

Subject: SEAMO Appeals Committee

Number: 11-02-05

Approved by: SEAMO Governing Committee

Original Issue: 2013 April 02

Reviewed by: Nominations & Governance Development Committee

Effective Date: 2018 April 09

Revised: 2018 Feb. 27

TERMS OF REFERENCE

Background

1. SEAMO allocates resources to SEAMO-funded clinical departments to enable them to meet their deliverables with respect to clinical service, research, education and administration. It is the responsibility of clinical departments, in turn, to establish policies and processes whereby individual role descriptions, performance expectations and compensation for departmental members are determined. Among these policies and processes must be a means by which a departmental member can appeal a decision made with respect to role description, performance expectations and/or compensation.
2. Following the conclusion of that internal, department-specific appeal process, either the departmental member or the departmental Head may appeal to SEAMO for a final determination of the dispute. SEAMO has established an Appeals Committee for this purpose.

Role of the Appeals Committee, Obligations of Parties

3. The role of the Appeals Committee is to hear appeals of departmental decisions regarding role descriptions, performance expectations and/or compensation and to determine if the department's policies and processes that resulted in the decision being appealed were fair. The Appeals Committee is not concerned with the decision in and of itself but, rather, the process by which that decision was made.
4. The role of the Appeals Committee does not include the following:
 - a. The review and/or adjudication of issues arising from an individual's employment relationship with Queen's University, such relationship including any leadership or administrative duties/roles at Queen's University and for which compensation is provided by Queen's University, in which case the individual has recourse to the University's policies and procedures, including the *Queen's University Senate Policy on Non-Bargaining Unit School of Medicine Academic Staff Grievances*;
 - b. The review and/or adjudication of issues arising from an individual's employment relationship with one of the hospitals, such relationship including any leadership or administrative duties/roles at the hospital(s) and for which compensation is

SEAMO POLICY

Subject: Appeals Policy

Number:

11-02-05

- provided by the hospital(s), in which case the individual has recourse to the hospital's policies and procedures;
- c. The review and/or adjudication of issues arising from an individual's appointment to or privileges with one of the hospitals, in which case the individual has recourse to that hospital's by-laws, policies and procedures; and/or
 - d. The review and/or adjudication of concerns, suggestions and appeals regarding academic matters, in which case the individual can raise those issues with the Clinical Practice Committee of the School of Medicine.
5. The Appeals Committee will not engage in adjudicating an appeal that is more properly addressed through a proceeding as described in parts a, b, c or d (above). Accordingly, the Appeals Committee has the ability to dismiss such an appeal, on its own initiative or at the request of one of the parties, and with or without receiving submissions. The Appeals Committee may defer adjudicating an appeal until the results of the other proceeding are known, on its own initiative or at the request of one of the parties, and with or without receiving submissions. The Appeals Committee may also, in cooperation with any other decision-making body involved in a proceeding as described in parts a, b, c or d (above), consolidate a related matter brought under that other proceeding with an appeal under this Policy, on its own initiative or at the request of one of the parties, and shall request submissions from the parties before doing so.
 6. The Appeals Committee will adhere to the rules of natural justice and the tenets of procedural fairness. The Appeals Committee may, on its own initiative or at the request of one of the parties, and in order to facilitate a fair and expeditious process: determine preliminary matters;; require or allow any written or oral submissions to be amended; consolidate or hear together separate appeals with common issues; determine and direct the order in which issues in an appeal, including issues considered by a party or the parties to be preliminary, will be considered and determined; define and narrow the issues in order to decide an appeal; determine and direct the order in which evidence and/or submissions will be presented; limit the evidence and/or submissions on any issue; and take any other action that the Appeals Committee decides is appropriate.
 7. Because of the potential impact on third parties of an appeal, and the benefits of timely resolution, it is important that the parties adhere to the timelines specified in this document. Timelines can therefore only be modified with the express written agreement of both the appellant and the respondent, and only in exceptional circumstances.
 8. The parties to an appeal are entitled to retain legal counsel and have legal counsel represent them in the proceedings before the Appeals Committee, and the parties must bear all associated costs.

