



Resident/Fellow Grievance and Appeal Policy

Effective 7/1/23 and applies to events that occurred on or after 7/1/23.

Responsible Office: Graduate Medical Education

POLICY STATEMENT

Any medical Resident/Fellow employed in a residency/fellowship at the UND School of Medicine and Health Sciences shall be provided the opportunity to seek redress and, as appropriate, a formal hearing, where they believe that school and/or program policy has not been followed or that a decision was made or based upon inadequate or incorrect information by initiating a grievance or appeal, as appropriate.

REASON for POLICY

In all circumstances it is the responsibility of each Resident/Fellow at the School of Medicine and Health Sciences (SMHS) to abide by the policies and procedures of the University of North Dakota as well as those described in the policies and procedures of the appropriate department or program. This policy provides an opportunity for the Resident/Fellow to address circumstances in which they believe that school and/or program policy has not been followed and, as appropriate, to request a formal hearing. This policy does not address issues regarding sexual harassment, which are governed by separate UND policies.

The following describes the SMHS grievance and appeal policy and procedures as they are to be applied to any Resident or Fellow participating in an SMHS-sponsored residency or fellowship.

SCOPE of POLICY

This policy applies to:

Deans, Directors, and Department Heads

Faculty

Managers and supervisors

Staff

Residents and Fellows

Others:

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DEFINITIONS	
Academic Reasons	Those decisions directly affecting the Resident/Fellow concerning their own academic performance including but not limited to inadequate medical knowledge or deficient application of medical knowledge to either patient care or research, deficient technical skills, or any other deficiency that adversely affects the Resident/Fellow physician's performance.
Appeal	A grievance or committee decision that is submitted by a Resident/Fellow to the Dean via the Advisory Committee for final disposition.
Dean	The Dean of SMHS; responsible for receiving the written report from the Advisory Committee and entering a final disposition of the same.
Dean's Decision	The outcome of an appeal; must be in writing; may adopt, modify, or reject any portion of a written report; in the case of medical Residents/Fellows, the final disposition of any committee decision; may include a remand to the Advisory Committee with specific instructions.
Discrimination	Unjust or prejudicial treatment of an individual on the basis of race, color, national origin, religion, sex, age, disability, sexual orientation, gender identity, genetic information, creed, marital status, veteran status, political belief or affiliation or any other status protected by law.
Dispute	An optional, written submission by the Resident/Fellow whereby he or she may respond to the findings, conclusions, or recommendations of the Advisory Committee; part of the appeal record submitted to the Dean.
Grievance	A problem specific to the grieving Resident/Fellow regarding policies, procedures, personnel, interpersonal relationships, non-renewal or other contractual concerns.

<p>Non-academic Reasons</p>	<p>Those matters which may arise in a Resident's/Fellow's capacity as an employee including but not limited to:</p> <ol style="list-style-type: none"> 1. Demonstrated incompetence in professional activities related to the fulfillment of assigned duties and responsibilities associated with the position; 2. Demonstrated dishonesty in any dealings with the UNDSMHS or in professional activities related to the fulfillment of assigned duties and responsibilities associated with the position; 3. Inability to satisfactorily perform functions essential to rendering proper medical care to patients and otherwise required of physicians providing direct patient care; 4. Personal conduct that substantially impairs the individual's fulfillment of properly assigned duties and responsibilities; 5. Substantial incapacity (physical or mental) to perform properly assigned duties; 6. Failure to improve performance in an area previously identified in informal counseling or in a written warning; 7. Failure to satisfactorily complete probation; 8. Conduct which violates professional and/or ethical standards; 9. Failure to fulfill any term of the employment contract or violation of UND or affiliated training site policies; 10. Violation of: <ol style="list-style-type: none"> a) The rules of the Program in which the Resident/Fellow physician is assigned; b) The rules of the institution to which the Resident/Fellow physician is assigned; or c) The law. 11. Disruptive behavior to or in the clinical and learning environment.
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Resident(s)/Fellow(s)	A post-graduate learner and staff member employed in a residency/fellowship program at the UND School of Medicine and Health Sciences.
SMHS	School of Medicine and Health Sciences
UND	University of North Dakota
Written Report	A document prepared by the Advisory Committee upon the conclusion of an appeal hearing and submitted to the Dean for final action; must contain the Advisory Committee's findings, conclusions, and recommendations; may include a minority report.
Written Resolution	The outcome of a grievance process; communicated to the Resident/Fellow in writing; subject to appeal by the Resident/Fellow.

