

### ■ Policy 3: Appeals

The Council on Naturopathic Medical Education affords due process to naturopathic medicine programs by allowing programs affected by certain adverse actions (see below) to appeal the Council's action to an independent Appeal Board. Within ten business days of such action, the Council sends a notice by certified mail to the chief administrative officer of the affected program. The notice states the adverse action and describes with particularity the basis of the action; included with the notice is a copy of this Policy on Appeals. A program that wishes to file a letter of appeal to an adverse action must do so within 30 days of having received notice of the action from the Council.

An appellant program may be represented by legal counsel throughout the appeal process; however, this is not a formal judicial process and the attendant procedures and rules of a formal judicial process do not apply.

The accreditation or candidacy status of an appellant program automatically remains in effect until the expiration of the period within which the appellant program may file a letter of appeal, or until the completion of the appeals process, whichever shall later occur.

#### **Appealable Adverse Actions**

A naturopathic medicine program may appeal any of the following adverse actions within 30 days of having received notice of the action from the executive director.

1. The denial, withdrawal, revocation, suspension or termination of candidacy; or
2. The denial, withdrawal, revocation, suspension or termination of accreditation.

#### **Basis for an Appeal**

It is the responsibility of the program to substantiate one or more of the following as the basis for appeal:

1. There were errors or omissions in carrying out prescribed procedures on the part of the evaluation team or the Council;
2. There was demonstrable bias or prejudice on the part of one or more members of the evaluation team or the Council's Board of Directors that significantly affected the decision;
3. The evidence before the Council at the time of the decision was materially in error; or
4. The decision of the Council was not adequately supported by the facts before it at the time, or it was contrary to the substantial weight of evidence before the Council.

In its letter of appeal, the naturopathic medicine program must set forth in detail the grounds for the appeal, stating with specificity the reasons why the program believes those grounds exist. The program must indicate whether or not it wishes to present testimony and/or evidence at the hearing and may provide documentary evidence to support its position at this time.

#### **Appointment of the Appeal Board and Scheduling of the Hearing**

CNME maintains a pool of qualified individuals who have been trained by the CNME to serve on a CNME Appeal Board. The pool of qualified individuals is selected by the CNME executive director from among former CNME board members, individuals who are currently in the CNME evaluator pool, naturopathic educators, naturopathic practitioners and individuals from outside of the field of naturopathic medicine (e.g., higher education). Current Council members are not included in the Appeal Board pool. Members of the Appeal Board pool must provide a current CNME conflict of interest form at the time that they receive their training.

Upon receipt of an appeal letter, the executive director notifies the president, who appoints a three-person Appeal Board from among the members of the CNME Appeal Board pool that includes a naturopathic educator and practitioner. No member of the Appeal Board may be a member of the Council, be affiliated (as

defined in the CNME “Policy on Potential Conflicts of Interest”) with the appellant program or the institution that houses the program, or have served on an evaluation team to the appellant program. Appointments are generally made from the field of higher education, including academic and administrative personnel, and from the field of naturopathic medicine; depending on the nature of the appeal, an individual with other relevant experience may also be appointed (e.g., CPA).

The executive director, in consultation with the appellant program, establishes a date, time and place for a meeting of the Appeal Board at least 21 days in advance of the meeting, and notifies in writing the parties concerned. At least five calendar days before the meeting, the program provides the executive director with all documentary evidence and with the names and positions of any witnesses it plans to have in attendance; the executive director, in turn, communicates this information to the chair of the Appeal Board.

### **Role of the Appeal Board**

In carrying out their duties, the members of the Appeal Board:

1. Select a member to serve as chair;
2. Meet at the time and place designated by the executive director to consider the appeal.
3. Provide for a hearing if the appellant has so requested;
4. Consider the grounds for the appeal as stated by the appellant program;
5. Study the evidence submitted in writing by the program in support of its appeal;
6. Consider the report of the evaluation team, Council reports and decision letters, the program’s response, and any other supporting or relevant statements and documents;
7. Compare the Council’s policies and procedures with the procedures followed in arriving at the adverse action;
8. Prepare a report of the meeting of the Appeal Board, including the final decision of the Appeal Board, within ten calendar days after the meeting; and
9. Forward the record of the Appeal Board’s meeting and the decision of the Appeal Board to the Council’s executive director, including a summary report of the Appeal Board’s meeting, the appeal documents filed by the program, and other statements and documents considered by the Appeal Board.

### **Hearing Procedures**

1. If the appellant has requested an opportunity to appear, the chair of the Appeal Board presides at the hearing. The chair ensures that all participants have a reasonable opportunity to be heard and to present all relevant oral and written evidence.
2. Technical rules of evidence do not apply to the hearing, and the chair of the Appeal Board may limit the evidence to avoid undue repetition and to ensure relevance. The chair rules on all questions pertaining to the conduct of the hearing.
3. Each party—the Council and the appellant—has the right to be represented by counsel or an authorized spokesperson, to examine the witnesses of the other party, and to present oral or written evidence.
4. The hearing is conducted in closed session with only necessary participants present. A secretary, selected by the Appeal Board from outside its ranks, records the hearing minutes; however, at the election of either party and at that party’s expense, a court reporter may be hired to prepare a record of the hearing.
5. As the proceeding before the Appeal Board is appellate in nature and is therefore limited to the existing record from previous proceedings, no discovery shall be permitted for either side and no evidence not already properly in the record on appeal shall be accepted, provided that the parties may offer witnesses for the limited purpose of elucidating the meaning of evidence properly before the Appeal Board. Notwithstanding this policy, before a final adverse action based solely upon a failure to meet a standard or criterion pertaining to finances is issued, the program may on one occasion seek review of significant financial information that was unavailable to the institution or program prior to the determination of the

adverse action, and that bears materially on the financial deficiencies identified by the Council. Such information shall be considered by the Appeal Board prior to rendering a decision. Any determination by the Council or the Appeal Board made with respect to the newly presented financial information shall not be separately appealable by the institution or program.

## **Decisions of the Appeal Board**

The Appeal Board may issue a final decision that an adverse action be affirmed, reversed or modified—which decision is binding on the Council. After arriving at its final decision, the Appeal Board shall remand the decision to the Council for further action consistent with the decision of the Appeal Board.

Should an appellant program believe that the Council has not correctly carried out the final decision of the Appeal Board, the appellant program may present this issue to the Appeal Board, which issue shall be appealable to the same Appeal Board; the Appeal Board in this circumstance shall retain jurisdiction for the limited purpose of determining whether its decision on remand has been correctly carried out and, if not, to provide further instruction to the Council.

## **Costs of an Appeal**

A program's appeal letter to the Council shall be accompanied by a deposit of \$6,000 (U.S. funds) to cover travel, lodging, and other necessary expenses of the Appeal Board and the Council. The expenses of the appeals process will be handled as follows:

1. If the Appeal Board affirms the adverse action of the Council, the appellant bears all of the expenses of the members of the Appeal Board and all of the Council's expenses related to the appeal.
2. If the Appeal Board remands the matter to the Council with the instruction that the adverse action be reversed or modified, the costs of the appeal are equally borne by the appellant and the Council.
3. Following the completion of the appeals process, the Council's executive director prepares for the appellant a detailed statement of all expenses. The appellant is obligated to pay any expenses that exceed its deposit, and any unused portion of the appellant's deposit shall be refunded.