

AOA Guiding Principles of Natural Justice / Procedural Fairness in Assessment

Principles

- The primary consideration in assessment is quality patient care and safety.
- Trainees have continuous opportunities to demonstrate their progress/competence and receive ongoing feedback.
- Feedback on performance does not constitute a complaint against a trainee.
- A Performance Appraisal is an assessment, not a progression decision.
- Positive observations or experiences of some colleagues do not negate the negative observations or experiences of others.
- Examples of performance that fall below the expected standard will carry more weight in an assessment.
- A trainee cannot make an assessment of their own competence, nor can they make an assessment of another trainee's competence.
- Trainees are fully informed of standards and expectations of performance against which they are being assessed, which are set out in the AOA Curriculum for Education and Training in Orthopaedic Surgery and AOA policies, as amended from time to time.
- Letters of support from individuals who are not in a direct working relationship or whose observation of the trainee is not directly relevant to the period under assessment will not be considered in decision making.

What is Natural Justice?

Natural Justice is a fundamental common law right, which qualifies the exercise of a power and is applied to administrative decision making to ensure a decision is made fairly. In administrative law, it is referred to as Procedural Fairness. The terms are interchangeable, they are not separate rules or principles.

Procedural Fairness has two components:

1. Decisions are made without bias

- Decision makers must be, and must appear to be, impartial. Decision makers must have an open mind to the matter on which they are making a decision.
- There are two elements to this:

- Actual bias

This exists when a decision-maker approaches the issues with a closed mind or prejudices them, notwithstanding the evidence presented to them. This considers the actual state of mind of the decision maker.

- Apprehended bias -

This exists when there is an apprehension or perception that bias may exist. A fair-minded and reasonably well informed observer must not conclude that the decision-maker might not approach the issue with an open mind. This considers the state of mind of a hypothetical observer.

2. Hearing rule

- The hearing rule requires that the individual about whom a decision is being made has a reasonable opportunity to be heard before a decision adverse to, or that affects, their rights or interests is made.
- The hearing rule is not fixed, its content is affected by the circumstances of a particular case.
- The hearing rule requires notice, disclosure and a reasonable opportunity to be heard.
- Notice - An individual must be informed of the matters relating to or against them with sufficient detail so they are able to meaningfully respond to it.
- Disclosure - The decision maker must disclose the material it proposes to rely on in making its decision. This is an ongoing obligation during the process.
- Reasonable opportunity to be heard - An individual must be afforded a reasonable or adequate opportunity to be heard and respond to the matters put to them.

In addition, the decision maker should only consider relevant material in making the decision. This includes excluding any irrelevant material that may be presented.

What does this mean for quarterly assessment?

1. Decisions are made without bias

If a Trainee Supervisor or Director of Training has a direct personal conflict with a trainee which has the potential to create bias, it should be declared and managed.

A conflict of interest may exist where there is a reason to expect that a Trainee Supervisor or Director of Training may be biased, either positively or negatively, towards a trainee for reasons including, but not limited to; familial relationship, personal friendship, potential personal gain, financial involvement and personal conflict.

Having previously assessed the trainee, or provided advice or guidance to the trainee, does not by itself impact on the Trainee Supervisor or Director of Training's ability to exercise the duties of their role in accordance with AOA policies. The requirement is to bring an open mind to decision making as opposed to not having had the opportunity to give thought to the matter.

2. The Hearing Rule

The Assessment Strategy of the AOA 21 Training Program relies on programmatic or continuous assessment. Trainees have continuous opportunities to demonstrate their progress and receive ongoing feedback from multiple assessors via Workplace-based Assessments (WBAs) and Feedback Entries (FEs). Each Feedback Entry and Workplace-based Assessment provides an option for the trainee to add comments on the form in response to the assessment. Supervisors and Trainees are

also encouraged to discuss each Feedback Entry and Workplace-based Assessment. The intention is for the assessments to document a feedback conversation.

