriately followed. The purpose of an appeal is not to re-evaluate the entity.

An appeal must be based upon specific grounds and supporting evidence and arguments, as described more fully below. An appeal based solely on the basis of dissatisfaction with the adverse action without citing specific grounds and supporting evidence consistent with these guidelines will be immediately rejected. An appeal will not be accepted on the basis of modifications made by the entity subsequent to the determination of the adverse action. The Committee will not consider measures taken by an entity to conform to Council standards, requirements, and/or procedures following determination of an adverse action.

## **2. Adverse Actions from Which Appeals May Be Taken**

The following list includes all possible adverse actions that are subject to appeal:

### FELLOWSHIPS/RESIDENCIES

- ◆ Deny eligibility for on-site evaluation
- ◆ Withdraw approval
- ◆ Withhold provisional approval

### CONTINUING EDUCATION PROVIDERS

- ◆ Withdraw approval
- ◆ Withhold approval

### SPECIALTY BOARDS

- ◆ Withdraw recognition
- ◆ Deny recognition
- ◆ Suspend Recognition

To be eligible for an appeal, the entity must exhaust the reconsideration process (except for appeals pertaining to specialty boards). If the entity does not seek reconsideration, it may not pursue an appeal and the adverse action will be considered final. Otherwise, no adverse action shall be final or published until the entity has been afforded an opportunity to request and complete the appeal process. If the entity does not timely request and pursue completion of the appeal process, the appeal rights of the entity will be deemed to be forfeited.

### **3. Notification of Adverse Action**

If the adverse action is sustained following the reconsideration process, the Council will so advise the entity in writing by certified mail (return receipt requested) and electronically within 30 days<sup>1</sup> following the decision. The notification will describe the reasons for the action and advise the entity of its right to seek an appeal of the adverse action.

### **4. Request for Appeal; Grounds**

An entity wishing to appeal an action must submit a Request for Appeal by certified mail (return receipt requested) and electronically such that it is received by the Council director within 30 days following the date listed on the Council's decision letter. An appeal must be based upon either or both of the following grounds:

- (a) That the Council, SBRC, RRC, or CEC failed to follow its established published procedures in reaching its decision, and that this failure to follow procedures caused the decision to be unfair;
- (b) That the decision of the Council, SBRC, RRC, or CEC was arbitrary, capricious, or not supported by significant, relevant information or evidence, and that this oversight resulted in an unfair decision.

The Request for Appeal must state completely all procedural and/or substantive grounds for the entity's appeal, and it must be accompanied by all evidence contained in the official record upon which the program relies to support its arguments. (See "Written Materials and Documents" below.)

A Request for Appeal that is received after the 30-day period or that does not set forth detailed facts and arguments in support of the entity's appeal will be rejected, and the adverse action will become final.

### **5. Status of the Entity Pending Appeal**

The entity must consult CPME publications 230, 330, 730, or 830 (procedures documents for specialty boards, residencies, continuing education providers, and fellowships, respectively) for applicable rules governing disclosure of the entity's status while an appeal is pending.

### **6. Appointment of an Ad Hoc Appeals Committee**

Appeals of adverse actions are reviewed by the Committee, which shall be appointed by the Council chair, subject to approval by the Council, and the after receipt of a properly submitted Request for Appeal. The Committee shall function as an independent body for the purpose of reviewing materials and hearing verbal presentations from representatives of the entity and as deemed appropriate by the Committee, representatives of the Council, CEC, SBRC, or RRC relative to the adverse action.

---

<sup>1</sup> All references are to calendar days.

The size and composition of the Committee is determined by the Council chair and will generally take into consideration the nature of the appeal and the content and scope of activities of the entity under consideration. The Council has the prerogative of appointing, on an annual basis, a panel of individuals with varied expertise from which the Council chair may select appropriate members to serve on the Committee when an appeal is filed.

In any event, the Committee shall be drawn from a pool of candidates possessing knowledge of approval purposes and procedures and will be constituted to meet the panel composition requirements set forth in this document. Prior to the appeal hearing, the CPME director will conduct a formal training session for all members of the Committee. Topics of training include, but are not limited to, the appeals process as it relates to Committee member responsibilities, the relevant policies and procedures, the decision options available to the Committee, and information about CPME's current interpretation of the relevant evaluative requirements and standards.

