

Creighton University School of Medicine-Omaha Policies

POLICY:	Academic Appeals and Due Process
GOVERNING BODY:	Graduate Medical Education Committee – Creighton University School of Medicine-Omaha
REVISED DATES:	7/9/2024;9/2023; 08/2021; 06/2019; 09/2015
ACGME ACCREDITATION STANDARD REFERENCE:	Institutional Requirement: IV.D.1.b) Appointment, Promotion, Renewal, and Dismissal

PURPOSE

Provide all House Staff Physicians (“HSP”) training in Creighton University School of Medicine-Omaha Graduate Medical Education programs (“CUSOM-OMA”) with a speedy and impartial method for resolving issues related to certain actions taken concerning professional and academic performance.

SCOPE

This policy applies to all CUSOM-OMA HSP and their respective training programs, both that are Accreditation Council for Graduate Medical Education (ACGME) accredited or Non-ACGME Accredited are required to comply with this operating procedure.

This policy governs appeals of corrective action.

DEFINITIONS

Clinical Competency Committee (CCC): The Clinical Competency Committee is required for each ACGME accredited program. Its role is to advise the program director regarding its synthesis of progressive resident performance and improvement toward unsupervised practice.

Designated Institutional Official (DIO): The individual in a Sponsoring Institution who has the authority and responsibility for all the ACGME- accredited GME programs.

House Staff Physician (HSP): Residents or fellows of any Creighton sponsored GME program.

Program Director: The physician designated with authority over and accountability for the operation of a residency or fellowship program.

PROCEDURE

- A. Matters not subject to this policy should be discussed with the program director, who may refer the matter to the appropriate individual or office.
- B. Disputes regarding corrective action should first be taken up between the HSP and Program Director. If the Program Director is involved in the event or issue, the HSP may then proceed directly to the next step. It is intended that as many matters as possible be resolved between

the HSP and the program. Written materials documenting the concerns and resolution should be maintained.

- C. If no satisfactory settlement is reached above, the HSP may state in writing the reasons why the matter remains unresolved and what resolution the HSP is seeking. The HSP shall submit the writing described above to their program director. If the HSP does not submit the written statement within three (3) calendar days after the meeting with Program Director as described in paragraph (A), the Program Director is not required to respond, and no further review rights are available. If the written statement is timely submitted, the program director shall review the matter, discuss it with the HSP and provide a written response, normally within five (5) calendar days after the meeting. Prior to responding, the program director may consult with the program's clinical competency committee ("CCC"), in which case an additional two days may be used to respond.
- D. If no satisfactory resolution is yet reached, then the HSP may submit to the DIO a request for an ad hoc panel review. To proceed, a request must be made in writing within five (5) calendar days of the program director's decision described in paragraph (C) above. The request shall include the reasons for appeal and any supporting evidence/documentation. If the HSP wishes to submit confidential information (especially regarding patients), the HSP shall work with the DIO and the University Privacy Officer to protect the confidentiality of such information, in which case additional time may be granted at the discretion of the DIO to resolve such confidentiality matters. Decisions regarding redaction shall be determined by the University Privacy Officer.

The appeal must be based on one of the following reasons:

1. The corrective action was taken without following established policy or procedure;
 2. The corrective action was arbitrary and capricious; and/or
 3. The corrective action was unsubstantiated by the evidence.
- E. Upon receipt of a request for an ad hoc review panel, DIO shall organize a panel and arrange its meeting, which meeting shall normally occur within fifteen (15) business days of receiving the HSP request for a review. To ensure fairness, no member of the ad hoc review panel should have any direct involvement with the circumstances in question. The composition of the ad hoc panel shall consist of the following five individuals, none of which shall be from the department of the HSP in question, but should be from departments with CUSOM-OMA:
 1. Two faculty members, consisting of
 - i. One (1) Program Director
 1. The Program Director shall act as chairperson of the ad hoc review panel
 - ii. One (1) core faculty member
 2. Two HSPs consisting of
 - i. One (1) HSP at a more senior level of training as the HSP in question
 - ii. One (1) HSP at the same level of training as the HSP in question
 3. One (1) GME-OMA Administrator or Manager.

