UMKC School of Medicine

Due Process Policy

October 17, 2024

DUE PROCESS (4.4.b.)

ACGME Institutional Requirements

4.4.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. 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 applicable GME Policies have 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 "ADGME" 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 ADGME and the CCC Chair.
5) The ADGME will select three members of the GMEC not faculty in the Resident's Program; these three members will constitute the GMEC Review Committee. The ADGME will notify the PD and the Resident of the identity of the members of the GMEC Review Committee as soon as reasonably possible.
6) Within ten (10) business days of receipt of notification from the members of the GMEC Review Committee, the PD must provide the Resident and the members of the GMEC Review Committee with 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 GMEC Review Committee, the Resident must provide any materials that the Resident wants the GMEC Review Committee to consider to the GMEC Review Committee members, the Chair of the CCC, and the PD.

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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 GMEC Review Committee members. The GMEC Review Committee will schedule the review in conjunction with the schedules of the Resident, Chair of the CCC, PD, and GMEC Review Committee members.
9) The GMEC 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 GMEC Review Committee. The Resident will meet with the GMEC 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 GMEC 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 GMEC Review Committee. The PD and/or Chair of the CCC shall meet with the GMEC Review Committee independent of the Resident.
    c. The GMEC 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 GMEC Review Committee, Chair of the CCC, PD, and the Resident within five (5) business days, unless the GMEC Review Committee grants an extension.
    d. Upon receipt of any additional materials:
        i. The Resident must have the opportunity to respond to the GMEC Review Committee regarding the additional materials, in writing, within five (5) business days of the receipt of the additional materials.
        ii. The GMEC Review Committee may request another meeting with the Resident (either after receiving the additional materials and/or receipt of the response to the additional materials by the Resident).
        iii. The GMEC Review Committee may request another meeting with the PD and/or Chair of the CCC.
    e. A final decision from the GMEC Review Committee shall be rendered within five (5) business days of the conclusion of its meetings and review of all materials requested.
    f. The GMEC 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 GMEC Review Committee and render a final recommendation to the GMEC Review Committee within fourteen (14) days of the date of the GMEC Review Committee's request. The GMEC Review Committee will then render a final decision.

iii. The decision of the GMEC 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 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 AD GME 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 AD GME may remove the Resident from all clinical duties and place the Resident on a paid leave of absence, and/or may allow the Resident to continue with the didactic curriculum until the hearing process is completed.
4) The AD 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.
5) The ADGME shall collaborate with the Resident, Resident's Advisor (if identified), and Chair of the Hearing Panel to identify a date for the hearing.
6) A notice of the hearing shall be provided by ADGME to the Resident, Resident's Advisor, and Chair of the Hearing Panel 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 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 members 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.

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k. That the Parties may request a virtual hearing with technology enabling participants simultaneously to see and hear each other, and/or necessary accommodations.

7) The notice shall be in writing and shall be delivered to the Resident in person or emailed to the Resident's UMKC-issued email.
8) If the Resident has identified an Advisor to be present at the hearing, the notice shall also be mailed to the Advisor.
9) Any request to reschedule the hearing shall be made in writing to the ADGME who is authorized to reschedule the hearing if the request is timely and for good cause.
10) Pre-Hearing Disclosures
    a. At least ten (10) business days before the hearing, the ADGME shall provide the Resident, the Resident's Advisor (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 related to the alleged misconduct.
    b. At least five (5) business days before the hearing, the Resident shall provide the ADGME 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 ADGME identifies any rebuttal witnesses or evidence to be called or submitted after receipt of the Resident's information, the ADGME 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.
11) The Chair of the Hearing Panel, ADGME, 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.
12) Rights of the Resident at the Hearing are:
    a. 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.
    b. Have an Advisor 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 Advisor 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 Advisor may request clarification of a procedural matter or object to a procedure by addressing the Chair of the Hearing Panel.
        iii. The Advisor 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 Advisor may examine and cross-examine witnesses.

c. To testify at the hearing or refuse to testify.
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. Make a statement in mitigation or explanation of the alleged misconduct.
h. Receive written findings, and the sanction imposed by the Hearing Panel.

13) Rights of the ADGME are:
   a. Be present at the hearing.
   b. Have an attorney from the Office of the General Counsel who may actively participate in the hearing and assist the ADGME.
   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.

14) Rights of the Hearing Panel are:
   a. Have an attorney from the Office of the General Counsel who may actively participate and assist the Hearing Panel.
   b. Permit a stipulation of facts by the ADGME and Resident.
   c. Permit the incorporation by reference to any documentation produced and desired in the Record of the Case by the ADGME or Resident, provided the other Party has had an opportunity to review and respond to the documentation.
   d. Question witnesses and challenge evidence introduced by either Party.
   e. Hear from the ADGME about dispositions made in similar cases and any dispositions offered to the Resident.
   f. Call additional witnesses or require additional investigation.
   g. Dismiss any action at any time.
   h. Permit or require at any time amendment to the Notice of Hearing to include new or additional matters which may come to the attention of the Hearing Panel before final determination of the case; provided, however, that in such event the Hearing Panel shall grant to Resident or ADGME such time as the Hearing Panel may determine is reasonable under the circumstances to answer or explain such additional matters.

16) 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 Advisor, 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, 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 ADGME may 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 ADGME.
j. The ADGME 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 ADGME, Resident, and witnesses at any time.
l. The Resident and the Resident's Advisor may cross-examine witnesses after they have been questioned by the ADGME.
m. Upon conclusion of the evidence presented by the ADGME, the Resident may present evidence through witnesses and written documents or other materials.
n. The ADGME and Hearing Panel may question the Resident and the Resident's witnesses at any time.
i. The Resident has the right to remain silent, and such silence shall not be considered as evidence supporting the 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.

17) 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.

18) Report of the Hearing Panel
a. The Chair of the Hearing Panel shall be a voting member of the Hearing Panel.
b. A majority vote of the Hearing Panel is required for a decision.
c. The standard of proof will be the "preponderance of the evidence," defined as determining whether evidence shows it is more likely than not that a violation occurred.
d. The burden of proof rests with the ADGME.
e. The Hearing Panel shall carefully review all the materials and promptly render its findings and final decision.
f. The Hearing Panel report shall detail the following:
    i. A description of the procedural steps taken (may reference this Policy);
    ii. Identification of the allegations potentially constituting misconduct and the decision of the Hearing Panel;

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iii. Findings of fact supporting the decision and any information the Hearing Panel excluded from its consideration and why;
iv. Conclusions regarding the application of the UMKC SOM GME Policy applicable to the facts;
v. A statement of, and rationale for, the result as to each allegation;
vi. Any Reportable Action or other sanction to be imposed on the Resident; and
vii. The procedures and permissible basis for the Resident to seek review or appeal.

g. The report of the Hearing Panel shall be provided to the Resident, Resident's adviser, and ADGME.
h. If the final decision supports a Reportable Action, that will not become effective until after the Resident waives or exhausts the review or appeal rights.

19) Grounds for Review or Appeal
a. 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 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, which 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 for 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.

20) 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.

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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 decision.

21) 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.

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