

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

Resident Fair Process and Grievance Procedure

Statement of Purpose

The role of a Resident in the residency programs of the University of North Dakota School of Medicine and Health Sciences (UNDSMHS) is educational in nature. Unlike the case with other students, a resident contract details a direct professional involvement with patients, other physicians and institutions, and reflects a role which is unique and sensitive. It is therefore acknowledged by UND and the Resident that the following grievance and fair process rights shall be the sole and exclusive rights to which a Resident is entitled. More specifically, except as provided in this document, those fair process rights provided to students in the four-year program offered by UND and UNDSMHS, as set forth in the UND Code of Student Life and the UND School of Medicine and Health Sciences Bulletin, are not applicable to Residents accepted into the University of North Dakota Residency Programs.

The policies and procedures contained herein relate to the UNDSMHS discipline of Residents and that of the affiliated training site. Also contained herein is the process by which a Resident may grieve.

I. Policy on Discipline of Residents:

A. University of North Dakota School of Medicine and Health Sciences (UNDSMHS)

1. Residents can be disciplined for both academic and non-academic reasons. Forms of discipline include, but are not limited to: warning, required compliance, remedial work, written reprimand, probation, suspension, and dismissal. Suspension and dismissal can give rise to a hearing.

Grounds for such disciplinary actions include, but are not limited to:

- a. Demonstrated incompetence in professional activities related to the fulfillment of assigned duties and responsibilities associated with the position;
- b. 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;
- c. Inability to satisfactorily perform functions essential to rendering proper medical care to patients and otherwise required of physicians providing direct patient care;
- d. Personal conduct that substantially impairs the individual's fulfillment of properly assigned duties and responsibilities;
- e. Substantial incapacity (physical or mental) to perform properly assigned duties;

- f. Failure to improve performance in an area identified in informal counseling or a written warning;
 - g. Failure to satisfactorily complete probation;
 - h. Conduct which violates professional and/or ethical standards;
 - i. Failure to fulfill any term of the employment contract or violation of UND or affiliated training site policies;
 - j. Violation of:
 - 1) The rules of the Program in which the Resident physician is assigned;
 - 2) The rules of the institution to which the Resident physician is assigned; or
 - 3) The law.
 - k. 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
 - l. Disruptive behavior.
2. When problems arise concerning a Resident's performance that may result in suspension or dismissal of the Resident by the Program Director, the following procedures shall be followed:
- a. Initial Investigation: The Program Director shall conduct an initial investigation.
 - b. Informal Resolution: Unless the situation requires immediate action, the Program Director and the Resident shall meet to discuss the matter.
 - c. When an initial investigation has been conducted and no informal resolution has been achieved, the Program Director has the authority to:
 - 1) Suspend the Resident; or
 - 2) Move to dismiss the Resident.
 - d. Written Notice: Within forty-eight (48) hours of the decision by the Program Director to suspend or move to dismiss the Resident, the Program Director shall deliver or mail a written notice of the decision to the Resident. If the decision is placed in the mail, it should be sent registered, return receipt.
 - e. Right to Hearing: The Resident is entitled to a hearing for disciplinary actions of suspension or action to dismiss by submitting a written request for review by a Hearing Panel to the Program Director within five (5) working days after receipt of notice of the Program Director's decision. The Program Director shall promptly forward the written request to the Department Chair, who will then convene the Hearing Panel

and schedule a date and time for the hearing, which is to occur within ten (10) working days after receipt of the written request for a hearing by the Department Chair.

4. Hearing Panel:

- a. The Hearing Panel shall consist of five (5) physicians defined as those who currently hold a UNDSMHS faculty rank or one resident within the same UNDSMHS residency program. They shall be selected from at least four (4) physicians nominated by the Resident and at least four (4) physicians nominated by the Program Director. The program director and the resident shall each confirm the willingness and availability of their nominees to participate before submitting their names.
 - 1) Two physicians, one of whom may be a resident, selected by the Department Chair or designee from the physicians nominated by the aggrieved Resident. If the resident's nominees prove to be unwilling, unable or ineligible to participate the Chair may appoint two other faculty members of his or her own choosing.
 - 2) Two physicians selected by the Department Chair or designee from the physicians nominated by the Program Director(s). If the Program Director's nominees prove to be unwilling, unable or ineligible to participate the Chair may appoint two other faculty members of his or her own choosing.
 - 3) A physician from a different department, who will act as Chair, designated by the campus Dean.
- b. The names of nominated Hearing Panel members shall be submitted to the appropriate Department Chair no later than four (4) working days prior to the hearing date.
- c. Convening of the Hearing Panel and the conduct of the hearing shall proceed according to the "Hearing Procedures for Resident Grievances."
- d. Decision by Hearing Panel: The Hearing Panel will make a finding of facts and then chose from the following options in arriving at a decision:
 - 1) Affirm the Program Director's decision;
 - 2) Reverse the Program Director's decision and reinstate the Resident; or
 - 3) Reverse the Program Director's decision and reinstate 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 Section I.A.6. "Limitation on Reinstatement."

