



# TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER™

School of Medicine

Operating Policy and Procedure

**SOM OP:** 50.13, **Grievance and Appeals Procedures**

**PURPOSE:** The purpose of this School of Medicine (SOM) policy and procedure is to provide guidelines to address grievances and appeals.

**REVIEW:** This SOM Policy and Procedure shall be reviewed within each odd-numbered fiscal year by the TTUHSC Graduate Medical Education Coordinating Council. Revisions will be forwarded to the Office of the Dean for approval and publication

## **POLICY/PROCEDURE:**

1. **Early Resolution.** Prior to filing a request for a hearing, the resident must attempt to resolve the issue through a meeting with the individual(s) involved.
  - a. If the complaint involves a specific incident or clearly defined matters, the complaint must be initially communicated to the Program Director at this initial step within seven (7) business days.
  - b. For complaints based on a continuing series of less clearly defined matters, the complaint must be communicated to the Program Director at this initial step no later than twenty (20) business days following the onset of the issue(s) of complaint.
  - c. If the issue(s) is not resolved at this initial step, the resident shall promptly attempt resolution by proceeding through the next steps.
2. **Complaint Process.**
  - a. If the complaint is against a faculty member, the resident should contact the Program Director. If not against a faculty member, the resident should contact the Chief Resident. In each case, the resident will clearly present his/her concerns and suggestions for resolution of those concerns, The Chief Resident shall make every effort to facilitate resolution of the issue(s), and shall inform the resident in writing of his/her response and reasons for that response within four (4) business days.
  - b. If resolution has not been achieved after meeting with individuals involved, the resident should meet with the Residency Program Director to seek resolution. The Program Director shall make a determination within four (4) business days.
  - c. If resolution is not achieved as a result of the above, or the complaint involves the Program Director, the resident may then contact the Department Chair regarding the complaint within four (4) business days from the Program Director's decision.
  - d. The resident will present a formal written complaint to the department chair including a summary of specific events, describe prior attempts to resolve the complaint, and state the remedy sought. The formal complaint cannot be changed after submission without approval of all persons concerned. The Department

Chair will investigate the complaint, attempt to reconcile differences and propose a solution. The Department Chair will provide a written statement of his/her recommendation to all parties within four (4) business days from receipt of the complaint.

- e. If the complaint is against the Department Chair, the resident should present the complaint to the Chair of the Campus GME Committee (GMEC).

**3. Hearing Request.**

- a. If the resolution recommended either by the Department Chair or the Chair of the Campus GMEC is rejected by the resident or the person against whom the complaint was filed, each may, within four (4) business days, request a hearing by submitting a written request to the Chair of the Campus GME Committee.
- b. The hearing request must include the original written complaint and remedy sought on the basis of disagreement with the proposed resolution and a copy of the Department Chair's written recommended resolution.

**4. Hearing Procedure.** Upon receipt of the written requests for a hearing, the Chair of the Campus GMEC, having gained assurance that the complaint does not fall under purview of another dispute forum, will, within four (4) days, initiate the process for establishing a Resident Hearing Panel according to the following procedure:

- a. The panel shall consist of a faculty member from the Campus GMEC appointed by the Chair of the GMEC to serve as chairperson. The Chair of the Faculty Grievance Committee will appoint an additional faculty member who will be a full-time physician from a clinical department and may, but is not necessarily required to be, a member of the Faculty Grievance Committee. The Chair of the GMEC will appoint an additional faculty member who will be a clinician involved in graduate medical education, but may not be a member of the GMEC. The fourth member of the Panel will be a housestaff officer. The fifth member of the Panel will be a resident appointed by the President of the Housestaff. The appointed Panel members shall not be from the resident's department or from the department of the party made the subject of the complaint. No panel member shall have a conflict of interest in this matter. The Chair of the Campus GMEC shall immediately notify both parties of the composition of the Panel. Each party has the right to request to replace any of the proposed members of the panel on the basis of conflict of interest. This request must be submitted in writing to the Chair of the Campus GMEC within three (3) business days of notification of the panel composition. The decision of the Chair of the Campus GMEC will be final.
- b. Within four (4) business days, the Panel will coordinate and set a date for the hearing. If the resident plans to have an attorney present, he/she shall notify the Chair of the Panel no later than five (5) days before the hearing date. The party(s) against whom the complaint is made may also have an attorney present only in advisory capacity. An attorney from the Office of General Counsel may attend in an advisory capacity as well.
- c. Within five (5) business days, the parties will submit copies of the original written complaint/response, copies of documentation and a list of the witnesses to be presented at the Hearing, and the Chair of the Panel will distribute these to the opposing party and the Panel members. Each party will then have three (3) business