RELATED INFORMATION	
Title IX	https://campus.und.edu/equal-opportunity/

CONTACTS

General questions about this policy can be answered by your department's administrative office.

Specific

Subject	Contact	Telephone/FAX	Office/Dept
Policy clarification	Graduate Medical Education Office	777.6716	

PRINCIPLES

1. Any Resident/Fellow employed in the residency/fellowship program at the UND School of Medicine and Health Sciences shall be provided the opportunity to seek redress and, as appropriate, a formal hearing, where they believe that school and/or program policy has not been followed or that a decision was made or based upon inadequate or incorrect information, by initiating a grievance or subsequent appeal.
2. **Discrimination:** Any person who believes that he or she is a victim of discrimination either individually or as a member of the class, as defined by the university's policies on discrimination or harassment, may initiate the grievance procedures as outlined in the UND [Discrimination and Harassment Policy](#). If a person brings a grievance under this policy in which discrimination is also alleged, the discrimination complaint may be dealt with simultaneously.
3. **Resident/Fellow Responsibility:** In all circumstances, it is the responsibility of each Resident/Fellow to abide by the policies and procedures of the University of North Dakota as well as those described in the appropriate school, college, department, or program.
4. **Timing:** All grievances/appeals must be initiated by the Resident/Fellow within five (5) calendar days following receipt of notification of the matter the Resident/Fellow wishes to have reviewed.

PROCEDURES

I) Discipline of Residents/Fellows

- A. Residents/Fellows can be disciplined for both academic and non-academic reasons. Forms of discipline include, but are not limited to: formal warning, required compliance outside of normal academic remediation, written reprimand, probation, suspension, and dismissal. Only suspension and dismissal can give rise to an appeal. Grounds for such disciplinary actions include, but are not limited to:
 1. Demonstrated incompetence in professional activities related to the fulfillment of assigned duties and responsibilities associated with the position;
 2. Demonstrated dishonesty in any dealings with the UNDSMHS or in professional activities related to the fulfillment of assigned duties and responsibilities associated with the position;

3. Inability to satisfactorily perform functions essential to rendering proper medical care to patients and otherwise required of physicians providing direct patient care;
4. Personal conduct that substantially impairs the individual's fulfillment of properly assigned duties and responsibilities;
5. Substantial incapacity (physical or mental) to perform properly assigned duties;
6. Failure to improve performance in an area previously identified in informal counseling or in a written warning;
7. Failure to satisfactorily complete probation;
8. Conduct which violates professional and/or ethical standards;
9. Failure to fulfill any term of the employment contract or violation of UND or affiliated training site policies;
10. Violation of:
 - a) The rules of the Program in which the Resident/Fellow physician is assigned;
 - b) The rules of the institution to which the Resident/Fellow physician is assigned; or
 - c) The law.
11. Inadequate medical knowledge, deficient application of medical knowledge to either patient care or research, deficient technical skills, or any other deficiency that adversely affects the Resident physician's performance; or
12. Disruptive behavior to or in the clinical and learning environment.