SEAMO POLICY

Subject: Appeals Policy

Number:

11-02-05

9. The parties may also have a support person in attendance at the hearing. If there is a cost associated with this support person, then this must be borne by the party receiving the support.
10. The parties are entitled to be accommodated throughout the appeal process in the event of a disability or other personal circumstance that engages the *Human Rights Code* and requires accommodation in order to ensure an accessible and just hearing. The party seeking the accommodation has the obligation to make the request and to provide any supporting documentation that may be required by the Appeals Committee.
11. The appeal process is meant to be carried out in a collegial fashion. The parties, and their representatives and witnesses, must behave at all times in a manner that is courteous and respectful of the Appeals Committee and the other participants in the proceeding.
12. Neither the appellant, the appellant's witnesses nor the appellant's support person (if any) shall be subject to any retaliatory action by the respondent as a result of initiating an appeal or participating in this appeal process.

Membership of the Appeals Committee

13. The Appeals Committee shall be constituted of three members, selected as follows:
 - a. Each clinical department shall select, through a democratic and collegial process, a SEAMO-funded physician to be available as a member of the Appeals Committee. Department Heads and Deputy Department Heads shall not be eligible.
 - b. The CEO of SEAMO will then select three individuals, by random choice, from the names provided for this purpose by the clinical departments.
 - c. No individual from the parties' department, or who has a pecuniary or non-pecuniary conflict of interest, can serve as a member of the Appeals Committee.
14. The three members of the Appeals Committee will then convene and select a Chair from among themselves. This first meeting will be convened as soon as possible, ideally within two weeks of the Appeals Committee being created.

Procedure

15. An appeal may be initiated by writing to the CEO of SEAMO and requesting that the CEO strike the Appeals Committee. The request must be made within thirty days of receipt of the final departmental decision, and must include a summary of the basis of the appeal.

SEAMO POLICY

Subject: Appeals Policy

Number:

11-02-05

16. The CEO of SEAMO will then select the three members of the Appeals Committee as described above, and will make administrative/secretarial support available to the Appeals Committee.
17. At the first meeting of the Appeals Committee, and immediately following the selection of the Chair, the Chair will write to the appellant and the respondent, confirming receipt of the appeal, providing a copy of this policy, and advising of the membership of the Appeals Committee. If the parties have concerns about the members of the Appeals Committee then they must notify the CEO of SEAMO within one week of receipt of the Chair's letter and provide an explanation of the basis of those concerns. The CEO of SEAMO will then make a determination as to the validity of those concerns and will take any necessary remedial steps.
18. If no concerns are raised about the membership of the Appeals Committee, or once any concerns has been dealt with by the CEO of SEAMO, the Chair will write to the appellant and ask the appellant to provide to the Appeals Committee, within three weeks of the receipt of the request, a written statement clearly identifying the nature of and the grounds for the appeal, including any material in support of the appeal (collectively, the "appellant's material"). The letter will indicate that the appellant's material will be provided to the respondent, that the respondent will be asked to respond to the appeal within three weeks of the receipt of the appellant's material, and that the respondent's response will then be forwarded to the appellant.
19. Upon receipt of the appellant's material, the Chair will write to the respondent and provide the respondent with the appellant's material. The Chair will also ask the respondent to provide to the Appeals Committee, within three weeks of the receipt of the appellant's materials, a written response to the appeal, including any material in support of the response (collectively, the "respondent's material"). The letter will indicate that the respondent's material will be provided to the appellant, that the appellant will be asked to reply to the response within three weeks of the receipt of the respondent's material; and that the appellant's reply will then be forwarded to the respondent.
20. Upon receipt of the respondent's material, the Chair will write to the appellant and provide the appellant with the respondent's material. The Chair will also ask the appellant to provide to the Appeals Committee, within three weeks of the receipt of the respondent's materials, a written reply to the response, including any material in support of the reply (collectively, the "appellant's reply material"). The letter will indicate that the appellant's reply material will be provided to the respondent.
21. Upon receipt of the appellant's reply material, or an indication from the appellant that no reply material will be forthcoming, or the passing of the three-week deadline with no

SEAMO POLICY

Subject: Appeals Policy

Number:

11-02-05

reply material received, the Chair will provide the respondent with a copy of the reply material or advise the respondent that there is no reply material.