The Committee may not include any member of the Council or other committee member or evaluator who was involved in the review of the entity leading up to the adverse action. The Committee must have a minimum of four members and a maximum of five members. The Council chair will designate one member of the Committee to serve as chair. Each member of the Committee is subject to the Council's Conflict of Interest Policy as stated in Chapter 15 of the CPME *Bylaws*.

Depending on the area of the appeal, the Council chair will appoint members accordingly, which may include but is not limited to:

An academic - someone currently or recently directly engaged in a significant manner in postsecondary education and/or research.

An administrator - someone currently or recently directly engaged in a significant manner in a podiatric postsecondary program, residency program, fellowship program, or continuing education program.

An educator - someone currently or recently directly engaged in a significant manner in an academic capacity at an accredited college of podiatric medicine who may not be an academic dean.

A faculty member - someone currently or recently directly engaged in a significant manner in training residents or fellows.

A practitioner - someone directly engaged in a significant manner in the practice of podiatric medicine.

A director - someone currently or recently directly engaged in a significant manner in administering a residency program, fellowship program, or continuing education program.

A public member – someone without a significant relationship (either direct or indirect) with podiatric medical organizations or podiatric medical educational entities. This individual shall have no vested interest in or financial relationship to the podiatric medical profession.

Other – an individual with expertise specific to residency programs, fellowship programs, continuing education programs, or specialty boards.

The names of the members of the Committee will be forwarded to the entity within 30 days following receipt of the Request for Appeal. The appellant will be provided reasonable opportunity, but in no event more than ten days, to submit written objections to the appointment of one or more members of the Committee based upon an alleged conflict of interest. The Council will review the appellant's objection(s) and withdraw the member or member(s) if appropriate under the Council's Conflicts of Interest Policy. If one or more members are withdrawn, the entity will be provided the name(s) of an alternate member(s) within ten days following the Council's withdrawal decision. The foregoing procedures also will apply to the alternate appointees. The final composition of the Committee will be confirmed generally within 60 days following receipt of the Request for Appeal.

Alternatively, the Council may submit a list of potential Committee members to the entity from which the entity will be requested to identify within ten days those individuals the entity believes have a conflict, stating the basis therefore. In this case, the final composition of the Committee will be confirmed generally within 30 days following receipt of the Request for Appeal.

The Council will provide written confirmation of the final appointment and composition of the Committee.

Expenses of the hearing committee, including the recording and transcription of proceedings and the meeting room, are shared equally by the appellant and the Council.

## **7. Written Materials and Documents**

At the time of its Request for Appeal, the entity shall submit detailed facts and arguments that support the basis for its appeal. The entity also may provide supplementary information following confirmation of the appointment of the Committee, provided the supplementary information (a) does not include facts related to events or developments that occurred subsequent to the adverse action, and (b) is received no later than 14 days prior to the hearing to allow sufficient time for review by members of the Committee. In its discretion, the Committee may alter the deadline for submission of supplemental information, and it may request that additional materials and documents be submitted after the deadline or after the hearing. However, in fairness to the Committee, information received after established deadlines cannot be considered.

## **8. Burden of Proof on Appeal**

The burden of proof is on the appellant to show by clear and convincing evidence that the action of the Council, SBRC, RRC, or CEC was inappropriate, i.e., that it failed to follow its

established published procedures in reaching its decision, and that this failure to follow procedures caused the decision to be unfair; or that its decision was arbitrary, capricious, or not supported by significant, relevant information, or evidence, and that this oversight resulted in an unfair decision.

## **9. Appeal Hearing**

A hearing will be scheduled during which representatives of the appellant entity will be provided opportunity to present oral remarks in support of its appeal.

### **A. Time and Location**

In most cases, the appeal hearing will take place within 60 days following confirmation of appointment of the Committee. A date and time for the appeal hearing are determined by the staff of the Council in consultation with the affected parties. The site of the hearing is determined by the staff of the Council. In selecting the site, staff must ensure that the confidentiality of the process can be maintained.

The Committee will determine specific time limitations prior to the hearing in an effort to confine the hearing to a reasonable period of time. As a general rule, the Committee will set a two-hour time limit for the entire hearing.

### **B. Identification of Representatives**

In the interest of reducing the expenses of the appellant, oral remarks of representatives who will speak on behalf of either party may be provided via electronic methods.

A list of all individuals who will provide oral remarks (in person or via electronic methods) on behalf of the appellant, and the identity of legal counsel who will be present, if any, must be submitted to the Committee at least 14 days prior to the hearing. No representatives of the entity who are not specifically identified prior to the deadline may participate in the hearing, with the exception of substitutes for participants who become ill or otherwise incapacitated.

