



Due Process Policy

October 19, 2023

DUE PROCESS (IV.D.1b)

ACGME Institutional Requirements

IV.D.1.b) The Sponsoring Institution must have a policy that provides residents/fellows with due process relating to the following actions regardless of when the action is taken during the appointment period: suspension, non-renewal, non-promotion; or dismissal. ^(Core)

A resident/fellow that receives a Notice of Reportable Action has the right to appeal that decision.

REQUEST FOR REVIEW OF REPORTABLE ACTION

A. ACADEMIC DEFICIENCIES

- 1) A **Resident** has the right to request a review of any **Reportable Action** recommended by the **CCC** in a **Notice of Reportable Action**. The purpose of this review is to determine if, when the basis for the **Reportable Action** is **Academic Deficiencies**, sufficient documentation is present to warrant academic concerns, to determine if the **Resident** has previously had the opportunity for remediation, and if this Policy and Procedure has been substantially followed.
- 2) The **Resident** must request a review in writing or by email directed to the **PD** within five (5) business days of the date of receipt of the **Notice of Reportable Action**. If a request is not timely made, the decision of the CCC shall become final and the PD shall notify the Associate Dean for GME of the Reportable Action.
- 3) If the **Reportable Action** is suspension or dismissal from the **Program** or if there are concerns for patient safety, and the **Resident** timely requests a review, the **CCC** may remove the **Resident** from all clinical duties and place the **Resident** on a paid leave of absence, but in its discretion may allow the **Resident** to continue with the didactic curriculum until the review process is completed.
- 4) Upon receipt of a timely request for review from the **Resident**, the **PD** must provide a copy of the request for review to the Associate Dean for GME and the **CCC** Chair.
- 5) The Associate Dean for GME will select three members of the GMEC who are not faculty in the **Resident's Program**; these three members will constitute the Review Committee. The Associate Dean of GME will notify the **PD** and the **Resident** of the identity of the members of the Review Committee as soon as reasonably possible.
- 6) Within ten (10) business days of receipt of notification of the members of the Review Committee, the **PD** must provide the **Resident** and the members of the Review Committee the following materials:
 - a. All information related to the basis for the **Reportable Action**.
 - b. A written report from the **CCC** summarizing the rationale for the recommendation for the **Reportable Action**.



- c. Copies of all **Notices of: Academic Deficiency; Failure to Remediate; Proposed Reportable Action; and Reportable Action** issued to the **Resident**.
- 7) Within ten (10) business days of receipt of notification of the members of the Review Committee, the **Resident** must provide any materials that the **Resident** wants the Review Committee to consider to the Review Committee members, the Chair of the **CCC**, and the **PD**.
- 8) It is expected the review will occur as quickly as reasonably possible and will be scheduled within fourteen (14) business days of the date the materials are received by the **Resident**, Chair of the **CCC**, **PD**, and Review Committee members. The Review Committee will schedule the review in conjunction with the schedules of the **Resident**, Chair of the **CCC**, **PD**, and Review Committee members.
- 9) The Review Committee, in its sole discretion, may extend the time for materials to be provided and for the date of the review.
- 10) During the review:
 - a. The **Resident** shall have the opportunity to present his/her perspective and respond to any questions from the members of the Review Committee. The **Resident** will meet with the Review Committee alone; however, an **Advisor** may be present with the **Resident** during the meeting, but the **Advisor** may only act in an advisory capacity to the **Resident** and may not otherwise actively participate in the review. The **Resident** shall notify the Review Committee if an **Advisor** will be present and the identity of the **Advisor** at least five (5) calendar days prior to the meeting.
 - b. Following the meeting with the **Resident**, the **PD** and/or Chair of the **CCC** shall have the opportunity to present their perspectives and respond to any questions from the members of the Review Committee. The **PD** and/or Chair of the **CCC** shall meet with the Review Committee independent of the **Resident**.
 - c. The Review Committee may request additional materials or the opportunity to talk with other individuals. If any additional review materials are requested, they must be provided to the Review Committee, Chair of the **CCC**, **PD**, and the **Resident** within five (5) business days, unless an extension is granted by the Review Committee.
 - d. Upon receipt of any additional materials:
 - i. The **Resident** must have the opportunity to respond to the Review Committee regarding the additional materials, in writing, within five (5) business days of the receipt of the additional materials.
 - ii. The Review Committee may request another meeting with the **Resident** (either after receipt of the additional materials and/or receipt of the response to the additional materials by the **Resident**).
 - iii. The Review Committee may request another meeting with the **PD** and/or Chair of the **CCC**.
 - e. A final decision from the Review Committee should be rendered within five (5) business days of the conclusion of its meetings and review of all materials requested.
 - f. The Review Committee may:



- i. Adopt or modify the **Reportable Action** recommended by the **CCC** and the **Reportable Action** becomes final.
- ii. Request further review by the **CCC** based on defined issues or questions. The **CCC** must review the issues or questions from the Review Committee and render a final recommendation to the Review Committee within fourteen (14) days of the date of the Review Committee's request. The Review Committee will then render a final decision.
- iii. The decision of the Review Committee must be provided in writing to the **Resident**, the **PD**, the **CCC** Chair, and the DIO.