II) Procedures for Grievance Brought by a Resident/Fellow

- A. Grievance defined. A grievance is defined as a problem specific to the grieving Resident/Fellow regarding policies, procedures, personnel, interpersonal relationships, non-renewal or other contractual concerns. The items listed under section I in this document cannot be grieved under this section. Suspensions or dismissals are not considered a grievance and shall follow the Resident/Fellow Appeal Process.
- B. Informal Resolution: A Resident/Fellow with a grievance shall report the problem to the Program Director within 10 business days from the problem being discovered. A Resident/Fellow may grieve a non-renewal up to 10 business days after notification. If the grievance involves the Program Director, the Resident/Fellow shall discuss the problem with the Chair. If the grievance involves the Program Director and the Chair, the Resident/Fellow shall discuss the problem with the Campus Dean. If the problem occurs within a hospital or ambulatory care setting, the Resident/Fellow shall first discuss

the problem with the on-site supervising staff member unless the grievance involves the on-site supervising staff member, following which the site supervisor will discuss it with the Program Director(s). If the grievance involves the on-site supervisor, the Resident/Fellow shall discuss it with the Program Director. The Department Chair shall be informed of all informal resolutions.

- C. **Formal (Written) Grievance:** If the problem is not resolved informally, the grievance shall be submitted in writing to the Program Director within 10 business days after the Resident/Fellow is notified of the Informal Resolution decision. The Formal (Written) Grievance shall state the specific basis for the grievance and the relief requested. A Resident/Fellow may grieve a non-renewal up to 10 business days after the Program Director informs the Resident/Fellow of the Program Director's decision. If the grievance involves the Program Director, the grievance shall be submitted in writing to the Chair. If the grievance involves the Program Director and the Chair, the grievance shall be submitted in writing to the Campus Dean. The Program Director (or Chair or Campus Dean, if applicable) shall submit a written response to the Resident/Fellow within ten (10) business days after receipt of the written grievance. The Department Chair shall be informed of all formal resolutions.
- D. **Review of Grievance Decision:** If the Resident/Fellow is not satisfied with the response received, the grievance may be submitted in writing to the Departmental Chair with the Program Director's response attached for review and final resolution. The Resident/Fellow may submit the grievance up to 10 business days after the Resident/Fellow is notified of the Formal (Written) Grievance decision. The Department Chair or designee shall provide the Resident and the Program Director with a written statement as to the final resolution of the grievance within thirty (30) business days after receipt of the grievance. This decision is not appealable.

III) Resident/Fellow Appeal Process: Only suspensions or dismissals may rise to the level of an appeal. Residents/Fellows may submit an appeal to the Dean of the SMHS through an Advisory Committee, according to the following procedure:

- a. **Filing an appeal:** The Resident/Fellow must submit notice of their intention to appeal, in writing, within five (5) calendar days of receipt of notice of suspension or dismissal. The Resident/Fellow's notice of appeal must include the following:
 - i. Three (3) nominees to serve on the Advisory Committee who are core faculty members, UND SMHS Residency/Fellowship Program Directors (PD's) or Associate/Assistant Program Directors (APD's). One (1) will serve on the Advisory Committee. All, except for the PD, may be from either inside or outside the Resident/Fellow's residency/fellowship program. The DIO shall select one (1) of the three (3) nominees. If the Resident's/Fellow's nominees prove to be unwilling, unable or ineligible to participate the DIO may appoint a core faculty, PD, or APD member of his or her own choosing.
- b. 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. Patient related material cannot be obtained by the Resident/Fellow directly from the affiliated training site, provided that a Resident/Fellow shall not be prejudiced by delays occasioned by third parties in providing such material. This material will then be redacted to protect patient confidentiality before release to the Resident/Fellow or the Advisory Committee. UND's legal counsel will advise the Chair of GMEC on what information should be redacted from patient records.