- F. In addition, to ensure fairness at the review, due process afforded to HSP during the ad hoc review, shall include the following:
1. The right to know the time and place (virtual or in person) of the ad hoc review as well as the names of the panel members. This shall be provided to the HSP in writing.
 2. The right to offer witnesses for the panel to consider calling. To exercise this right, the HSP shall submit a list of proposed witnesses and the reasons the witnesses are relevant to the matter before the panel, which list shall be submitted to the DIO and the program director at least five (5) days before the panel is to meet. Witnesses who speak solely to character will not be considered relevant.
 3. The right to submit witness questions for the review panel to consider, which list should be submitted to the DIO at least three (3) days before the panel is to meet.
 4. The right to a hearing before an impartial body.
 5. The right to present their position statement live and answer questions of the panel.
 6. The right to be accompanied by an advisor, who may or may not be an attorney. While the advisor may consult with and advise the HSP during the review, the advisor shall not in any way participate in the proceedings.
 7. The right to a written statement prepared by the hearing body setting forth its recommendation and/or conclusion, its reasons for reaching such recommendation, and the facts relied upon in reaching such recommendation.
- G. The program director:
1. Shall submit a position statement and supporting documentation to the panel. The program director shall work with the DIO and University Privacy Officer to address any confidentiality issues that arise in the presentation of supporting information. The program director's statement is due 5 days before the panel is to meet.
 2. May submit a list of witnesses for the panel to consider calling and the reasons those witnesses are relevant. Witnesses who speak solely to character will not be considered relevant. The list and reasons should be submitted to the DIO at least 5 days before the panel is to meet. Witnesses who speak solely to character will not be considered relevant.
 3. May submit witness questions for the review panel to consider, which list should be submitted to the DIO at least 3 days before the panel is to meet. The program director must submit these items to the DIO at least five days before the review panel is to meet.
- H. The DIO shall share any items submitted by the HSP with the program director, and vice versa, usually within one day of receipt.
- I. Procedure at the ad hoc review:
1. The HSP shall present first.

2. The Program Director shall then present their position statement.
 3. The panel may call any witnesses it deems relevant to the matter and ask questions it considers necessary to its review and decision.
 4. University counsel will be present to assist the panel.
 5. At the discretion of the panel's chair, the HSP and the program director may each be granted brief recesses to confer with their advisors.
 6. The panel may request additional witnesses or information not already made available to it, should it find such witnesses or information relevant to the issues before the panel. The DIO shall work to promptly respond to the panel's request. The Panel will continue the meeting until such information / witnesses are available.
 7. Once all testimony has been received, the HSP, program director, witnesses and representatives shall be excused, and the review panel shall deliberate privately. The panel may seek legal advice from University counsel, if it so chooses. The panel will provide its findings and decision in writing to the DIO, the HSP and the program director, normally within two (2) business days following completion of the review.
- J. Appeal to the DIO: If the HSP or the Program Director does not concur with the decision and/or findings of the ad hoc review panel, the HSP or Program Director may appeal in writing within five (5) business days of receipt of the recommendations of the ad hoc review panel asking the DIO for reconsideration. The written appeal shall include the reasons for appeal. The DIO shall review the record and consider the matter. Normally, the DIO's decision shall be within five (5) business days of the written request of the HSP, will respond to the HSP in writing. The determination of the DIO shall be final, binding and no further review or appeal process will be available.
- K. Related Matters:
1. The burden of persuasion is upon the HSP to demonstrate, by a preponderance of the evidence, that the corrective action failed to follow established policy or procedure, was arbitrary or capricious, or was unsubstantiated by the evidence.
 2. The ad hoc review panel record is confidential and shall not be open to the public or members of the hospital community, except (a) to the extent both parties agree in writing to the DIO or (b) as may otherwise be appropriate in response to a governmental or legal process.
 3. Legal fees and other costs, if any, shall be borne by each side on their own behalf.
 4. The review panel shall record hearing but not its deliberations. There is no requirement or expectation that a court reporter or other method of transcription will be used.
 5. In the event the HSP or the program director raise issues of a conflict of interest of a panel member, the DIO shall determine if a conflict exists and appoint a replacement. If the DIO is alleged to have a conflict, the Dean of the School of Medicine shall determine, in their sole discretion, whether a conflict exists and who shall replace the DIO for purposes of this policy. A conflict cannot be found lightly and must be related to a

material relationship in the disputed matter (e.g., the DIO made the decision to dismiss the HSP) or a significant social relationship between conflicted individuals.

6. No School of Medicine faculty, resident, student or staff may retaliate against any individual who participates in this process. Retaliation means an intentional, adverse action, including any conduct that seeks to discourage, threaten, intimidate, harass or coerce an individual from participating in this process.

REFERENCES

ACGME

EXCLUSIVITY, WAIVER AND BINDING EFFECT:

All academic and professional matters shall be subject to the HSP's Professional and Academic Review Process described herein except the customary assessment of a HSP's performance, assessments of the HSP's progress in the residency/fellowship program, and/or assessments of the HSP's practice of medicine.

Recognizing that CUSOM-OMA HSPs are students in an academic training program, the Professional and Academic Review Process is final and binding and in no case will there be a right to a trial by jury.

AMENDMENTS OR TERMINATION OF THIS POLICY

This policy supersedes all program level policies regarding this area/topic. In the event of any discrepancies between program policies and this GME policy, this GME policy shall govern.

Creighton University reserves the right to modify, amend, or terminate this policy at any time.