



## The appeal process and beyond (part 3 of 3). When residents shouldn't become clinicians: getting a grip on fair and defensible processes for termination of training

## Le processus d'appel et la suite (troisième et dernier article de la série). Ces résidents qui ne doivent pas devenir cliniciens : comment élaborer des processus justes et légitimes pour mettre fin à la formation d'un résident

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Résumé de l'article

Les programmes de formation ont la double responsabilité de fournir une excellente formation aux apprenants et de s'assurer qu'à l'issue de celle-ci les diplômés sont des praticiens compétents. Malgré tous les efforts déployés, une petite minorité d'apprenants ne parviendra pas à atteindre le niveau de compétence requis pour obtenir son diplôme. Malheureusement, la décision de la direction du programme de mettre fin à la formation d'un étudiant est souvent annulée, non pas parce qu'elle n'était pas académiquement fondée, mais parce qu'on a omis d'appliquer ou de suivre un processus d'évaluation juste. Cette série de trois articles, destinée aux responsables des politiques et procédures d'évaluation des programmes de résidence, présente des recommandations concernant l'établissement de bases d'évaluation solides et l'émergence de préoccupations quant à la progression d'un résident dans le programme (première partie), les préoccupations confirmées et la remédiation formelle (deuxième partie), et enfin le processus d'appel formel et ses suites (troisième partie). La mise en œuvre de ces 14 recommandations sur la définition de processus justes et légitimes pour mettre fin à la formation d'un apprenant devrait permettre de prendre des décisions aux répercussions importantes pour la carrière qui sont néanmoins à la fois justes envers la personne et justifiées du point de vue du programme. Elles sont proposées pour éviter la révision des décisions de nature académique, qui entraîne un gaspillage de ressources pour le programme, pose des risques pour la sécurité des patients et retarde la recherche d'un cheminement de carrière plus approprié pour le résident. Cet article (le troisième d'une série en trois parties) portera sur les appels formels et sur ce qu'il conviendrait de faire à la suite de l'appel.

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Le processus d'appel et la suite (troisième et dernier article de la série). Ces résidents qui ne doivent pas devenir cliniciens : comment élaborer des processus justes et légitimes pour mettre fin à la formation d'un résident

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### Abstract

Training programs have the dual responsibility of providing excellent training for their learners and ensuring their graduates are competent practitioners. Despite everyone's best efforts a small minority of learners will be unable to achieve competence and cannot graduate. Unfortunately, program decisions for training termination are often overturned, not because the academic decision was wrong, but because fair assessment processes were not implemented or followed. This series of three articles, intended for those setting residency program assessment policies and procedures, outlines recommendations, from establishing robust assessment foundations and the beginning of concerns (Part One), to established concerns and formal remediation (Part Two) to participating in formal appeals and after (Part Three). With these 14 recommendations on how to get a grip on fair and defensible processes for termination of training, career-impacting decisions that are both fair for the learner and defensible for programs are indeed possible. They are offered to minimize the chances of academic decisions being overturned, an outcome which wastes program resources, poses patient safety risks, and delays the resident finding a more appropriate career path. This article (Part Three in the series of three) will focus on the formal appeals and what to do after the appeal.

### Résumé

Les programmes de formation ont la double responsabilité de fournir une excellente formation aux apprenants et de s'assurer qu'à l'issue de celle-ci les diplômés sont des praticiens compétents. Malgré tous les efforts déployés, une petite minorité d'apprenants ne parviendra pas à atteindre le niveau de compétence requis pour obtenir son diplôme. Malheureusement, la décision de la direction du programme de mettre fin à la formation d'un étudiant est souvent annulée, non pas parce qu'elle n'était pas académiquement fondée, mais parce qu'on a omis d'appliquer ou de suivre un processus d'évaluation juste. Cette série de trois articles, destinée aux responsables des politiques et procédures d'évaluation des programmes de résidence, présente des recommandations concernant l'établissement de bases d'évaluation solides et l'émergence de préoccupations quant à la progression d'un résident dans le programme (première partie), les préoccupations confirmées et la remédiation formelle (deuxième partie), et enfin le processus d'appel formel et ses suites (troisième partie). La mise en œuvre de ces 14 recommandations sur la définition de processus justes et légitimes pour mettre fin à la formation d'un apprenant devrait permettre de prendre des décisions aux répercussions importantes pour la carrière qui sont néanmoins à la fois justes envers la personne et justifiées du point de vue du programme. Elles sont proposées pour éviter la révision des décisions de nature académique, qui entraîne un gaspillage de ressources pour le programme, pose des risques pour la sécurité des patients et retarde la recherche d'un cheminement de carrière plus approprié pour le résident. Cet article (le troisième d'une série en trois parties) portera sur les appels formels et sur ce qu'il conviendrait de faire à la suite de l'appel.

