

**University of North Dakota
School of Medicine and Health Sciences**

Hearing Procedures for Resident Grievances

This hearing guideline is to be used when convening and conducting a Resident Fair Process hearing.

- A. The Hearing Panel hearing must commence within ten (10) working days after receipt of the written request for review by the Department Chair. Written notice of the hearing date, time, and place must be provided to the Resident by the Department Chair at least six (6) working days prior to the hearing.
- B. At least forty-eight (48) hours before the hearing, both parties shall exchange a list of all witnesses to be called and copies of all documents to be submitted at the hearing. Within that time frame, each party will also provide to the Chair of the Hearing Panel five (5) copies of the documents to be used at the hearing and a list of the witnesses to be called. No documents or other evidence shall be provided to the Hearing Panel or its members later than 48 hours prior to the hearing. Failure to comply with stated deadlines shall be grounds for excluding any witness or document not so disclosed.

Any patient related material must be obtained by requesting that the Chair of the Graduate Medical Education Committee (GMEC) of the University of North Dakota School of Medicine and Health Sciences (UNDSMHS) gather the material. The request for documents must be made within five (5) days of notice of Program Director's decision. Such material will be gathered from the appropriate affiliated training site. Patient related material cannot be obtained by the Resident directly from the affiliated training site. This material will then be redacted to protect patient confidentiality before release to the Resident or the Hearing Panel.

At the end of the hearing, all materials will be returned to the Office of the Chair of the GMEC. No copies of the hearing materials, including medical records or any patient related material, will be kept by any member of the Hearing Panel or any party. One copy of the entire record—including patient material—will be kept by the Chair of the GMEC.

- C. Unless both parties submit written requests asking that the Hearing Panel hearing be open, it shall be closed to the public. No cause of action for libel or slander shall arise from any statement made during a hearing regardless of whether it is an open or closed hearing.
- D. Each party may have an advisor, including legal counsel; however, the Resident and the Program Director, not their advisors, will present the case. No advisor, including legal counsel, will speak on behalf of either party. If the Resident decides to have legal counsel present, it is at his or her own expense. If the Resident chooses to be accompanied by counsel or another advisor, notification of the presence of counsel must occur five (5) days prior to the hearing. If this notification does not occur in a timely manner, the hearing will be postponed until University counsel can be present.
- E. At the hearing:
 - 1. A hearing record should be made by use of audio tape or other reliable method, from which parties may obtain, at their own expense, a transcript of the proceedings, if desired.
 - 2. Have everyone who is present introduce and identify themselves;
 - 3. Finish any preliminary matters, confirm open or closed hearing on the record, accept previously submitted exhibits—making every reasonable effort to obtain the most reliable evidence available, and determine if witnesses will be sequestered. It is usual to sequester witnesses, even if the hearing is open, until after they have testified. This allows the witness to give information that is pertinent without having heard previous testimony that may change their thought processes. If the hearing is open, witnesses who are finished testifying and are excused from further testimony, may sit in the hearing.

4. Opening statements can be presented at this time if the Hearing Panel or the presenters wish. The UNDSMHS presents its case first.
 - a. All witnesses shall be sworn. If the Program Director is to give testimony, the Director is sworn at the beginning of his or her presentation of the case against the resident. If the Resident is to give testimony, the Resident is sworn at the beginning of the presentation of his or her case.
 - b. The Program Director(s) shall present the case against the Resident;
 - 1) Each witness is subject to examination:
 - a) Direct examination by the UNDSMHS Program Director;
 - b) Cross examination by the Resident; and
 - c) Redirect and recross as needed or as allowed by the Hearing Panel.
 - 2) If necessary, presentation of documentary evidence
 - c. The Resident then presents his/her case:
 - 1) Each witness is subject to examination:
 - a) Direct examination by the Resident;
 - b) Cross examination by the Program Director; and
 - c) Redirect and recross as needed or as allowed by the Hearing Panel.
 - 2) If necessary, presentation of documentary evidence
 - d. Examination of witnesses by Hearing Panel members may occur at any time, but it should usually be done at the end of the presentation of the witness by the party calling the witness. The Hearing Panel may ask for additional information or call additional witnesses as the Panel deems appropriate.