B. MISCONDUCT

- 1) A **Resident** has the right to request a hearing of any **Reportable Action** recommended by the **CCC** in a **Notice of Reportable Action**. The purpose of this hearing is to determine if there is substantiation of the misconduct, and the misconduct is serious enough to warrant **Reportable Action**.
- 2) The **Resident** must request a hearing in writing or by email directed to the **PD** within five (5) business days of the date of the **Notice of Reportable Action**. If the Resident fails to timely request a hearing, the Reportable Action will become final on the sixth business day from the date of the Notice of Reportable Action.
- 3) If the **Reportable Action** is suspension or dismissal from the **Program** or if there are concerns for patient safety, and the **Resident** timely requests a hearing, the **CCC** may remove the **Resident** from all clinical duties and place the **Resident** on a paid leave of absence, but in its discretion may allow the **Resident** to continue with the didactic curriculum until the hearing process is completed.
- 4) Upon receipt of a timely request for a hearing from the **Resident**, the **PD** must provide a copy of the request for the hearing to the Associate Dean for GME and the Chair of the **CCC**.
- 5) The Associate Dean for GME will select three (3) members of the GMEC who are not faculty in the **Resident's Program** to constitute the Hearing Panel and shall designate a Chair.
- 6) The Chair of the Hearing Panel shall work with the Resident, Chair of the CCC, and PD to identify a date for the hearing.
- 7) A notice of the hearing shall be provided to the Resident, Chair of the CCC, and PD at least twenty (20) business days before the hearing, or sooner if the agreed-upon date for the hearing is less than twenty (20) business days, which shall include:
 - a. Detailed description of the alleged misconduct and any applicable policies or laws that have been alleged to have been violated.
 - b. Description of the procedures for the hearing, including the right to have advisers, who may be attorneys, present at the hearing.
 - c. The potential Reportable Action that may be imposed.



- d. Statement that the Resident is permitted to inspect, copy, and review all information or evidence obtained as part of the investigation that directly relates to the alleged misconduct.
 - e. Statement that the Parties and their witnesses must be truthful when making any statements or providing any information or evidence throughout the hearing, and documentary evidence must be genuine and accurate.
 - f. Statement that nothing in the hearing procedures is intended to alter any rights that the Resident may have under applicable Federal or Missouri laws or the US Constitution.
 - g. Names of the Hearing Panel and the designated Chair.
 - h. How an objection to any member of the Hearing Panel can be made and the timeline for making that objection.
 - i. Time, date, and location of the hearing.
 - j. That if the Resident fails to appear at the hearing, the hearing will be conducted without the Resident.
 - k. That the Parties may request a virtual hearing with technology enabling participants simultaneously to see and hear each other, and/or necessary accommodations.
- 8) The notice shall be in writing and shall be delivered to the Resident in person, or emailed to the Resident's UMKC-issued email if the Resident has consented electronically or in writing to receiving all notifications by email or mailed to the Resident's address as indicated in official UMKC records and also emailed to the Resident's UMKC-issued email.
- 9) If the Resident has identified an adviser to be present at the hearing, the notice shall also be mailed to the adviser.
- 10) Any request to reschedule the hearing shall be made in writing to the Chair of the Hearing Panel who is authorized to reschedule the hearing if the request is timely and for good cause.
- 11) Pre-Hearing Disclosures
- a. At least ten (10) business days before the hearing, the Chair of the CCC or PD shall provide the Resident, the Resident's adviser (if identified), and the Chair of the Hearing Panel with:
 - i. The investigative report that summarizes the relevant evidence related to the alleged misconduct either in electronic format or hard copy.
 - ii. List of proposed witnesses to be called at the hearing.
 - iii. Copies of all proposed documentary, photographic, video, and audio evidence.
 - iv. How the Resident can access all the evidence gathered during the investigation directly related to the alleged misconduct.
 - b. At least five (5) business days before the hearing, the Resident shall provide the Chair of the CCC, PD, and Chair of the Hearing Panel with:
 - i. Any written response to the investigative report.
 - ii. List of proposed witnesses to be called at the hearing.
 - iii. Copies of all proposed documentary, photographic, video, and audio evidence.



