

**CONEMAUGH MEMORIAL MEDICAL CENTER
GRADUATE MEDICAL EDUCATION POLICY**

APPEAL OF DISCIPLINARY ACTION

Purpose

To offer an appeal and review process to a Resident/Fellow Physician whose professional conduct or academic performance has resulted in an adverse action described in the Disciplinary Action Policy.

Applies To

All Residents/Fellows in Conemaugh Memorial Medical Center (CMMC) Graduate Medical Education (GME) Training Programs.

Policy

To ensure that all GME programs offer standard appeals procedures as approved by GMEC for the following adverse actions; for dismissal from a program; non-promotion to the next PGY level; nonrenewal of a Resident's/Fellow's agreement; suspension; probation; and not recommended for Board certification for training completed.

Administrative Leave Pending Investigation

The Program Director and the Designated Institutional Official (DIO) (or their designees) may determine that immediate action is required prior to completion of a review or investigation of possible Misconduct or Academic Deficiency, in order to protect the health and safety of patients, staff or other persons, or the interests of CMMC. In such cases, the Resident/Fellow may be placed on immediate administrative leave, with or without pay as appropriate depending on the circumstances. In this event, legal counsel and Human Resources should be alerted. This action is not disciplinary in nature and therefore cannot be appealed. This type of leave is intended to be a short term measure to allow for a review of the underlying concern and determination as to whether Disciplinary Action is warranted.

Procedure

- A. A Resident/Fellow who receives a notice of recommendation of Disciplinary Action (as defined in the Disciplinary Action Policy) will be permitted to appeal the recommended action in accordance with the procedure outlined herein.
- B. CMMC prohibits retaliation against an individual who, in good faith, appeals a Disciplinary Action or participates in the review or resolution of a Disciplinary Action under this policy.
- C. No report of Disciplinary Action is final until the appeal is concluded or the appeal rights expired. As noted in the GME Disciplinary Action Policy, no report of Disciplinary Action to any outside entity, including but not limited to any certifying body, professional association, or other training program, may be made until the appeal process has concluded, any appeal rights have expired, or the Resident/Fellow has withdrawn the appeal (unless any such disclosure is authorized in writing by the Resident/Fellow or disclosed pursuant to compulsory legal process, in which case legal counsel should be consulted prior to such disclosure). The foregoing shall not prevent the Program or GME

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Office from notifying necessary persons or entities that the Resident/Fellow is on leave for purposes of ensuring appropriate patient coverage.

D. Initiating the Appeal

1. Filing of Appeal with Graduate Medical Education Office:
 - a. To initiate the appeal process, the Resident/Fellow must submit a written request for appeal to the DIO within ten (10) calendar days of receipt of the notice of recommendation of Disciplinary Action.
 - b. After this time period, the Resident's/Fellow's right to appeal is forfeited and the recommended Disciplinary Action shall become final.

E. Convening and Constitution of Ad Hoc Appeal Panel:

1. Within ten (10) calendar days of receipt of the request for appeal by the DIO, the DIO or his/her designee will appoint an ad hoc review panel to hear the Resident's/Fellow's appeal.
2. The Panel consists of five members: three faculty physicians and two Residents/Fellows. Three members of the Panel are chosen by the DIO or his/her designee, and one by the Resident/Fellow, and one by the Program Director. The Resident/Fellow makes his/her choice known first, followed by the Program Director. The DIO or his/her designee select the remaining Panel members.
3. The Panel members may include one Program Director from a residency/fellowship other than that of the grievant. Panel members cannot have been involved directly with the incident(s) that resulted in adverse action.
4. The Panel elects a Chair to conduct the appeal and to present the Panel's decision to the Resident/Fellow and Program Director. The DIO serves as staff to the Panel to coordinate the appeal and provide guidance on the process.

F. Scheduling of Hearing:

The Panel will schedule the appeal hearing and notify the GME Office of the hearing date. The appeal hearing should occur within fifteen (15) calendar days of appointment of the Panel. The Panel Chair may, upon written request of either the Resident/Fellow or the Program Director, for good cause shown, or on his/her own for other reasonable reasons, extend or reschedule the hearing date. Any extension of the hearing date shall require the generation of a new hearing notice.

G. Notice of Hearing:

The GME Office will send a hearing notice to the Resident/Fellow and Program Director. The hearing notice will contain the names of the Panel members; the date, time, and location of the appeal hearing; and the deadline to submit evidence. The GME Office will send the notice at least ten (10) calendar days' prior to the hearing date. This notice requirement to the Resident/Fellow may be met by given to the resident in person or Certified Mail US Postal Service with a copy to the Resident's/Fellow's CMMC e-mail address. Notice to the Program Director may be accomplished via CMMC email.

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H. Withdrawal of Appeal:

The Resident/Fellow may, at any time, withdraw the appeal by informing the DIO in writing of his/her decision to withdraw the appeal. The withdrawal of the appeal shall become binding immediately upon receipt of a withdrawal of the appeal by the DIO. Once withdrawn, an appeal may not be reinstated.

I. Evidence

1. Any written evidence that the Resident/Fellow or the Program Director wishes the Panel to consider must be submitted to the GME Office at least five (5) calendar days prior to the appeal hearing date. Failure to submit evidence in the time and manner required by the GME Office may result, at the discretion of the Panel Chair, in the material not being considered by the Panel.
2. The GME Office will facilitate the exchange of evidence between the Resident/Fellow and the Program Director and will provide copies of all evidence to the Panel.

