

## RESIDENT DUE PROCESS

### I. Introduction

1. Residents may request due process, as described in this policy, when any of the following disciplinary actions is contemplated:
  - a. Probation/remediation
  - b. Suspension
  - c. Demotion
  - d. Non-promotion
  - e. Dismissal from a program
  - f. Non-renewal of contract (“NNR”)

Residents may also request a due process hearing under this policy when remediation is contemplated under the Remediation and Progressive Performance Review Policy in this Handbook.

2. Disciplinary action may be taken for:
  - a. Academic or knowledge-based reasons (such as failure to meet educational and training standards or requirements);
  - b. Misconduct (including any prohibited conduct as defined by Title 2, Chapter 6 of the Nevada System of Higher Education Code or violation of any policy or procedure contained in the UNLV School of Medicine Resident Handbook); and
  - c. Unprofessional conduct.

### II. Policy

Residents may seek review of probation, suspension, demotion, non-promotion, dismissal, non-renewal of contract and remediation by requesting due process as described in this policy.

### III. Procedure

1. Informal Resolution: Nothing in this policy shall be construed to either disallow or mandate the informal resolution of complaints. Complaints resolved by informal means may be written or verbal. Residents and Departments are encouraged, although not required, to seek informal resolution of issues that arise whenever possible. Informal resolution of concerns may be done within a department, through a departmental evaluation or by the Department’s Clinical Competency Committee. Informal resolution by agreement may include performance improvement or remediation. The informal resolution reached shall be described in writing, with a copy to the resident’s file. The imposition of performance improvement as an informal resolution of a complaint is limited to one time only.
2. Written Complaints: When disciplinary action is contemplated following a complaint, the complaint must be submitted in writing to the Chair of the resident’s department with copies to the Associate Dean for Graduate Medical Education. When the complaint involves the resident’s activities at an affiliated hospital, a copy will also be sent to the hospital CEO or hospital COO. Written complaints should describe the specific activity, conduct, deficiency or other basis constituting the grounds for the complaint, and provide supporting documentation, if it exists. Upon receipt of written complaint, the Department chair may seek informal resolution (described in paragraph III

(A) or may request a hearing by a panel of the Resident Performance Review Committee.

3. Request for Resident Performance Review Committee Panel Hearing: The Associate Dean for Graduate Medical Education shall convene a Panel of the Resident Performance Review Committee under the following circumstances:
  - a. At the request of a Department Chair where it has been determined that informal resolution is not feasible;
  - b. At the request of Department Chair or Resident if an informal resolution of a complaint was attempted but not reached;
  - c. At the request of a Resident if the resident disagrees with the decision to take any of the following actions:
    - i. Probation
    - ii. Suspension
    - iii. Demotion
    - iv. Non-promotion
    - v. Dismissal from a program
    - vi. Non-renewal of contract (“NNR”)
    - vii. Remediation

The request for a hearing must be submitted in writing to the Associate Dean for Graduate Medical Education, unless the action under review is the issuance of an NNR. The request for an appeal for notices of non-renewal of contract must be made within 15 business days of receipt of the notice of non-renewal and must be submitted to the Dean. The Dean shall notify the Associate Dean for Graduate Medical Education to convene the Resident Performance Review Committee Panel to hear the resident’s appeal under the provisions of this policy.

4. Resident Performance Review Committee: This is a standing committee of the GMEC which shall be facilitated and organized by the Associate Dean for Graduate Medical Education within the following guidelines:
  - a. No fewer than 6 members shall be selected from among the program directors and/or associate program directors;
  - b. No fewer than 3 Senior residents shall be selected by peers to serve on the GMEC;
  - c. Members shall serve a term of 12 months;
  - d. The Associate Dean for Graduate Medical Education shall be a non-voting member and shall not be eligible to chair the committee;
  - e. The role of Committee Chair shall rotate among the committee members;
5. Hearing Panel: Upon receiving a request under this policy to convene the Resident Performance Review Committee, the Associate Dean for Medical Education shall establish a Hearing Panel from among the members of the Resident Performance Review Committee.
  - a. The Panel shall be comprised of three program directors/associate program directors and one senior resident, for a total of four members.
  - b. The Associate Dean for Graduate Medical Education shall serve on the Panel as a non-voting member.
  - c. None of the Panel members shall be from the same department as the resident or program director requesting the hearing to avoid conflicts of interest.