- c. If the Chair of the CCC or PD identifies any rebuttal witnesses or evidence to be called or submitted after receipt of the Resident's information, the Chair of the CCC or PD shall provide notice of such witnesses or evidence to the Resident, the Resident's adviser, and Chair of the Hearing Panel at least two (2) business days before the hearing.
- 12) The Chair of the Hearing Panel, Chair of the CCC, PD, and Resident may agree that certain witnesses do not need to be physically present if their testimony can be adequately summarized in the investigative report or during the hearing by other witnesses.
- 13) Rights of the Resident at the Hearing are:
- b. Be present at the hearing, which right may be waived by either written notification to the Chair of the Hearing Panel or by failure to appear at the hearing.
 - c. Have an adviser who may be, but is not required to be, an attorney present at the hearing and who may actively participate and assist the Resident during the hearing.
 - i. Prior to the hearing, the adviser may communicate with the Chair of the Hearing Panel, including raising questions or objections, or making requests regarding the hearing procedures.
 - ii. At the hearing, the adviser may request clarification of a procedural matter or object to a procedure by addressing the Chair of the Hearing Panel.
 - iii. The adviser may make presentations and speak on behalf of the Resident and may consult with the Resident during the hearing or outside of the hearing during breaks.
 - iv. The adviser may examine and cross examine witnesses.
 - d. To testify at the hearing or refuse to testify.
 - e. Hear and examine evidence presented to the Hearing Panel.
 - f. Question witnesses testifying at the hearing.
 - g. Present evidence by witnesses or affidavits.
 - h. Make a statement in mitigation or explanation of the alleged misconduct.
 - i. Receive written findings and the sanction imposed by the Hearing Panel.
- 14) Rights of the Chair of the CCC and PD at the Hearing are:
- a. Be present at the hearing.
 - b. Have an attorney from the Office of the General Counsel who may actively participate and assist the Chair of the CCC and PD during the hearing.
 - c. State the facts of the investigative report.
 - d. Hear and examine evidence presented to the Hearing Panel.
 - e. Question witnesses testifying at the hearing.
 - f. Present evidence by witnesses or affidavits.
 - g. Receive written findings and the sanction imposed by the Hearing Panel.
- 15) Conduct of Hearing
- a. All Parties shall have the opportunity to present the facts and arguments in full.
 - b. The Chair of the Hearing Panel shall preside at the hearing, call the hearing to order, call the roll of the Hearing Panel, ascertain the presence or absence of the Resident, verify the receipt of notices related to the hearing by the Resident, report any



- continuances requested and granted, establish the presence of any advisers, explain any special procedures to be employed during the hearing, and permit the Resident to make suggestions regarding, or objections to, any hearing procedures.
- c. The Chair of the Hearing Panel shall determine the relevancy and admissibility of any evidence offered and shall respond to any procedural questions.
 - d. The Chair of the Hearing Panel shall not require, allow, or use any evidence that constitutes, or seek disclosure of, information that is protected under a legally recognized privilege unless the person holding the privilege has waived that privilege.
 - e. The Chair of the Hearing Panel may dismiss any person who interferes with or obstructs the hearing or fails to abide by any ruling of the Chair of the Hearing Panel.
 - f. Rules of common courtesy and decency shall be observed.
 - g. The Chair of the Hearing Panel may exclude any witness, document, or information that is irrelevant, immaterial, cumulative, or more prejudicial than informative.
 - h. The Chair of the CCC or PD shall make opening remarks outlining the general nature of the alleged misconduct.
 - i. The Resident may make a statement after the opening remarks or at the conclusion of the presentation by the Chair of the CCC or PD.
 - j. The Chair of the CCC or PD may state the facts of the investigation and call witnesses and introduce evidence supporting the Notice of Reportable Action.
 - k. The Hearing Panel may question the Chair of the CCC, PD, and witnesses at any time.
 - l. The Resident and the Resident's adviser may cross examine witnesses after they have been questioned by the Chair of the CCC or PD.
 - m. Upon conclusion of the evidence presented by the Chair of the CCC or PD, the Resident may present evidence through witnesses and written documents or other materials.
 - n. The Chair of the CCC or PD and Hearing Panel may question the Resident and the Resident's witnesses at any time.
 - (1) The Resident has the right to remain silent, and such silence shall not be considered as evidence supporting a finding of misconduct.
 - o. After conclusion of the evidence has been presented by the Resident, the Chair of the Hearing Panel may allow either Party to offer rebuttal of the other Party's presentation.
- 16) Record of the Hearing
- a. There shall be an audio, video, digital, or stenographic record of the hearing maintained.
 - b. The "Record of the Case" shall include the notices, hearing record, exhibits from the hearing, and report of the Hearing Panel.
- 17) Report of the Hearing Panel