22. The Chair will then convene the Appeals Committee to review the appellant's material, the respondent's material and any appellant's reply material and determine whether additional information is necessary. If the Appeals Committee feels that additional information is necessary, then the Chair shall ask the appellant, the respondent and/or the department for the information, by letter and with a copy to both parties. All such additional information should be received within three weeks of the Chair's letter.
23. Both parties will receive all submissions and documentation that have been received by the Appeals Committee.
24. Following receipt of the additional information or a determination by the Appeals Committee that no additional information is required, the Appeals Committee will set the hearing date(s). The commencement of the hearing should be within six weeks of the date of receipt of additional information or the date on which the determination was made that no additional information was required, whichever is earlier. The Chair will write to the parties to advise them of the hearing date(s) and notify them that any further submissions and/or documentation must be provided at least two weeks prior to the commencement of the hearing.
25. In the event that there are scheduling difficulties, or if there is urgency to the appeal, the Chair may determine that the appeal will be decided on the basis of the written submissions only.
26. The parties must notify the Chair, at least two weeks prior to the commencement of the hearing, of the names of any legal counsel, support persons and witnesses who may be attending the hearing.
27. At the hearing, the appellant will present his/her case first. The respondent will then have an opportunity to respond. The appellant will subsequently have an opportunity to reply to any issues raised by the respondent that were not initially raised by the appellant.
28. Each party may ask questions of the other party and that party's witnesses, although the questions may be asked only by one individual on behalf of each party.
29. The Appeals Committee may ask questions of the parties and of the witnesses.
30. The hearing is confidential and not open to the public.

SEAMO POLICY

Subject: Appeals Policy

Number:

11-02-05

31. The Appeals Committee will record the hearing. The Chair will announce at the commencement of each hearing that the hearing is being recorded and that the recording is being made for the purpose of assisting the Appeals Committee in its deliberations. The recording will be held confidential by SEAMO and maintained by SEAMO for one year following the conclusion of the hearing, at which time it will be destroyed.
32. The Chair will make such procedural decisions as may be required from time to time. Ordinarily, the Appeals Committee will secure legal counsel for the purpose of advising on procedure.

Decision

33. Following the hearing, the Appeals Committee will render a written decision and provide it to the parties. The decision will include the reasons for the decision and, ordinarily, will be issued within two weeks of the conclusion of the hearing.
34. If the Appeals Committee finds that the process by which the decision under appeal was made was fair, then the decision will be upheld.
35. If the Appeals Committee finds that the process by which the decision under appeal was made was unfair, then the Appeals Committee can direct that the decision be reconsidered by the original decision-maker (or suitable alternative) and can provide direction for the reconsideration process. If the Appeals Committee is of the view that reconsideration is not appropriate, then it can substitute its own decision for the decision under appeal.
36. The appeal process is not intended to be a mechanism by which the Appeals Committee can alter departmental policies and processes. In the event that any unfairness arises from departmental policies and/or processes, and if changes are recommended for the purpose of reconsidering the departmental decision under appeal, then those changes shall be limited to that purpose only.
37. Decisions of the Appeals Committee are final and binding on the parties.

Alternative Dispute Resolution

38. The CEO of SEAMO, following the initiation of an appeal, or the Chair of the Appeals Committee, at any time in the appeal process, may recommend to the parties that they attempt to resolve the dispute.
39. If the parties are agreeable to engaging in an attempt at resolution, then SEAMO will appoint a facilitator for this purpose. Both parties must agree to the person appointed to

SEAMO POLICY

Subject: Appeals Policy

Number:

11-02-05

conduct the facilitation, and must execute a facilitation/mediation agreement provided by SEAMO or the facilitator.

40. The resolution process is confidential and without prejudice.
41. Any resolution must be in writing and signed by the parties.
42. In the event that the issues are not resolved, or some are resolved and some remain outstanding, the facilitator will notify the CEO of SEAMO or the Chair of the Appeals Committee, whomever is appropriate, of this outcome in writing. The appeal process will then be resumed and any timelines or other procedural requirements will be adjusted accordingly.

Distribution and Notification

43. SEAMO will distribute this policy to every SEAMO-funded physician upon its approval. Thereafter, it shall be given to each physician upon initial appointment to the hospitals and University.