



PRACTICE DIRECTION

Appeals Pursuant to S.38 of the RHPA

Initial Approval: November 22, 2018

Effective Date: January 1, 2019

Reviewed with NO Changes

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Practice Directions set out requirements related to specific aspects of the practice of medicine. Practice Directions provide more detailed information than contained in the Regulated Health Professions Act ("RHPA"), Regulations, Bylaws, and Standards of Practice issued by the College. All members must comply with Practice Directions, in accordance with s. 86 of the RHPA.

This Practice Direction is made under the authority of s. 85 of the RHPA and implements and supplements the mandatory requirements of s. 38 of the RHPA where the Executive Committee, sitting as a panel of Council pursuant to s. 38(4) of the RHPA, is determining appeals from:

1. a decision of the Program Review Committee denying a certificate of accreditation to a facility pursuant to s. 183(7) of the RHPA; or
2. any of the following decisions of the Registrar:
 - a. denial of registration or approval of registration subject to conditions pursuant to s. 38 of the RHPA;
 - b. denial of certificate of practice or with conditions pursuant to s. 43 of the RHPA;
 - c. refusal to renew due to failure to meet the requirements of the regulations pursuant to s. 47 of the RHPA; or
 - d. decision made pursuant to s. 3.72 and appealed from pursuant to s. 3.73 of the College's General Regulation.

1. MANDATORY PROCEDURAL REQUIREMENTS OF S. 38 OF THE RHPA

1.1. Section 38 of the RHPA contains the following mandatory procedural requirements in relation to certain appeals:

- 1.1.1. the appeal must be made by filing a notice of appeal in writing within 30 calendar days after the person appealing the decision receives notice of the

- decision (except for extensions of membership period in which case the appeal must be filed within 15 calendar days);
- 1.1.2. the notice of appeal must specify the reasons for the appeal;
 - 1.1.3. upon receiving a notice of appeal, the appeal hearing must be scheduled for a date within 90 calendar days from receipt of the notice of appeal (except for extensions of membership periods in which case the date must be scheduled within 60 calendar days);
 - 1.1.4. the person who appealed the decision must be given written notice of the date, time and place of the hearing;
 - 1.1.5. the person who appealed the decision is entitled to make representations at the hearing and to appear at the hearing with or without counsel;
 - 1.1.6. the appeal must be decided within 90 calendar days after the hearing (except for extensions of membership periods in which case it is 30 calendar days);
 - 1.1.7. the executive committee must either dismiss the appeal or make any decision that the Registrar or program review committee could have made;
 - 1.1.8. within 30 calendar days after the appeal has been decided, the person who appealed the decision must be given written notice of the decision and the reasons for it; and
 - 1.1.9. the person who appealed the decision may appeal the Executive Committee's decision to the court by filing a notice of appeal within 30 calendar days after receiving the decision.

Some of these requirements are repeated in this Practice Direction for ease of reference.

2. DATE FOR HEARING THE APPEAL

- 2.1. Upon receipt of a Notice of Appeal which complies with the requirements of s. 38(2) of the RHPA, the Registrar must acknowledge receipt of the Notice of Appeal to the person appealing the decision and advise the President of the College.
- 2.2. The President will schedule a hearing date for the appeal in accordance with the following principles:
 - 2.2.1. If the next regularly scheduled meeting of the Executive Committee is within 90 calendar days from receipt of the notice of appeal, the hearing will be scheduled for that date (except for extensions of membership periods in which case it is 30 calendar days).
 - 2.2.2. Where, in the sole opinion of the President, the Notice of Appeal is received too near the date of the next regularly scheduled Executive Committee meeting to reasonably permit the appeal material to be assembled and the

other requirements of this Practice Direction to be met, the President may schedule the hearing for a subsequent regularly scheduled Executive Committee meeting.

- 2.2.3. Where the Executive Committee is not scheduled to meet within the required time stated in the RHPA or where, in the sole opinion of the President the appeal should be heard earlier for any reason, the President will schedule a meeting of the Executive Committee for an earlier date within the required time for the purpose of hearing of the appeal.

3. NOTICE OF HEARING

- 3.1. The person appealing the decision must be given written notice of the date, time and place of the hearing as soon as reasonably possible after the date has been scheduled.

4. OBJECTION TO PANEL OR EXECUTIVE COMMITTEE MEMBER

- 4.1. The person appealing the decision must be advised of the names of the Executive Committee members or the panel of Executive Committee members who will hear the appeal and asked to promptly advise of any objection to any of those individuals hearing the appeal.

5. APPEAL MATERIAL

- 5.1. The Registrar must assemble the following material for submission to Executive Committee in relation to an appeal from a decision of the Registrar:
 - 5.1.1. the application for registration, renewal and/or extension,
 - 5.1.2. particulars of the applicant's medical education and post-graduate medical training,
 - 5.1.3. each document relied upon by the Registrar in reaching the decision being appealed,
 - 5.1.4. the Registrar's letter to the person appealing the decision advising of the reasons for the decision being appealed,
 - 5.1.5. the notice of appeal and any written submission filed by the person appealing the decision in support of the appeal.

5.2. The Registrar must assemble the following material for submission to the Executive Committee in relation to an appeal from a decision of the Program Review Committee:

- 5.2.1. each document relied upon by the Program Review Committee in reaching its decision,
- 5.2.2. the MANQAP letter to the person appealing the decision advising of the Program Review Committee's reasons for the decision being appealed, and
- 5.2.3. the Notice of Appeal and any written submission filed by the person appealing the decision in support of the appeal.

6. OPPORTUNITY TO REVIEW

6.1. The Registrar must provide to the person appealing the decision:

- 6.1.1. a complete copy of the appeal material and the index of the appeal material to be submitted to Executive Committee; and
- 6.1.2. an opportunity to comment on the appeal material and on whether any additional items should be included in the material submitted to the Executive Committee.

6.2. If there is any dispute as to the content of the appeal material, particulars of that dispute shall be provided to the legal counsel for the Executive Committee, who is responsible for giving advice to the President as to the resolution of the dispute.

7. DEADLINE FOR SUBMISSION OF MATERIAL

7.1. All appeal material must be supplied to the Executive Committee at least two weeks in advance of the scheduled hearing date.

7.2. The President shall have the discretion to determine whether to accept any material filed outside of this deadline.

8. HEARING

8.1. The Registrar shall be excluded from the hearing in relation to an appeal from a decision of the Registrar.

8.2. The person appealing the decision is entitled to make representations at the hearing and to appear at the hearing with or without counsel.

- 8.3. Executive Committee may have legal counsel to assist it in relation to the appeal.
- 8.4. Executive Committee may request any additional information it deems necessary and may adjourn the hearing to request the additional information from the Registrar and/or the person who appealed the decision.

9. EXECUTIVE COMMITTEE DECISION

- 9.1. The Executive Committee must decide the appeal within 90 calendar days after the hearing (except for extensions in which case it is 30 calendar days).
- 9.2. In deciding the appeal, the Executive Committee can either dismiss the appeal or make any decision the Registrar could have made.
- 9.3. Within 30 calendar days after deciding the appeal, the Executive Committee shall communicate to the Registrar and the Applicant written notice of the decision and the reasons for it by way of a Notice of Decision and Reasons for Decision.
- 9.4. Where the appeal is denied in whole or in part, the person who appealed the decision should be informed of his or her right of appeal to the court by filing a notice of appeal within 30 calendar days after receiving the decision pursuant to RHPA.