The aim of in-training assessment is trainee learning. Performance Appraisals are a cumulative assessment of the 3-month training period. Performance Appraisals reflect the expert opinion of a consultant orthopaedic surgeon in a nominated AOA role. This opinion is formed after reviewing the trainee's portfolio (including any comments the trainee has made on WBAs and FEs), and collating any feedback from experiences and observations of any individuals working with the trainee.

The Performance Appraisal meeting provides an opportunity to communicate the outcome of the Performance Appraisal to the trainee. This meeting will discuss positive attributes displayed by the trainee, as well as highlight any concerns in their performance that may exist. Its purpose is to provide feedback and direction for learning; and to identify where the trainee may need additional support to facilitate progression towards competence. The Trainee will have the opportunity to ask questions and discuss the assessment with the Supervisor.

A less than positive outcome on a Performance Appraisal does not constitute a complaint against a trainee and will not be treated as such. Corrective feedback on performance provides an opportunity for remediation through a Performance Improvement Period. The Performance Appraisal is an expert assessment of the trainee; the trainee is not in a position to make an assessment of their own competence but the trainee will have a reasonable opportunity to respond to any comments made in the Performance Appraisal.

To not flag areas of concern would be a disservice to the trainee, who will then not be provided the support needed to remediate. A trainee may be performing well in some areas of the curriculum while needing improvement in others. This is not uncommon. It is considered wholly appropriate that where there are examples of performance that falls below the standard expected of a trainee, that these will necessarily carry weight in the overall assessment of a training period. This is reflected in the AOA 21 Additional Support policy which states:

Where the Trainee Supervisor has identified serious concerns in one area, or concerns in two or more areas, the trainee must be assessed as 'Performance Concern/s'.

It is important that trainees are fully informed of the standards and expectations of performance against which they are being assessed and how the assessment will occur. This is clearly documented in the AOA Curriculum for Education and Training in Orthopaedic Surgery and AOA policies, which are available on the website. It is the trainee's responsibility to review these documents and to seek further information if they are considered in any way unclear.

3. Relevant Considerations

It is the responsibility of the Trainee Supervisor and/or Director of Training to assess a trainee's performance during the training period, with consideration to all assessments, experiences and observations, while having regard to their primary duty of quality patient care and safety.

It is important to note that positive observations or favourable formative assessments are not solely determinative of the trainee's competence and progression in the training program. Likewise positive observations or experiences of some colleagues do not negate the negative observations or experiences of others.

The opinions of surgeons who were not responsible for training during the assessable period are irrelevant to the decision, as they do not pertain to the trainee's performance at that point in time. Having previously demonstrated competence at one assessment point is not a guarantee that competence will be maintained.

Letters of support from individuals who have not been involved in training during the assessable period will be set aside. Where additional feedback on performance is required, it will be sought from those involved in the relevant training period.

What does this mean for progression and review decisions?

1. Decisions are made without bias

In the case of 'weighty' decisions, such as Stage Progression, Reviews of Training, or Reviews of Decisions, AOA policy stipulates the composition of decision-making panels.

In the case of Review Panels, the panel members are selected based on having no previous involvement in the process.

In the case of consideration of dismissal from the training program, a decision maker may have had previous involvement in the trainee's assessment. This does not by itself necessarily impact on the decision maker's ability to exercise the duties of their role in accordance with AOA policies.

At the AOA Committee level, conflicts of interest are declared and managed in accordance with the Terms of Reference of the relevant Committee.

2. The Hearing Rule

The trainee's right to notice, AOA's disclosure obligations and the trainee's right to make written and/or verbal submissions to a decision-making panel is outlined in AOA policy.

3. Relevant Considerations

Decision making panels are provided with relevant information as to the decision required to be made in accordance with AOA policy. In particular, where a trainee's competence is under review, letters of support from individuals who have not been responsible for recent/relevant assessment will not be considered as reflective of a trainee's current performance.