days to submit additional documentation or add to the list of witnesses in rebuttal. The Hearing shall be held within five (5) business days after receipt of this additional material.

- d. The chair of the panel shall present both parties with the Agenda for the Hearing which may include opening statements, presentation by the resident, presentation by the person against whom the complaint is made and summary or closing statements. Each party shall have the opportunity to question the other party and all witnesses appearing. The responsibility of establishing the validity of the complaint rests with the resident who filed the complaint.
- e. The Hearing Panel Chair shall make an audio record of the hearing, which shall include date, time and location of the hearing and names of those present. Evidence, e.g. records, written testimony, duplicated materials, etc. introduced will be noted. A copy of the audiotape of the proceedings will be provided to both parties upon written request. The original will be retained in the GME office for a period of one year.
- f. All materials presented to the Panel shall be treated as confidential, and upon completion of the hearing, all materials shall be returned to the appropriate party or destroyed together with any notes taken during the process, except for a copy which is forwarded to the Chair of the GMEC with the Panel's recommendation.
- g. After completion of the hearing, the Resident Hearing Panel shall meet in closed session and prepare written findings and recommendations. Within four (4) business days of ending deliberations, the Chair of the Panel shall forward the Panel's findings and recommendation to the Chair of the Campus GMEC.
- h. The Chair of the Campus GME Committee shall present the findings and recommendations to the Campus GMEC, which shall review the Panel's recommendations, provide written results of the GMEC's review and then forward the Committee's findings and recommendation and the Panel's recommendation to the Regional Dean/Associate Dean for Educational Programs for Review and comment to be made within four (4) business days of receipt of the recommendation.
- i. The Regional Dean/Associate Dean for Educational Programs may also provide a position regarding the findings and recommendations and shall forward the recommendations, comments and other appropriate documentation to the Dean, School of Medicine who shall make the final decision within four (4) business days of receipt of the materials.
- j. Both parties shall have the right of appeal of any final decision but only on procedural grounds. The appealing party must provide written notice of appeal to the opposing party and the Regional Dean/Associate Dean for Educational Programs, and the grounds for the appeal must be submitted to the Dean within three (3) business days. Within three (3) business days, the Dean whose decision is final, will notify all parties in writing of his decision regarding the appeal.
- k. The Chair of the GMEC must approve any departures from these procedural guidelines, including established time frames, and only for cause.