J. Witnesses:

The Resident/Fellow and the Program Director may invite up to three (3) witnesses each to present before the Panel. The Resident/Fellow and Program Director may also ask others not invited to speak to submit written statements which must be submitted to the GME Office at least five (5) calendar days prior to the hearing date. Failure to submit written statements in the time and manner set forth herein may result, at the discretion of the Panel Chair, in the material not being considered by the Panel.

K. Appeal Hearing

1. The Resident/Fellow must be physically present at the hearing. Failure by the Resident/Fellow to be present in person shall be deemed a withdrawal of the appeal by the Resident/Fellow.
2. The Panel chair has wide discretion with respect to conducting the appeal hearing. In general, appeal hearings will proceed according to the following format:
 - a. The Program Director may make a presentation to the Panel up to twenty (20) minutes. The Program Director shall then have an opportunity to present witnesses.
 - b. The Resident/Fellow may make a presentation to the Panel up to twenty (20) minutes. The Resident/Fellow shall then have an opportunity to present witnesses.
 - c. The Program Director and the Resident/Fellow will each have the opportunity to ask questions of the other's witnesses.
 - d. The Program Director and the Resident/Fellow will each have up to ten (10) minutes to respond to the statements made by the other.
 - e. At any time during the hearing, the Panel may ask questions of witnesses, the Resident/Fellow and/or the Program Director.

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- f. The Panel may also, at its sole discretion and without special notice, recess the hearing and reconvene later in order to study new evidence presented during the hearing.
3. Neither the Resident/Fellow nor the Program Director may be assisted or represented during the appeal hearing by counsel. Nothing in this policy shall be construed as prohibiting either the Program Director or the Resident/Fellow from soliciting the advice of counsel at any time before or after the hearing. No inference may be drawn against an individual as a result of that individual's having sought the advice of counsel.
4. Appeal hearings are confidential. Only participants as outlined in this policy and Panel members may attend. The hearing may not be audio or video recorded, though general minutes shall be maintained by the Panel chair or a GME administrative staff member. To the greatest extent permitted by law, hearing minutes shall be confidential and protected under Pennsylvania statutes or other state and federal confidentiality laws.
5. The hearing is not controlled by legal rules of evidence or procedure. The Panel shall consider such evidence as reasonable persons are accustomed to rely on in the conduct of serious affairs. The Panel shall decide all other procedural matters not specified in this policy. The Panel and CMMC may rely on and accept as true, any finding of fact contained in a final decision by the applicable licensing, certifying, or regulatory authority.

L. Deliberation and Decision

1. Following the appeal hearing, the Panel shall deliberate privately.
2. If the Panel determines that additional meetings are required after the initial appeal hearing above, the Panel Chair will notify the DIO within five (5) calendar days of the initial hearing meeting.
3. The Panel will prepare a written decision setting forth its conclusions and reasoning in support of those conclusions.
4. The Panel's decision will be sent to the Resident/Fellow, the Program Director and the DIO within ten (10) calendar days after the final hearing.
5. The final decision as to whether to uphold, modify, or reverse the proposed Disciplinary Action will be made by a majority vote of the Panel members. A decision to uphold the recommended Disciplinary Action may be made by the Panel upon a finding that the recommended Disciplinary Action is reasonable under the circumstances.

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6. The decision of the Panel shall be final and binding.
7. The Panel's decision must be documented in the Resident's/Fellow's file.

M. The Legal Actions

1. No legal action concerning Disciplinary Action may be brought by a Resident/Fellow unless and until:
 - a. The Resident/Fellow has filed a written request for an appeal of the recommended Disciplinary Action following the procedure and within the time prescribed above; and
 - b. The Resident/Fellow has been notified in writing of the decision of the Panel or the Panel has failed to take any action on the Resident/Fellow's written request for appeal within the time prescribed above.

N. Time Limits and Computation of Time

1. Time Limit: Time limits set forth in this policy must be adhered to by both the Resident/Fellow and CMMC unless extended for good cause at the discretion of the DIO or his/her designee. A Resident/Fellow who fails to meet the time limits for submitting a request for an appeal hearing shall forfeit his/her right to an appeal. A Resident/Fellow who fails to appear at a hearing will be deemed to have withdrawn the appeal. In either case (failure to file an appeal or failure to appear) further legal action is precluded.
2. Computing Time: The following rules apply in computing any time period specified in this policy:
 - a. When the period is stated in days or a longer unit of time:
 - i. Exclude the day of the event that triggers the period;
 - ii. Count every day, excluding intermediate Saturdays, Sundays, and legal holidays; and
 - iii. Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
 - b. If the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.
 - c. Legal holidays are those designated as such by CMMC policy.

O. Report Requirements

Under Pennsylvania law, certain actions involving physician discipline or adverse action must be reported to the Board of Medicine. In addition, behavior incompatible with the role of a physician including illegal, immoral or unethical behavior must also be reported to the Board of Medicine. Required reports shall be made by CMMC following the conclusion of the appeal process, if invoked by the Resident/Fellow, or following conclusion of the time period for the Resident/Fellow to request an appeal (pursuant to the Appeal of Disciplinary Action Policy). The DIO is designated as the CMMC representative who will make required reports in connection with GME matters to the

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Pennsylvania Board of Medicine. The DIO is encouraged to consult with legal counsel for guidance in making required reports.

References

IR: I.B.4.b.). (12) (GMEC Responsibilities)

GMEC Review: 3/2018

GMEC Revision: 12/2017