It may be recommended that a Resident physician undergo medical and/or psychiatric evaluation in order to provide the Hearing Panel with information that would serve as a basis for further action. In the event the Resident agrees to undergo such evaluation, the Resident shall be advised that the results of the evaluation shall not be confidential and shall be disclosed to the Hearing Panel for use in making a determination under this paragraph. Any fees charged by the evaluator shall be paid by the UNDSMHS. The Hearing Panel shall not share the evaluation with anyone outside the hearing, except another decision-maker of the UNDSMHS. If the hearing has been open to this point, the Resident may request the hearing be closed subsequently, if further deliberation will include the results of the medical and/or psychiatric evaluation. If the Resident declines to be evaluated, the Panel may make a decision based solely upon the information available to it.
 - f. Rebuttal witnesses by both parties if needed. These witnesses should have been previously disclosed unless a valid claim of surprise is made. These witnesses would be used to explain or contradict those new matters which have come up. It is within the discretion of the Hearing Panel to have these witnesses heard or not heard.
 - g. Closing arguments are presented by each side if wanted. The UNDSMHS Program Director goes first.
- F. After receiving final statements, the Hearing Panel will deliberate; make findings of fact regarding the case against the resident; draw conclusions based on those facts, with supporting reasons; and decide from among the following options:
 1. Affirming the Program Director's decision;

2. Reversing the Program Director's decision and reinstating the Resident; or
3. Reversing the Program Director's decision and reinstating the Resident only after the Resident has met certain, specified conditions precedent to reinstatement, which conditions shall include established time limitations for completion by the Resident.

In considering any reinstatement, the Hearing Panel should refer to the Resident Fair Process document, section I.A.6. Limitation on Reinstatement.

G. Deliberations:

Deliberations should be based on only the information and testimony that was provided at the hearing. The Hearing Panel may have to meet a number of times before the report is finished. If the hearing has been designated as open, the parties may be present, but may not speak during this phase. Also present may be anyone from the public. If the hearing has been designated as closed, parties may attend the deliberations; however, there may be no other members of the public at the deliberations. No additional testimony is taken during deliberations. If the Panel finds it needs more information during its deliberations, it must give notice to the parties before reconvening the hearing.

H. The written decision of the Hearing Panel is due two (2) weeks after the conclusion of deliberations and should include:

1. A short procedural summary of the events that have taken place, including a review of the process (e.g., what occurred at the initial investigation; that there was a failed informal resolution; the written decision by the Program Director; the written notice to the Resident, and the Resident's right to request a hearing; a summary of the hearing process, when the Hearing Panel met, who was there, who chose each member, who presented evidence, and what evidence was presented;
2. A short summary of the issues appealed and presented;
3. Findings of fact, which should be based only on what was presented during the hearing. Findings should include a statement about whether the witnesses were credible;
4. Conclusions based on findings with supporting reasons; and
5. Decision.

All members of the Hearing Panel will sign and date the report.

- I. If the Hearing Panel cannot come to a unanimous decision, a minority report may be written and appended to the majority's decision. This also must have signatures and dates.
- J. If a draft report is written and is being reviewed by all Hearing Panel members, until the Panel members agree, the report will be labeled "draft," and it will only be released to Panel members. Once finalized, the report will be provided to the Department Chair who initiated the hearing, the Resident who requested the hearing, and the Residency Program Director. All materials will be returned to the Chair of the Hearing Panel for shredding. The exception to this rule is that one official copy of the final report and supporting documents will be maintained in the Office of the Chair of the GMEC.

Revised and approved by the Graduate Medical Education Committee: 3/12/02
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