- a. The Hearing Panel shall carefully review all the materials and promptly render its findings and final decision.
- b. The Hearing Panel may:
 - i. Adopt or modify the Reportable Action recommended by the CCC.
 - ii. Request further review by the CCC based on defined issues or questions. The CCC must review the issues and questions and render a final recommendation for the Reportable Action to the Hearing Panel within fourteen (14) business days of the date of the Hearing Panel's request.
 - iii. The Hearing Panel will then render a final decision.
- c. The final decision and report of the Hearing Panel, and a letter outlining the review or appeal rights, as applicable, of the Resident shall be provided to the Resident, Chair of the CCC, PD, and DIO.
- d. If the final decision supports a Reportable Action, that will not be made until after the Resident waives or exhausts the review or appeal rights.

18) Grounds for Review or Appeal

The grounds for review or appeal are limited to the following:

- i. A material deviation from established procedures that affected the outcome of the matter.
 - ii. To consider new evidence that was not reasonably available at the time the decision was made that could affect the outcome of the matter.
 - iii. The Hearing Panel members demonstrated a conflict of interest or bias against the Resident(s), generally that affected the outcome of the matter.
 - iv. The Reportable Action falls outside that typically imposed for this offense, or for the cumulative conduct record of the Resident.
- b. A review or appeal is not intended to be a full rehearing of the matter and is therefore deferential to the original findings.
 - c. In most cases, reviews and appeals are confined to a review of the written documentation, Record of the Case, and relevant documents regarding the grounds for review or appeal.
 - d. A review or appeal granted based on new evidence should normally be remanded to the Hearing Panel for reconsideration.
 - e. The Chancellor will render a written decision within ten (10) business days after receiving any reply, or after the deadline to reply has passed without a submission being made.
 - f. If the Chancellor is unable to render a decision within ten (10) business days, the Chancellor will promptly notify the Parties of the delay.
 - g. The decision of the Chancellor on a review or appeal is final, and further appeals or grievances are not permitted.

19) Petition for Review

- a. If the Reportable Action is *not for suspension or dismissal* from the Program, the Resident may petition the Chancellor, with a copy to the Chair of the Hearing Panel, in



writing for a review of the decision of the Hearing Panel within ten (10) business days after notification of the Hearing Panel's decision.

- b. The Petition for Review must state the grounds for review in detail.
 - c. The Chair of the Hearing Panel may provide a written response to the Petition for Review within ten (10) business days of receipt of the Petition for Review.
 - d. Upon request, the Chancellor may extend the time for filing or responding to the Petition for Review for good cause.
 - e. The Chancellor may review or refuse to review the decision of the Hearing Panel. If the Chancellor refuses to review the decision, the decision of the Hearing Panel is final.
 - f. If the review is granted, the Chancellor may affirm, reverse, or modify the decision, or remand it back for further proceedings. The action of the Chancellor is final unless it is to remand the matter back for further proceedings.
 - g. The Chancellor shall promptly notify the Parties in writing of the final action.
- 20) Right of Appeal
- a. If the Reportable Action is *for suspension or dismissal* from the Program, the Resident may appeal the decision of the Hearing Panel by filing a written Notice of Appeal to the Chancellor, with a copy to the Chair of the Hearing Panel, within ten (10) business days after notification of the Hearing Panel's decision. The Notice of Appeal may include a written memorandum explaining the details of the grounds for the appeal.
 - b. The Chair of the Hearing Panel may submit in writing a reply to the Notice of Appeal and any memorandum within ten (10) business days after receipt of the Notice of Appeal.
 - c. Upon written request, the Chancellor may extend the time for the appeal or reply for good cause.
 - d. The Chancellor shall review the Record of the Case and the appeal documents, and may affirm, reverse, or modify the decision of the Hearing Panel, or remand the matter back for further proceedings.
 - e. The Chancellor shall notify the Parties in writing of the decision on the appeal.
 - f. The action of the Chancellor shall be final unless it is to remand the matter back for further proceedings.

Administered By:

A handwritten signature in black ink that reads "Phil Byrne".

Phillip D. Byrne, EdD
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