## Introduction

The first two parts in this series<sup>1,2</sup> have outlined recommendations for building a strong program foundation to support residents' competency development, what to do at the beginning of concerns about a resident's competency development and what to do when a formal remediation or probation is undertaken. They described recommendations 1-10 (Table 1). Depending on your institution's promotion and appeals policy a resident may be able to appeal any decision affecting progression through their residency. Most appeals will be resolved relatively informally at the program or dean level. If however the resident fails their remediation or probation (R/P) and/or is asked to leave training it is likely they will appeal this decision to the highest level, which will involve a more formal review. Often the resident will engage legal representation at this stage. This article describes recommendations 11-14 in sections D (challenges to formal review) and E (after the review).

## D. Challenges to formal review

The formal review can be thought of as having two equally critical stages—preparation for the review and participation in the review. If the resident has engaged legal representation you will want to access your institution's legal services to support you and the program in these steps.

### Recommendation 11: preparation for the review

Preparing for the review is a time-intensive process. There will be many documents to review, ranging from the resident's legal submissions outlining perceived procedural flaws and extenuating circumstances, to a review of all assessment documents and correspondence. While reviewing the documents you and your lawyer will want to anticipate questions based on the submissions, the substance behind the three pillars of robust assessment, fair assessment and support for the resident, as well as the rationale and/or impact of any deviations from the outlined R/P plan. Know the strengths of your program's decision and processes, but perhaps more importantly know the weaknesses and be prepared to address them. Writing your answers, making note where the evidence is in the documentation that can support your answers, facilitates critical information being at your fingertips during the review.

Table 1. Summary of recommended steps for fair and defensible processes leading to termination of training

Steps for fair and defensible processes leading to termination of residency training		Core concepts
<b>Part One</b>		
A.	Program Foundations:	
1.	Ensure trustworthy assessment practices	Multiple expert assessors assessing the desired competencies using performance standards, doing this over time and contexts, documenting these assessments and having a system to interpret the collated data looking for patterns and trajectory
2.	Ensure fair assessment practices	Clear relevant documented performance standards, opportunities for competency development, observation by informed assessors, clear feedback with ideas for improvement, followed by more opportunities for improvement
3.	Provide holistic resident support	Evaluating for and attending to other factors that could be impacting resident performance
B.	Beginnings of Concerns:	
4.	Make an educational diagnosis	Consideration of the situation holistically to determine the issue(s) negatively impacting clinical performance and addressing those
5.	Bring concerns forward to an educational group	Separate informed body to review assessment data and any performance impacting factors to inform learning plans and summative decisions if need be
6.	Start a documentation trail early	Documentation of all discussions and interventions pertaining to items 1-3, dated to create a timeline
<b>Part Two</b>		
C.	Established Concerns	
7.	Carefully create the remediation/probation plan	Use of an institutional template if available using deliberate unambiguous language with attention to practical and achievable interventions considering the reality of the workplace
8.	Disseminate and review the plan with all involved.	Review of the plan with all involved ensuring program personnel (supervisors, education leaders) understand and can meet the requirements laid out in the plan and the resident has understood the plan and signed and dated each page as evidence of that understanding
9.	Carryout the plan	Scrupulous attention to carrying out all elements of the plan. Support for all throughout
10.	Determine the outcome	Outcome decision made by an independent assessment group
<b>Part Three</b>		
D.	Challenges to program decisions:	
11.	Preparation for the review	Review of all documentation and legal submissions and compiling evidence to justify the program decision
12.	Participation in the review	Being adequately prepared for cross-examination both with documentation and mental mind set
E.	After the review.	
13.	Improve program processes	Use of the review board's findings to improve any weaknesses in assessment processes
14.	Support the learner.	Career counselling if training is terminated

Giving yourself enough time to prepare documents based on anticipated questions, also often subconsciously contributes to your preparation. This is a process that is better if not rushed. On the day of the review, realize that these reviews may last hours. Being rested, nourished, and avoiding all distractions will be helpful.

#### **Recommendation 12: participation in the review**

Set your expectations for the tone of the review. Review hearings, with legal representation for both the resident and program, are adversarial in tone and nature as each side desires a different outcome. Most people find this unsettling, which can negatively impact their performance. Do not take the tone of the legal challenge to your program's decision personally. It can be helpful to remind yourself of the two important roles of a program: providing excellent training and patient advocacy. If the resident is at this stage, then the program has made the decision that this resident cannot safely practice, and your patient advocacy role is now paramount. Terminating training when appropriate is an important task. In addition to managing your emotions throughout the review board, be attentive. Questions put to you at the beginning of your testimony will feel redundant, as you must restate what is already in the documentation. These are fact-recording questions meant to get evidence on the meeting record. They are generally yes/no answers. At some point though the resident's lawyer's questioning will become leading, designed by them to follow a logical sequence guiding you towards a perceived procedural flaw or extenuating circumstance. There will be pressure to continue to answer only yes or no. Realize you can and should elaborate if additional information and/or your concerns need to be brought forward. Be prepared to stand your ground.

