

Policy	
TITLE: Academic Appeals and Due Process	
ISSUING DEPARTMENT: Graduate Medical Education Committee Creighton University School of Medicine-Phoenix	ORIGINALLY ISSUED: 02/06/23
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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 Appeals and Due Process Policy are included at the conclusion of this Policy.

DEFINITIONS

Academic Chair: The administrative head of an academic department, appointed by the CUSOM-PHX Regional Dean, responsible in matters concerning the administration of the department.

Designated institutional official (DIO): The individual in a Sponsoring Institution who has the authority and responsibility for all of that institution's ACGME-accredited programs.

House Staff Physician (HSP): Any resident or fellow in a CUSOM-PHX GME program.

Immediate Supervisor: The professional who is evaluating and directly responsible for HSP performance on a particular rotation.

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

PROCEDURE

INFORMAL

- A. 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.
- B. The HSP may submit to the program director a request to meet to resolve the issue within seven (7) calendar days after being notified of the action. The HSP may state in writing the reasons why the actions regarding their professional and academic performance should be resolved differently and what resolution the HSP is seeking.
 1. The HSP shall submit the documentation described above to their program director at least three (3) calendar days before the scheduled meeting.
 2. If the program director is also the immediate supervisor, the HSP may submit the written statement to the Academic Chair.
 3. If the HSP does not submit the written statement at least three (3) calendar days before the scheduled meeting with the program director as described in paragraph (B), the program director or Academic Chair are not required to respond, and no further review rights are available.
 4. If the written statement is submitted in a timely manner and a response is sought, the person to whom the statement was submitted shall meet and discuss their 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.

FORMAL

C. *Ad hoc panel review.*

If no satisfactory resolution is yet reached, then the HSP may submit a formal appeal to the DIO and request for an ad hoc panel review. To proceed, a request must be based on one of the following reasons:

- The action was taken without following established policy or procedure;
- The action was arbitrary and capricious; and/or
- The action was unsubstantiated by the evidence.

The request must be made in writing within ten (10) calendar days of the informal discussion described in paragraph (B.3) above.

1. Upon review the DIO shall organize a hearing of an ad hoc review panel within twenty-one (21) calendar 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 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 HSP: one senior HSP and one HSP at same level of training as HSP in question
- c. One CUSOM-PHX Administrative staff member.
- d. University legal counsel will be present to assist the panel and will not have voting privileges.

2. The HSP.

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 and 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 questions for the witnesses to the review panel.
- 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 seven (7) calendar 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. Witnesses who speak solely to character will not be considered relevant. 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. The program director.

Shall submit a position statement and supporting documentation to the panel. The program director shall work with the DIO and University legal counsel to address any

confidentiality issues that arise in the presentation of supporting information. The program director's statement is due not less than seven (7) calendar days before the panel is to meet.

- a. 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 not less than seven (7) calendar days before the panel is to meet.
4. The DIO.
The DIO shall share any items submitted by the HSP and program director with the ad hoc review panel members, the HSP, and program director at least three (3) calendar days before the hearing.
5. Procedure at the ad hoc review:
 - a. The HSP shall present first.
 - b. The program director follows.
 - c. The panel may call any witnesses it deems relevant to the matter and ask questions it considers necessary to its review and decision.
 - d. The review panel shall deliberate privately and will provide its written finding(s) and recommendation(s) within four (4) calendar days following completion of the review. The review panel will use the preponderance of the evidence standard to determine whether the HSP professional or academic concerns have merit and the action(s) 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:

1. The HSP or program director may appeal in writing within seven (7) calendar days of receipt of the recommendations of the ad hoc review panel asking the DIO for reconsideration.
2. 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 seven (7) calendar days to the HSP or program director in writing. The determination of the DIO shall be final and 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. 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.
4. Legal fees and other costs, if any, shall be borne by each side on their behalf.
5. No recordings of the proceedings shall be allowed.

SCOPE

The policy applies to all Creighton University School of Medicine-Phoenix (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 Programs Policy.

ADMINISTRATION AND INTERPRETATIONS

The Graduate Medical Education Committee – Creighton University School of Medicine-Phoenix is responsible for the administration of this policy and may interpret its provisions as needed.

EXCLUSIVITY, WAIVER, AND BINDING EFFECT

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

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

AMENDMENTS OR TERMINATION OF 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. The University reserves the right to modify, amend or terminate this policy at any time.

ACGME ACCREDITATION STANDARD REFERENCE

4.4.b. Appointment, Promotion, Renewal and Dismissal

ACTIONS SUBJECT TO THE ACADEMIC APPEAL AND DUE PROCESS POLICY

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

- Noncertification for boards
- Non-promotion
- Non-renewal
- Probation
- Suspension or dismissal
- Under Review

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 healthcare professionals.
- Cannot be relied upon to complete tasks.
- Misrepresents or falsifies actions and/or information, for example regarding patients, laboratory tests, and research data.

Lack of effort toward self-improvement and adaptability:

- Is resistant or defensive in accepting feedback.
- Remains unaware or has 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 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 healthcare professionals

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

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

- Call schedules, vacation schedules, work and duty assignments, scheduling changes, and 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).

Summary of Actions and Reportability

Action	Subject to Academic Appeals and Due Process Policy	Subject to Grievances and Complaints Policy	Reportable ²	Retain in Resident File
Remedial¹				
Informal Counseling	No	No	No	No
Structured Feedback	No	No	No	No
Under Review status	Yes	No	No	No
Corrective				
Dismissal	Yes	No	Yes	Yes
Noncertification	Yes	No	Yes	Yes
Non-promotion	Yes	No	Yes	Yes
Non-renewal	Yes	No	Yes	Yes
Probation	Yes	No	Yes	Yes
Suspension	Yes	No	Yes	Yes
Grievance (Examples³)				
Call schedules, vacation schedules, work and duty assignments, scheduling changes, environmental work issues	No	Yes	No	No
Communication challenges with peers, faculty, patients, care team and staff	No	Yes	No	No
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)	No	Yes	No	No

¹ Details of any remedial actions may also be disclosed to third parties, where HSP provides consent to disclose performance history.

² Where required by applicable state law, corrective actions shall be reported to the state licensing board. Corrective actions may also be disclosed to third parties, including prospective employers, where HSP provides consent to disclose performance history.

³ These examples are not all inclusive or exhaustive. When in doubt consult with the Program Director or GME Office.

Any matters already covered by separate Creighton University policy and process shall be referred to those processes, including but not limited to matters subject to the jurisdiction of the Office of Title IX & Civil Rights Compliance (example: harassment and discrimination) and matters subject to the jurisdiction of the Office of Research Compliance (example: research misconduct).