### **C. General Rules for the Conduct of the Hearing: Rights of the Participants**

The chair of the Committee will preside over the entire hearing and his/her decisions pertaining to rules of order and procedures are final. All oral remarks are considered to be on the record and will be stenographically recorded.

At the hearing, the appellant entity has full opportunity to present documented facts and arguments in support of its appeal. The appellant entity, at its own expense, may bring faculty and administrative representatives and legal counsel. Issues that were not set forth in the entity's Request for Appeal may not be raised and will not be considered by the Committee. Organizational or programmatic modifications made to come into compliance with Council standards, requirements, criteria and/or procedures following

determination of an adverse action are not deemed relevant and will not be considered by the Committee.

Issues regarding personalities, which may be subject to slander and libel laws, are explicitly prohibited. Specific allegations regarding individual performance also are prohibited unless actual documented evidence can be provided to substantiate these allegations. Provision for cross-examination is not available.

The Council, at its own expense, may have members or representatives, consultants, and legal counsel in attendance at the hearing. At least one staff member of the Council will be present at the hearing and will act as a technical advisor to the Committee.

## **10. Appeal Summary of Findings and Appeal Action**

The Committee will deliberate in executive session following the presentation of oral remarks. The Committee will determine significant areas of concern (if any), and develop the Appeal Summary of Findings, which will contain the Committee's action. The Committee chair shall coordinate these efforts.

The Committee will take one of the following actions:

- Affirm the original Council action
- Amend the original Council action
- Remand the original Council action back to the Council for reconsideration, with specific issues to be addressed by the Council and respective committee (SBRC, RRC, or CEC) based upon finding the presence of bias, injustice, error or departure from the standards and procedures.

A decision to affirm or amend the adverse action is implemented by the Council upon notification by the Committee. In a decision to remand the matter to the Council for further consideration, the Committee must explain the basis for a decision that differs from that of the Council. In a decision that is implemented by or remanded to the Council, the Council must act in a manner consistent with the Committee's decision or instructions. For appeals pertaining to the withdrawal of approval or recognition that result in confirmation of the original decision by the Council, the entity may reapply for approval or recognition in accordance with the procedures for seeking eligibility and candidate status as outlined in CPME documents 230, 330, 730, or 830.

The Appeal Summary of Findings will be forwarded to the entity and to the Council as soon as practicable, but no more than 45 days after the hearing, unless the entity is notified of circumstances requiring a delay. In the case of eligibility for on-site evaluation actions taken by the RRC, the Appeal Summary of Findings is transmitted to the RRC for final disposition and a report of the RRC decision is transmitted to the Council.

The Appeal Summary of Findings cannot be modified, revised, or changed once completed.

## 11. Action of the Council

The Council will implement decisions of the Committee to affirm or amend the prior Council decision within 30 days of the date of the Committee’s written decision. The Council will implement a decision to remand within 90 days of the date of the written decision by the Committee.

## 12. Notification of Final Action

The entity will be advised in writing of the Council’s final action, including, if necessary, a statement of specific concerns, as soon as practicable, but no later than 45 days (unless the entity is notified of circumstances requiring a delay) after the Committee issues its Appeal Action, as follows:

<u>Type of Entity</u>	<u>Persons Notified</u>
Residency	Chief Administrative Officer Program Director
Fellowship	Chief Administrative Officer Program Director
Provider of Continuing Education	Administrator Director of Continuing Education
Specialty Board	President Executive Director

The entity also will be advised as to its ethical obligations in informing students, residents, applicants, and learners of the action taken. The Council also may have an obligation to inform other parties of certain adverse actions. These other parties may include (but are not limited to based on the specific procedures of each of the entities) the appropriate Council-recognized specialty boards or state boards for examination and licensure. Additionally, the status of the entity may be published in the Council's annual report and listed on the Council’s website.

## II. ARBITRATION

### 1. Arbitration Process: Overview

An adverse decision is a ruling by the Ad Hoc Appeals Committee (“the Committee”), which results in:

For Fellowships and Residencies:

- ◆ Denial of eligibility for on-site evaluation



- ◆ Withdrawal of approval
- ◆ Withholding provisional approval

For Continuing Education Providers:

- ◆ Withdrawal of approval
- ◆ Withholding approval

Or for Specialty Boards:

- ◆ Withdrawal of recognition
- ◆ Denial of recognition
- ◆ Suspending Recognition

Binding arbitration pursuant to these guidelines is the exclusive remedy for an entity which has received an adverse decision and such arbitration shall govern any and all claims arising out of the appeal decision including the predicate actions of the Council and its Residency Review Committee, Continuing Education Committee, and the Specialty Board Recognition Committee.