- c. Supporting, written documentation must be provided within ten (10) calendar days from receipt of notice of suspension or dismissal including:
 - i. A full and complete copy of the written resolution or decision being appealed;
 - ii. A statement identifying the person(s)/committee that made the written resolution or decision being appealed;
 - iii. A statement setting forth the date the written resolution or decision being appealed was made (and received, if different);
 - iv. A summary of all efforts made to resolve the matter giving rise to the appeal;
 - v. Information directly relevant to the Advisory Committee's review of the appeal, including evidence that a specific policy was violated or the Resident/Fellow was treated prejudicially, arbitrarily or in a manner inconsistent with school or program academic policy or procedure;
 - vi. The name(s) of any legal counsel or personal advocate(s) who may have assisted the Resident/Fellow in developing the appeal or may accompany the Resident/Fellow and provide assistance, if the Resident/Fellow appears before the Advisory Committee;
 - vii. A list of all witnesses to be called with their contact information including position, mailing address, email address, and phone number. A witness shall have firsthand knowledge of matters that are directly relevant to the appeal.
 - viii. Any relevant pertinent evidence or documents, including written statement(s) from individual(s) who can provide evidence directly relevant to the appeal, or a statement that specific evidence or documents are unavailable and the reason(s) for such unavailability and the identity of the custodian(s) of the same; and
 - ix. A statement of the desired outcome the Resident/Fellow is seeking as a result of the appeal.

Supporting, written documentation must be received no later than 4:30 p.m. on the tenth (10th) calendar day by the Designated Institutional Official (DIO). For purposes of calculating time under this policy, if any day falls on a weekend or an official North Dakota state holiday, information shall be deemed timely submitted as of 4:30 p.m. on the next business day. Resident/Fellows may request, in writing and for good cause, an extension of time in which to compile and submit information in support of an appeal, and any other deadline may be extended by mutual agreement so long as it promotes the orderly, efficient, and fair administration of this policy.

- d. Upon receipt of the appeal, the DIO will constitute an Advisory Committee, according to the following procedures:
 - i. Membership: The Advisory Committee will include three (3) members:

1. Two (2) UND SMHS PDs or APDs from a different residency/fellowship program than the Resident/Fellow.
 2. One (1) core faculty member, as listed in the Accreditation Data System (ADS), who currently holds a UND SMHS faculty rank.
- ii. The Advisory Committee chair will be appointed from among its three (3) members by the DIO.
 - iii. Conflict of Interest: If it is determined that an Advisory Committee member has an unmanageable conflict of interest that may challenge their objectivity in the appeal, recusal is warranted either by action of the Advisory Committee or by the conflicted member. The Resident/Fellow has the opportunity to challenge any member(s) of the Advisory Committee for an unmanageable conflict of interest according to the procedure below. In all cases in which an Advisory Committee member is recused, the DIO will appoint a replacement. The Resident/Fellow may also have the opportunity to challenge the DIO for an unmanageable conflict of interest, such challenge to be resolved by the Dean or a designee. In all cases in which the DIO is recused by order of the Dean or designee, the DIO's responsibilities will be fulfilled by the Senior Associate Dean for Medicine and Research (SADMR). The Resident/Fellow may also have the opportunity to challenge the SADMR for an unmanageable conflict of interest, such challenge shall be resolved by the Dean or a designee. In all cases in which the SADMR is recused by order of the Dean or designee, the SADMR's responsibilities will be fulfilled by a replacement appointed by the Dean.
 1. Challenge procedure (excluding challenges to the DIO):
 - a. The Resident/Fellow will be provided the names of the Advisory Committee members and will have up to ten (10) calendar days after receiving the names to challenge any member on the basis of conflict of interest if they so desire.
 - b. The Resident/Fellow shall provide, in writing, the reasons for the challenge to the DIO.
 - c. The DIO will rule on the challenge within ten (10) calendar days of receipt and notify the Resident/Fellow of the determination. The judgment of the DIO is final.
- e. Training: A training session for Advisory Committee members will be scheduled by the Graduate Medical Education Office. Training will include Title IX training, if appropriate, and a review of the Resident/Fellow appeal process. This training will occur before any information specific to the appeal is disseminated to the Advisory Committee.
 - f. Scheduling of the hearing: The Graduate Medical Education Office will identify possible dates for a hearing and organize the hearing place, which may occur via video conferencing or in-person, and time. At the hearing, the Advisory Committee will consider all pertinent materials, including any new written information from both the Resident/Fellow and a representative of SMHS who can speak to the underlying matter being appealed both of

whom will be invited to be present at the Advisory Committee hearing. Typically, the representative of SMHS will be appointed by the PD or is the PD himself/herself, unless the PD is being grieved or is involved in the grievance in which case the representative of SMHS will be appointed by the DIO, unless the DIO is also involved, in which case the SAMDR will appoint.