- d. The Associate Dean for Graduate Medical Education shall make every effort to select a Panel from among the standing members of the Resident Performance Review Committee.
  - e. In the event that scheduling conflicts, conflicts of interest or other unforeseen circumstances prevent the establishment of a Hearing Panel from among the standing member of the Resident Performance Review Committee, the Associate Dean for Graduate Medical Education shall select additional Panel members from among the membership of the Graduate Medical Education Committee.
6. Due Process Hearing: The hearing held by the Panel of the Residency Performance Review Committee, also called a “due process hearing” shall be conducted within the following guidelines:
- a. *Responsibilities of the Associate Dean for Graduate Medical Education*  
The Associate Dean for Medical Education shall:
    - i. Assemble members from the Resident Performance Review Committee (3 faculty and 1 resident) to form a panel ensuring that there is no conflict of interest;
    - ii. Set a hearing date that is acceptable to all involved in the hearing to the extent practical, with no less than 10 days advance notice to resident of the date of hearing;
    - iii. Arrange for recording of the hearing by certified court reporter (to be charged to resident’s department);
    - iv. Provide to resident, at least 10 business days prior to the hearing, the following notice:
      - a. A written statement which shall include a description of the underlying facts to be considered; the action requested by the Department; the date, time, and location of the hearing; and the option for the resident to have legal representation at the hearing. This documentation may be provided electronically.
      - b. At least 7 business days prior to the hearing, provide the resident with copies of all documentation and the names of all witnesses that will be presented by the Department to the panel at the hearing;
      - c. At least 7 business days prior to the hearing, provide the panel with copies of all documentation and the names of all witnesses that will be presented to the panel at the hearing, from both the department and the resident.
  - b. *Responsibilities and Rights of the Resident*: Upon requesting a hearing before the Panel of the Resident Performance Review Committee, the resident shall:
    - i. At least 10 business days prior to the hearing, receive a written statement which shall include a description of the underlying facts to be considered; the action to be contemplated by the Committee; the date, time and location of the hearing; and the option for resident to have legal representation at the hearing. This documentation may be provided electronically.
    - ii. At least 7 business days prior to the hearing date, receive copies of all documentation and the names of all witnesses that will be presented by the Department to the panel at the hearing;
    - iii. At least 7 business days prior to the hearing date, provide to the Associate Dean for Graduate Medical Education copies of all documentation and the names of all witnesses that will be presented by the resident at the hearing. It is important that the information be available for distribution to the Resident Performance Review Committee Panel prior to the hearing.

- iv. At least 7 business days prior to the scheduled hearing date, advise the Chair whether the resident will be represented at the due process hearing by an attorney or other advisor. Failure to do so shall result in the resident not being permitted to be accompanied by counsel except for good cause shown or upon written agreement of the parties.
  - v. At the due process hearing, the resident may:
    - a. Be heard in person;
    - b. Present witnesses and written documentation in support of the resident's position;
    - c. Question adverse witnesses;
    - d. Have an unbiased, confidential hearing;
    - e. Be accompanied by an advisor or legal representative;
    - f. Have the case determination made only on the evidence recorded at the hearing; and
    - g. Receive a written response from the Dean regarding the Dean's decision within 10 business days of the hearing. The Dean's decision is final.
- c. *Role of the Hearing Panel of the Resident Performance Review Committee:*  
The Hearing Panel of the Resident Performance Review Committee shall:
- i. Allow the resident 10 business days from receipt of the written statement referenced in paragraph III (F)(1)(e)(i) to prepare a response;
  - ii. Invite the resident (and, if the resident wishes, a legal representative\*) to be heard before the committee;
  - iii. Evaluate all documentation provided by the resident and the School of Medicine prior to the hearing date;
  - iv. Allow the resident and Department to present, question and cross-examine witnesses;
  - v. Question the witnesses presented by the resident and the Department;
  - vi. Deliberate at the close of the presentations before the Panel;
  - vii. Provide recommendations to the Dean, with a copy to the Associate Dean for Graduate Medical Education. The recommendations will set forth the committee's findings and decision and the reason(s) for reaching such decision. The committee's deliberations will not be recorded.
  - viii. The Panel shall make one or more of the following recommendations to the Dean:
    - a. No action against the resident;
    - b. A verbal or written reprimand;
    - c. A period of monitoring, after which the Panel, or its successors, will reconvene to review the case and make its final recommendation;
    - d. The repeat of certain training or education;
    - e. Remediation;
    - f. Suspension from the residency program for a specified length of time;
    - g. The continuance or discontinuance of an emergency suspension by the Dean (if in place);
    - h. Demotion;
    - i. Non-promotion;
    - j. Dismissal from the residency program;
    - k. Affirmation of a Notice of Non-renewal;
    - l. Rescinding of a Notice of Non-renewal.

d. *Time Limitation:* The Due Process hearing shall be limited to six hours unless additional time is specifically requested by the resident and his/her representative or the representative of the School of Medicine. Requests for additional time must be made 5 calendar days prior to the hearing and must be approved by the Resident Performance Review Committee Panel Chair. Any additional time granted for the hearing may require a subsequent or different hearing date. Notwithstanding the limitation on time, the resident shall be afforded an equal time period for the presentation of documentation and witnesses at the hearing as the Department.

\*If the resident opts to have legal representation, University counsel will participate at the hearing.

7. A resident's failure to request a hearing to review an adverse decision or to appear at a scheduled hearing, will be treated as consent to the action.
8. Action under these procedures shall go forward regardless of other possible or pending administrative, civil or criminal proceedings arising out of the same or other events.
9. Except upon dismissal from their program, and in that event, only upon a final decision regarding dismissal, residents will be entitled to receive their regular compensation during any period of disciplinary action up to the end of the appointment period.
10. Deviation from these procedures will not invalidate a decision or proceeding unless it is determined by the Dean, in the Dean's sole discretion, that the course of the proceedings would have been substantially different had the deviation not occurred. A deviation may be brought to the attention of the Dean by the resident, the Department, the Associate Dean for Graduate Medical Education or any member of the Panel.
11. Technical departures from or errors in following the procedures established in the [NSHE] Code or in any applicable stated prohibition, policy, procedure, rule, regulation or bylaw of a System institution under which disciplinary procedures are being invoked shall not be grounds to withhold disciplinary action unless, in the opinion of the Dean, the technical departures or errors were such as to have prevented a fair and just determination of the charges.
12. The Associate Dean for Graduate Medical Education will be required to notify the Nevada Board of Medical Examiners or the Nevada Board of Osteopathic Examiners, as applicable, when a resident has been disciplined under these Guidelines and the Dean has rendered a final decision.

Revised January 2017

Approved by GMEC April 2017