A CPME-recognized entity shall remain in approval status during the pendency of the arbitration proceedings and until the arbitrator issues a final decision in the matter. The arbitration proceeding shall be considered confidential, and the parties and the arbitrator shall preserve the confidentiality unless required by law or disclosure is ordered by a court of competent jurisdiction.

## **2. Standard of Review in Arbitration**

The arbitrator's review of the adverse decision by the Ad Hoc Appeals Committee is limited to the question whether the decision of the Committee was supported by substantial evidence in the evidentiary record before the Committee at the time that it made its decision. It is not a *de novo* review, and the arbitrator may not take into account evidence, documents, testimony, or other materials that were not in the record before the Committee. Accordingly, depositions, interrogatories, requests for admission, and other forms of fact discovery cannot be utilized by any party during the arbitration proceeding. The burden of proving that the decision of the Ad Hoc Appeals Committee was not supported by substantial evidence on the record rests exclusively with the entity.

## **3. Authority of the Arbitrator**

In the arbitration proceeding, the arbitrator shall only have the authority to affirm or reverse the decision of the Committee. The arbitrator shall have no power to amend or remand the Committee's decision nor shall the arbitrator have the authority to order any actions reserved to the Council such as mandating an on-site visit, requiring the filing of reports, or submission of information or data to the Council.

If the arbitrator reverses the decision of the Committee, the Council shall execute the decision in a manner consistent with the decision. The arbitrator has no power to grant approval to the appealing entity because that power is the exclusive province of the Council.

If the arbitrator affirms the decision of the Committee, the Council's action shall become final immediately.

#### **4. Initiation of Arbitration Proceeding**

The arbitration permitted by these guidelines shall be conducted and decided by a single independent and impartial arbitrator chosen from the National Roster of Commercial Arbitrators maintained by the American Arbitration Association ("AAA").

In order to initiate arbitration of an adverse decision by the Ad Hoc Appeals Committee, an entity must submit a written Notice of Intent to Arbitrate to the Council along with all applicable fees as specified by the Council. The Notice of Intent to Arbitrate and requisite fees must be submitted within 10 business days of receipt of the final adverse decision. The notice must include a concise statement of the contentions that the entity intends to advance during the arbitration proceeding as well as the relief or remedy which it will request.

Within 20 days of receipt of the entity's Notice of Intent to Arbitrate, the Council shall request arbitration services from the American Arbitration Association and furnish the AAA with a copy of the Notice of Intent to Arbitrate; the names, addresses, and contact information for all of the parties; a statement of the arguments that the Council will advance during the arbitration; a copy of these Guidelines; and the applicable AAA fees.

After receiving the requisite information from the Council, the AAA shall provide a list of five proposed arbitrators (along with biographies for each) from the National Roster to the entity and to the Council. The entity and the Council may each object to two of the arbitrators on the list; any such objection must be lodged with the AAA within 7 business days of receipt of the list from the AAA. The AAA shall select the arbitrator for the proceeding from the list of arbitrators to whom no objection was lodged. The appointment of the arbitrator by the AAA shall be in writing to both parties and is final and not subject to review.

*Ex parte* communications by either party or by anyone acting on behalf of either party with the arbitrator or any candidate to be an arbitrator are expressly prohibited.

#### **5. The Arbitration Record**

The arbitration record constitutes the complete evidentiary record upon which the arbitrator shall make her/his decision. Within 30 calendar days of receipt of the notice of appointment of the arbitrator by the AAA, the Council shall transmit to the arbitrator and entity a true and complete copy of the record which was before the Ad Hoc Appeals Committee when it made the decision for which review by the arbitrator has been sought. The record shall include the prior relevant decisions and actions of the Council, all documents, correspondence, spreadsheets, and other materials, as well as the entity's pleadings before the Committee including its grounds for appeal and any exhibits, the transcript of the hearing before the Ad Hoc Appeals Committee (if a hearing was held), and the final appeal decision. Within 10 business days of receipt of the arbitration record, the entity may request the arbitrator to include in the record any material which the Council did not include in the arbitration record. Such additional materials may not be

included in the record unless it is shown that they were included in the record before the Committee at the time it made its decision.