- g. The hearing must commence within twenty (20) calendar days after receipt by the DIO of the written request for review, unless an extension of time has been granted by the DIO.
- h. Provision and dissemination of appeal documentation: Dissemination of documentation will be completed by the Graduate Medical Education Office at least seven (7) calendar days prior to the scheduled Advisory Committee hearing. Therefore, any new written information from either the Resident/Fellow or the SMHS representative must be submitted no later than seven (7) calendar days prior to the hearing. Late submissions may be considered at the discretion of the Advisory Committee chair.
- i. The Advisory Committee Hearing: The Resident/Fellow will be invited to appear at the hearing to answer questions or to present any relevant information. Likewise, witnesses will be invited to appear at the hearing to answer questions or to present any relevant information. The SMHS representative will also be invited to appear before the Advisory Committee. If the Resident/Fellow is represented by a lawyer, the Advisory Committee and SMHS representative may each elect to have separate legal representation from the Office of General Counsel in a non-participatory advisory role except as noted otherwise in the policy. If a lawyer or personal advocate is to be present, the Resident/Fellow must provide notification in the written appeal (see section III(b)(vi)). If this notification does not occur in a timely manner, the hearing may be postponed to permit legal counsel from the Office of General Counsel to be present. The Advisory Committee hearing is an educational process, not a legal proceeding and does not follow the procedures of a court of law. Federal and State Rules of Evidence and Procedure do not apply to this proceeding.
- j. Recording the hearing: The Graduate Medical Education Office will arrange for the hearing to be recorded.
- k. Format of the Advisory Committee hearing:
 - i. The chair will complete introductions and will have full procedural control of the hearing, including the timing and sequencing of all presentations.
 - ii. At the beginning of the hearing, the chair will ask the Resident/Fellow to state for the record whether the hearing is to be open or closed. The Resident/Fellow will sign a written statement declaring the hearing open or closed. If the Resident/Fellow is not present, it is a closed hearing.
 - iii. Each party involved in the appeal, including each committee member and witness involved in the hearing, will be asked to sign an oath of truthfulness and a non-retaliation statement.

- iv. The SMHS representative or the UND lawyer will give opening remarks, not to exceed 30 minutes, regarding the matter being appealed.
- v. The Resident/Fellow, Resident/Fellow's lawyer, or Resident/Fellow's personal advocate will give opening remarks, not to exceed 30 minutes, regarding the appeal and rationale for their position.
- vi. As a regular order of business, each party present will have sixty (60) minutes for presentation. This time may be enlarged by the Advisory Committee chair either on request of a party or when, in the chair's sole discretion, additional time is required due to the facts or complexity of the issues presented, so as to promote the orderly, efficient, and fair administration of the hearing. Upon request, the chair will also permit time to be reserved for rebuttal, on request of a party. Members of the Advisory Committee may ask questions of the Resident/Fellow and the SMHS representative after both opening remarks have concluded. Time spent answering committee questions does not count toward either party's total presentation time.
- vii. Witnesses may appear during each party's presentation. All witnesses called by a party will be calculated toward the total 60 minutes of that party's presentation time.
 - 1. It is usual to exclude witnesses, even if the hearing is open, until after they have presented information to the Advisory Committee. This allows the witness to give information that is pertinent without having heard previous reporting from other witnesses that may change their thought processes. If the hearing is open, witnesses who are finished providing information to the Advisory Committee and are not expected to be needed further, may remain in the hearing.
 - 2. The SMHS representative's witnesses are subject to questions in the following order:
 - a. By the SMHS representative.
 - b. By the Resident/Fellow.
 - c. Following the Resident/Fellow's questioning either party may ask clarifying questions as needed or as allowed by the Advisory Committee.
 - 3. The Resident/Fellow's witnesses are subject to questions in the following order:
 - a. By the Resident/Fellow.
 - b. By the SMHS representative.
 - c. Following the SMHS representative's questioning either party may ask clarifying questions as needed or as allowed by the Advisory Committee.
 - 4. Questioning of witnesses by the Advisory Committee may occur at any time, but should aim to be done at the end of the presentation of the witnesses by the party calling the witness. The Advisory Committee may ask for additional information or call additional witnesses as the Advisory Committee deems appropriate.
- viii. The parties involved in the appeal will not address questions/comments to each other.

