

Creighton University School of Medicine-Phoenix Policies

POLICY:	Academic Appeals and Due Process
GOVERNING BODY:	Graduate Medical Education Committee – Creighton University School of Medicine-Phoenix
GMEC APPROVAL DATE:	August 7, 2023; February 6, 2023
REVISED DATE:	February 6, 2023
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-Phoenix (CUSOM-PHX) programs with a speedy and impartial method for resolving issues related to certain actions taken concerning professional and academic performance.

Actions subject to the Academic Appeal and Due Process Policy are included below, at the conclusion of this Policy.

SCOPE

The policy applies to all CUSOM-PHX HSP and their respective training programs, that are Accreditation Council for Graduate Medical Education (ACGME) accredited or meet the criteria in the Non-ACGME Accredited Program Policy.

PROCEDURE

Professional and Academic Review:

- A. Professional and academic concerns 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 program. Written materials documenting the concerns and resolution should be maintained.
- B. 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 documentation described above to their program director. If the program director is the immediate supervisor, the HSP may submit the written statement to the Designated Institutional Official (DIO). If the HSP does not submit the written statement within five (5) calendar days after the meeting with program director as described in paragraph (A), the program director or DIO are not required to respond, and no further review rights are available. If the written statement is submitted in a timely manner and a response is sought, the person to whom the statement was submitted shall discuss his or her findings with the HSP and provide a written response within five (5) calendar days after the meeting. Both parties shall attempt to resolve the dispute at this step informally.
- C. 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 ten (10) calendar days of the informal discussion described in paragraph (B) above.

1. Upon review the DIO shall organize a hearing of an ad hoc review panel 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-PHX Graduate Medical Education (GME) programs:
 - a. Two faculty members, including one program director. The program director shall act as chairperson of the ad hoc review panel (faculty members may be physicians or non-physicians, employed by any of the Creighton Alliance partners, designated by the DIO).
 - b. Two HSPs or fellows, one being a senior HSP or fellow and one being a HSP at the same level of training as the HSP in question.
 - c. One CUSOM-PHX Administrator or Manager.
 2. To ensure fairness at the review, the HSP has the following rights:
 - a. 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.
 - b. The right to be heard live and present witnesses on behalf of the HSP.
 - c. The right to submit to the review panel question for the witnesses.
 - d. The right to a hearing before an impartial body.
 - e. The right to be accompanied by an advisor, who may or may not be an attorney. While the advisor may attend the review and consult with and advise the HSP during the review, the advisor shall not in any way speak to the review panel during the proceedings.
 - f. The right to submit documents to be considered by the review panel. The HSP must submit the documents to the DIO not less than five (5) business days before the review. Such submission shall include a list of witnesses, if any, and a summary of the subject matter about which that witness will testify and the relevance of that witness's testimony to the matter being heard. It shall be at the discretion of the panel whether to call witnesses and what questions will be asked.
 - g. 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.
 3. Procedure at the ad hoc review:
 - a. The HSP shall present first.
 - b. The program director follows.
 - c. The panel may then call witnesses if it so chooses.
 - d. The review panel shall deliberate privately and will provide its written finding(s) and recommendation(s) within two (2) business days following completion of the review. The review panel will use the preponderance of the evidence standard to determine whether the HSP's professional or academic concerns have merit and the corrective action to be taken to resolve those concerns.
- D. Appeal to the DIO: If the HSP or the program director does not concur with the findings and corrective action of the ad hoc review panel, except in cases of summary dismissal as described below, 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 DIO

shall consider the matter of the written request of the HSP or program director. Normally a decision will be made and communicated within five (5) business days to the HSP or Program Director in writing. The determination of the DIO shall be final, binding and no further review or appeal process will be available.

E. Related Matters:

1. The burden of persuasion is upon the HSP to demonstrate that the action taken was arbitrary and capricious, i.e., not based on any legitimate academic or professional reason.
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. No recordings of the proceedings shall be allowed.

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-PHX HSPs are trainees in an academic training program, the Professional and Academic Review Process is final and binding.

SUMMARY DISMISSAL

Notwithstanding anything contained in this policy, if the DIO determines that the continued presence of a HSP on campus or in the residency/fellowship program substantially interferes with the orderly function of the residency/fellowship program; the hospital(s); or the safety or welfare of employees or patients; the HSP shall be suspended with pay effective immediately. However, such dismissals are subject to appeal through the Professional and Academic Review Process. This decision is not subject to appeal.

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 institutional policy shall govern.

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

ACTIONS SUBJECT TO THE ACADEMIC APPEAL AND DUE PROCESS POLICY

Examples of Academic and Professional issues coming within the scope of review are as follows:

- The decision not to advance a HSP within his or her program of study.
- An HSP being placed on probation.
- The non-renewal of a HSP's contract.
- An HSP becoming subject to a Under Review status.
- An HSP's suspension or dismissal; and
- The determination not to certify an HSP to sit for an Accrediting Board.

Descriptors and examples of unprofessionalism include but are not limited to the following:

- Unmet professional responsibility.
- Needs continual reminders about fulfilling responsibilities to patients and to other health care professionals.
- Cannot be relied upon to complete tasks.
- Misrepresents or falsifies actions and/or information, for example regarding patients, laboratory tests, research data.

Lack of effort toward self-improvement and adaptability:

- Is resistant or defensive in accepting criticism
- Remains unaware or limited awareness of own inadequacies
- Resists considering or making changes
- Does not accept responsibility for errors or failure
- Is overly critical/verbally abusive during times of stress
- Demonstrates arrogance

Diminished relationships with patients and families

- Lacks/limited empathy and is often insensitive to patients' needs, feelings and their wishes or to those of the family.
- Lacks/limited rapport with patients and families.
- Displays inadequate commitment to honoring the wishes and wants of the patient.

Diminished relationships with health care professionals

- Demonstrates inability/limited ability to function within a health care team.
- Lacks/limited sensitivity to the needs, feelings and wishes of the health care team.

Examples of issues, complaints, and grievances, which do not fall under this policy and should be referred to the CUSOM-PHX GME Complaint and Grievance Policy & Procedure:

- Call schedules, vacation schedules, work and duty assignments, scheduling changes, environmental work issues.
- Communication challenges with peers, faculty, patients, care team and staff.

Routine performance evaluations or evaluations of patient care competencies (unless they result in an adverse action, and then the appealable issue is the adverse action itself).