- i. Upon receipt of the written recommendations for dismissal/Disciplinary Action Form, the resident may initiate the appeal process by submitting to the Chair of the campus GMEC within five (5) business days, a written notice of appeal. In the event the resident elects not to appeal the decision or the resident fails to appeal within the prescribed five (5) business days, the resident will be deemed to have waived the option to appeal. Upon receipt of the findings of the ad hoc Appeals Committee or after time has expired to appeal or, the Regional Dean/Associate Dean for Educational Programs will then submit in writing to the Dean a final recommendation for action. The Dean will then review the recommendation and render a decision, which shall be communicated in writing to the Educational Programs, and Program Director.
- m. The resident shall have no clinical duties during this process, but the resident will be provided salary and insurance benefits during the process (provided the resident has not exhausted sick and/or vacation leave time) not to exceed 45 calendar days from the receipt of the request for consideration. The Program Director may assign duties to the resident, other than clinical, during the review period, if applicable.
- n. Upon receipt of the notice of appeal from the resident, the Chair of the Campus GMEC shall appoint an ad hoc Appeal review Subcommittee consisting of two (2) faculty members of that committee, a chief Resident, and a household officer. Membership of this Subcommittee shall exclude faculty and housestaff from the department of the appealing resident. The Subcommittee shall be charged to review the recommendation of dismissal.
- o. At least five (5) days prior to the hearing, the resident and the Program Director shall provide to each other and the Review Subcommittee all relevant documents that will be used in the appeal process to include, but not limited to, the written request for appeal, all reports, evaluation and recommendations related to the action taken and his/her file as maintained by the Office of Graduate Medical Education. All document submitted to the Review Subcommittee shall be deemed confidential and returned to the GME office after a decision is rendered. At least five (5) days prior to the hearing the Resident and Program Director shall provide to each other and the Review Subcommittee the names of witnesses to be available for the hearing proceedings. The resident and Program Director shall each be responsible for arranging the participation of their respective witnesses for and during the hearing proceedings.
- p. At the hearing by the Appeal Review Subcommittee, the resident shall have the right to appear in person and may be accompanied by legal counsel retained by the resident. If legal counsel is to accompany him/her, the resident shall, in writing, notify the subcommittee at least five (5) business days in advance. The legal counsel may serve only in an advisory capacity to the resident and may not participate in the hearing. In the event the resident is accompanied by legal counsel at the hearing, a representative from the Office of the Vice Chancellor and General Counsel (OVCGC) shall attend on behalf of the university.
- q. The resident shall have the right to address the Subcommittee, but may not be required to do so, and may introduce evidence considered to be relevant and material to the case. This material should be provided to the appeals committee chair and Program Director not later than five (5) business days prior to the hearing (The Director of GME may be utilized to disseminate the documents to the

committee and Program Director). All evidence offered must be reasonably related to the facts and statements concerning the reasons for dismissal and the resident's appeal.

- r. Failure of the resident to appear at the hearing results in automatic dismissal of the residents request for consideration and any and all other rights of appeal. The Review Subcommittee shall submit a report and recommendation to the Campus GMEC no later than seven (7) calendar days from the conclusion of the hearing.
  - s. If the resident believes that procedural due process has not been followed up to and/or during the hearing, he/she must notify the Chair of the Campus GMEC in writing within five (5) calendar days after receipt of the Review Subcommittee's recommendations. Only in cases where the Campus GMEC determines that the procedural due process concerns materially affected the outcome will a new subcommittee be appointed to re-hear the residents request for consideration of the dismissal.
  - t. The Campus GMEC shall review the findings and recommendations of the Review Subcommittee at a regular or called meeting that shall be held within seven (7) calendar days after receipt of report from the Review Subcommittee. The recommendation of the Campus GMEC will be forwarded to the Regional Dean/ Associate Dean for Educational Programs for review and recommendation, who in turn, will forward his/her recommendation to the Dean of the School of Medicine. The Dean of the School of Medicine shall then review the recommendation and make a decision, which shall be communicated in writing to the resident, the Regional Dean, Program Director, and Chair of the GMEC. The communication to the resident shall be Certified Mail Return Receipt Requested or hand delivered with acknowledgment of delivery.
5. **Previous Agreements.** A final determination by the Dean of the School of Medicine to discuss the resident shall nullify or terminate any previous agreement appointing the resident to a subsequent year of training.
6. **Reporting.** Unless required and where a deadline for reporting exists, no specialty or subspecialty certifying board or national, state or local medical organization, exclusive of a licensing agency, shall be notified of a pending disciplinary action until a final determination has been made by the Dean of the School of Medicine.
7. **Pursuit of Other Remedy.** Remedies and procedures contained herein must be exhausted in their entirety prior to the residents resorting to any other forum.
8. **Time Frames.** Time frames listed herein are guidelines and may be extended only by the Dean of the School of Medicine where justified. For the purpose of determining any deadline herein, the first business day following any event shall count as the first day.