All materials in the arbitration record shall be prepared and distributed in electronic format.

When the arbitrator is satisfied that the record is complete and accurate, the Council and the entity shall be notified in writing that the record for the arbitration is finalized.

## **6. Arbitration Briefs**

The entity shall submit its arbitration brief to the arbitrator and the Council within 20 calendar days of receipt of the notice from the arbitrator that the arbitration record is finalized. The brief shall set forth the entity's arguments why the decision of the Committee was not supported by substantial evidence on the record.

The Council may submit a response to the entity's arbitration brief within 20 calendar days of receipt of the entity's brief.

All briefs and accompanying documents shall be filed and distributed in electronic format.

## **7. Hearing**

At the request of either the entity or the Council, a hearing shall be held before the arbitrator (which will entail additional fees to the AAA and compensation for the arbitrator). The hearing may be in-person, video, or telephonic as may be agreed to by the parties and approved by the arbitrator. Conversely, the entity and the Council may agree to waive a hearing before the arbitrator and submit the matter for decision based exclusively on the arbitration record and the parties' briefs. In the case of an in-person hearing, the hearing shall be held a location selected by the Council.

The arbitrator, after consultation with the parties, shall set the date, time, and length of the hearing whether it be in-person, by video, or telephonic. The hearing shall be held within 45 calendar days of the arbitrator's receipt of all of the briefs in the matter.

Within 15 calendar days of the scheduled date of the hearing, the parties shall notify (in writing) the arbitrator and the opposing party of the names and titles of all of the individuals who will represent them at the hearing. The parties may be represented by legal counsel.

The arbitrator shall conduct the hearing, set the procedures for the hearing, establish the order of proof, and question the parties as appropriate.

An arbitration hearing, regardless of the platform, is confidential and not open to the public. A stenographic transcript of the hearing shall be made and will be available to the parties upon request and payment of related costs.

## **8. Arbitrator's Decision**

The arbitrator shall render her/his decision expeditiously after the conclusion of the hearing or, if there is no hearing, after receipt of all of the briefs of the parties. The decision shall be in writing, include a detailed statement of the reasons for the decision, and be signed by the arbitrator.

As described more fully in Section 3 above, the authority of the arbitrator is limited to affirming or reversing the decision of the Ad Hoc Appeals Committee; the arbitrator can neither remand the matter to the Council nor amend the decision of the Committee.

## **9. Arbitration Fees**

The entity's Notice of Intent to Arbitrate must be accompanied by payment of a non-refundable fee of \$2,000 to cover the administrative expense of the Council in connection with the proceeding.

The AAA charges a fee for providing administrative services for an arbitration proceeding for which the entity requesting arbitration is entirely responsible. The amount of the fee is specified in the current schedule of fees maintained by the AAA.

The AAA may require a deposit prior to any hearing to account for the expense of the arbitration as well as the arbitrator's fee. Such deposit shall be paid by the entity. However, the AAA shall provide an accounting to the entity and the Council and return to the entity any amount remaining in the deposit after the conclusion of the arbitration proceeding.

The failure to pay any of the required fees or make the required deposit will suspend the arbitration proceeding until the fees are paid. Upon request of the Council or upon her/his own volition, the arbitrator may terminate the proceeding for non-payment of fees.

Expenses of the arbitration proceedings, including the recording and transcription of proceedings and the meeting room or the video/audio platform for a virtual proceeding, are shared equally by the appellant and the Council.

## **III. VENUE OF CLAIM OR PROCEEDING**

By applying for approval of a residency, fellowship, provider of continuing education, or a specialty board from the Council, the entity agrees to exhaust all appeal opportunities and to submit fully and faithfully to final, binding arbitration proceedings as set forth in CPME 935b before filing any suit, claim or proceeding relating to such application, whether a claim for damages or injunctive or declaratory relief, and brought against the American Podiatric Medical Association ("the Association"), the Council or a member of the Council, Specialty Board Recognition Committee (SBRC), the Residency Review Committee (RRC), the Continuing Education Committee (CEC), or a member of the SBRC, RRC, or CEC, a member of an appeal panel, member of a visiting team, or other agent or employee of the Association, Council, SBRC, RRC, or CEC because he or she acted on their behalf and in the discharge of his or her

duties. Jurisdiction and venue of any suit, claim, or proceeding shall only be in the U.S. District Court for the District of Columbia.