- e. Confidential Hearing Record: A confidential hearing record will be maintained in the Office of the Chair of the Graduate Medical Education Committee (GMEC) and will consist of:
 - 1) A copy of the written notice sent to the Resident of the action taken;
 - 2) A written summary of the hearing together with all documentary and other evidence offered or admitted into evidence;
 - 3) Any other materials considered by the Hearing Panel; and
 - 4) The written decision of the Hearing Panel.

The written decision of the Hearing Panel will also be kept as part of the Resident's educational record.

5. Appeal to Dean:

- a. The Resident will have five (5) working days to submit an appeal in writing to the Dean with a copy to the Resident's Department Chair. The appeal is to be filed using a form designated for the purpose.
- b. An appeal to the Dean will trigger an automatic procedural review by the Resident's Department Chair or his/her designee. Within four (4) working days of receipt of the appeal to the Dean, the Department Chair or his/her designee will decide if all procedural requirements have been met. The Chair will forward his or her decision to the Dean.

If the Department Chair finds that the procedure is flawed, the Chair will either reconvene the Hearing Panel to remedy the procedural error or call for another Hearing Panel to be convened.

- c. Within fifteen (15) working days after receiving the written appeal, the Dean of UNDSMHS shall issue a written decision based upon the confidential hearing record and the procedural review of the Department Chair. All information relevant to the hearing process will be available to the Dean for review, if necessary. The Dean may approve, reject, or modify the decision in question or may require the original hearing to be reconvened for the presentation of additional evidence and reconsideration of the decision. If the Dean requires the hearing to be reconvened, the reconsidered decision made by the Hearing Panel may again be reviewed by the Dean. If the Hearing Panel is not reconvened or if the Dean approves the Hearing Panel decision or modifies the Hearing Panel decision, the Dean's decision is final and unappealable.
6. Limitation on Reinstatement: Any decision, at any level of this appeal process, which includes a right to reinstatement must also include a specific timeline for completion of the conditions precedent to reinstatement and such reinstatement must comply with the applicable rules governing the residency program involved.
7. Determination of Deadlines & Definitions: "Working days" are defined as Monday through Friday, excluding holidays. If the person responsible for making a determination is out of the office, the counting of "working days" is suspended until the decision-maker returns to the office.

B. Unilateral Authority of Affiliated Training Site and Program Site Director's Authority

If a serious problem arises relative to the performance of the Resident within the affiliated training site setting, the designated site personnel shall have the authority, pending the outcome of the review process, to immediately suspend the Resident: 1) from patient care activity; 2) from actual presence at the facility; or 3) both of the above. The affiliated training site should provide fair process for the Resident under its rules.

C. Program Director's Authority in Reference to Affiliated Training Site Action

When a site has exercised its unilateral authority to suspend a Resident, the Program Director may, in the exercise of sound discretion: 1) assign the Resident to a different site during the pendency of the review process; or 2) suspend the Resident from all patient care, pending the outcome of the review process set forth below.

In the event the Program Director is considering the suspension of the Resident from all patient care activity during the review process, a pre-suspension meeting shall be held with the Program Director(s) and the Resident, at which meeting the following rights will be afforded to the Resident: 1) notice of the charges in writing; 2) an opportunity to hear and review the evidence against the Resident; and 3) a reasonable opportunity for the Resident to respond.

Within forty-eight (48) hours after the pre-suspension meeting, the Resident will be informed in writing of the Program Director's decision, of the further review process, and of the procedures for initiating it. If the decision is to suspend the Resident from all patient activities, the Resident shall also be notified of the possible cessation of all

pay until such time as the Resident is actually reinstated to patient care activities.

If the Resident wishes to appeal the decision of the Program Director, the procedures listed in I.A.2 through I.A.5 are available for use.

II. Procedures for Grievance Brought by a Resident:

- A. Grievance Defined A grievance is defined as a problem specific to the grieving Resident regarding policies, procedures, personnel, interpersonal relationships, non-renewal or other contractual concerns. The items listed under section I.A.1. in this document cannot be grieved under this section.
- B. Informal Resolution: A Resident with a grievance shall discuss the problem with the Program Director(s). If the grievance involves the Program Director, the Resident shall discuss the problem with the Chair. If the grievance involves the Program Director and the Chair, the Resident shall discuss the problem with the campus Dean. If the problem occurs within a hospital or ambulatory care setting, the Resident 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 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(s) stating the specific basis for the grievance and the relief requested. The Program Director(s) shall submit a written response to the Resident within ten (10) working days after receipt of the written grievance.
- D. Review of Grievance Decision: If the Resident is not satisfied with the response received, the grievance may be submitted in writing to the Departmental Chair with the Program Director's(s') response attached for review and final resolution. The Department Chair or designee shall provide the Resident and the Program Director(s) with a written statement as to the final resolution of the grievance within ten (10) working days after receipt of the grievance. This decision is not appealable.
- E. Determination of Deadlines: "Working days" are defined as Monday through Friday, excluding holidays. If the person responsible for making a determination is out of the office, the counting of "working days" is suspended until the decision-maker returns to the office.

This signature indicates I have read, understand, and agree to abide by this policy and its procedures.

Resident's Signature

Date

For the Contract Year

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

Revised and approved by Graduate Medical Education Committee: 4/2/02

Revised and approved by Graduate Medical Education Committee: 6/8/04