## **E. After the appeal**

#### **Recommendation 13: improve program processes.**

Many weeks will likely pass after the review, giving the board time to deliberate and prepare a thoughtful, legally sound decision. Try not to get caught up in second-guessing your answers. Keep all documentation as, depending on where you are at in your institution's appeal process, further appeals may be launched weeks after the decision is received. Once the decision is received, using the review board's comments to examine your program's assessment processes and educate key stakeholders (preceptors, academic advisors/competency coaches, and committees) about lessons learned will strengthen your program.

#### **Recommendation 14: support the learner**

If your program decision has been upheld and the resident's training is now terminated, consider connecting them with career counselling to explore other career paths besides being a medical clinician<sup>3</sup> (Appendix A). Providing information about local resources for psychological support and/or financial advice may be helpful.

## **Conclusion**

Terminating someone's training is a momentous and difficult decision made only after all reasonable efforts to support the resident's success have been expended. Once that decision has been made, having that decision overturned for process reasons is distressing for the program, delays the resident's opportunities to explore other career options, consumes time and resources and puts patients at risk. The three pillars of robust and trustworthy assessment practices and support for residents are critical for your residents and your program's decision to terminate someone's training. Documentation should describe efforts around each of these pillars richly enough so that a neutral third party can understand why the end-training decision was made and what efforts you put into supporting and educating the resident. Being prepared, focused, and calm during the review hearing is critical. Using review outcomes to iteratively improve your processes of assessment, fair process and support is an important final step any time your program goes through a situation such as this.

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## **References**

1. Schultz K, Risk A, Newton L, Snider N. Program foundations and beginning of concerns (part one of 3). When residents shouldn't become clinicians: getting a grip on fair and defensible processes for termination of training. *Can Med Ed J.* 2021. <https://doi.org/10.36834/cmej.70170>
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## Appendix A. Example of content of a career counselling brochure produced for learners pursuing alternate career paths afforded by a medical degree beyond being a clinician.

### Career Resources for Residents: Your Career Options—What Are They?

Good career fit is based on more than simply education. It also considers your interests, skills, values and needs. Despite this, many people changing career paths want to start the process by understanding: “what (else) can I do with a degree in medicine?” or “who is looking for people like me?” While the answer to those questions is much more complex than any list can convey, you may wish to investigate some general options through resources such as the ones on the list to the right or the following:

#### Websites:

Careers in Medicine - <https://www.aamc.org/cim/> (Check with the Learner Wellness Office for access)

Careercruising.com (ID = career, password = golden). This website has hundreds of Canadian occupational profiles to peruse. You may want to start with the section on “health”.

<http://medicalsucces.net> (Alternate careers, nonmedical CV writing tips)

<http://beyondclinical.thecareersgroup.co.uk> (General resources tab)

<http://healthcareers.com>

#### Books (available at Career Services, libraries & stores):

Top 100 Healthcare Careers, Careers for Scientific Types, Careers for Health Nuts, Careers for Caring People, Careers for Competitive Spirits

...and many more

That there are a wide range of options (with or without a completed residency) can be good news to hear but it can also come with a lot of pressures (How do I choose from among the options? What if something I’m thinking about isn’t on the list?) and sometimes a sense that there is little time to figure things out.

#### Finding Career Direction

Figuring out what’s best for your future is a big question. It takes time to figure out about yourself and also about what’s “out there”. Think about the following to get started:

- Are you exploring or wondering about options?
- Do you have a new career goal in mind? Are you open to further education?
- What are your current responsibilities and obligations....family? financial?
- What are your transferable skills?

#### 5 Steps to Career Success: Tips for Moving Forward

1. Know that you are not alone - You are not the first or only person who has faced this change. Putting this information into perspective by discussing it confidentially with someone can help. There is support available, at Queen’s and probably, also in your own network. Email: [learnerwellness@queensu.ca](mailto:learnerwellness@queensu.ca) or visit [careers.queensu.ca](http://careers.queensu.ca)
2. Take some time to acknowledge your feelings about what’s happening - It is very normal to feel sad, angry, disappointed or disoriented. It may take a bit of time before you are ready to move forward.
3. Avoid rushing into decisions- It can be tempting to want to decide and move forward quickly into another career path. If possible, you may want to spend a bit of time exploring.

4. When you're ready, start to look ahead - You have skills, attributes, interests and opportunities. You can make something happen.
5. Remind yourself: all it takes is one offer - Virtually everything you do in your work search has the potential to produce the one lead that could put you in a position to do work that makes sense for you.