However, they may address their questions to the chair of the committee who, if deemed relevant and appropriate, may ask the questions on their behalf after each party's presentation.

- ix. Each party will be permitted an opportunity to provide any closing remarks, each party's remarks may not exceed 30 minutes, unless extra time is granted by the chair.
 - x. The chair will excuse the parties involved from the meeting along with any personal advocate(s), legal counsel, and public present at the conclusion of their presentations once the Advisory Committee's questions, if any, have been answered.
 - xi. The Advisory Committee will adjourn the hearing and reconvene such that the members will be free to discuss the appeal in closed session.
- I. Post-hearing:
- i. No later than fifteen (15) calendar days following the conclusion of the hearing, the Advisory Committee will produce a written report of their findings, conclusions, and a majority or unanimous recommendation. This report will be based on the testimony heard and the documentation received from the parties involved in the appeal. The chair is responsible for creating the report, which all members of the committee will sign and date with an indication of whether or not they are in agreement with the report's findings, conclusions and recommendation(s). A minority report can be written and may adopt some or all of the majority findings and conclusions but must also contain a separate recommendation. The chair will notify the Resident/Fellow and SMHS representative of the committee's recommendation(s) and provide each a copy of the report(s).
 - ii. If the Resident/Fellow chooses to dispute any findings, conclusions or recommendation(s) of the Advisory Committee, the Resident/Fellow must submit a concise, written dispute in response to the committee's report(s) to the DIO within ten (10) calendar days of receipt of the committee's report(s). The dispute shall identify with specificity the finding(s), conclusion(s), or recommendation(s) being disputed, including where appropriate references to page(s) and line(s) of the report(s). Where a minority report has been authored, the Resident/Fellow is encouraged to distinguish and direct remarks separately to each report.
 - iii. The appeal record consists of all written documentation received from the parties, the recording of the hearing, the Advisory Committee's report(s), and dispute (if any).
 - iv. The office of record for appeals is the Graduate Medical Education Office. The record will be retained pursuant to the SMHS records retention schedule.
 - v. The Graduate Medical Education Office will submit the entire record to the Dean for review and final decision. The Dean may adopt, modify, or reject any recommendation of the Advisory Committee. In rare circumstances, the Dean may remand an appeal to the Advisory Committee with specific instructions.
 - vi. The Dean's Office will forward the Dean's decision to all principal parties (Resident/Fellow, Program Director and/or SMHS Representative, DIO, and Department Chairperson) within

thirty (30) calendar days of receipt.

vii. All decisions by the Dean are final and not subject to appeal.

IV) In all stages of the grievance and appeal processes, it is the responsibility of the Resident/Fellow to initiate and advance the grievance or appeal to the appropriate stage of the process.

RESPONSIBILITIES	
Advisory Committee	Conduct the hearing and create the final report
Designated Institutional Official	Constitute the Advisory Committee on Resident/Fellow appeals, appoint chair, rule on conflict of interest, and retain records
Graduate Medical Education	Provide administrative support to process, schedule and make arrangements for hearing
Grieved party or department/program	Provide documentation; appear at hearing, if required
Resident/Fellow	Initiate the grievance and/or appeal within the appropriate timeline; initiate and advance the grievance and/or appeal to the appropriate stage of the process; provide documentation; appear at hearing, if required

Approved by GMEC 2/14/23 (policy effective 7/1/23)