

**MARSHALL UNIVERSITY
JOAN C. EDWARDS SCHOOL OF MEDICINE
GRADUATE MEDICAL EDUCATION**

POLICY ON DUE PROCESS

Effective Date: July 1, 2022

GMEC Policy Subcommittee Review: November 2, 2022

Review Date: July 1, 2024

SECTION 1. STATEMENT AND SCOPE OF THE POLICY

This policy establishes a fair and reasonable written institutional policy and procedure for resident appeal of disciplinary actions for all Marshall University School of Medicine graduate medical education programs accredited by the Accreditation Council for Graduate Medical Education (ACGME).

SECTION 2. DEFINITIONS

- 2.1 For this policy, the following definitions shall apply:
 - 2.1.1. Resident: Any physician in a graduate medical education program (GME), including residents and fellows.
 - 2.1.2. Designated Institutional Official (DIO): The individual in a sponsoring institution who has the authority and responsibility for all GME programs.
 - 2.1.3. Panel - Members of the Ad Hoc Appeal Review Panel as described in Section 6 of this policy.
 - 2.1.4. Sponsoring Institution – The accrediting institution approved by the ACGME that has the ultimate authority and oversight of all residency and fellowship programs.
- 2.2. For calculating working days, the following rules apply in determining working days specified in this policy:
 - 2.2.1. Exclude the day of notification;
 - 2.2.2. Count every day, excluding Saturdays, Sundays, and Marshall Health holidays, and
 - 2.2.3. Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until 4:30 p.m. of the next day that is not a Saturday, Sunday, or Marshall Health holiday; and,
 - 2.2.4. If the period ends on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or Marshall Health holiday.

SECTION 3. POLICY LIMITATIONS

- 3.1. A resident who receives a notice of a recommendation of disciplinary action (as defined in the Disciplinary Action Policy) will be permitted to appeal the recommended action in accordance with the procedure outlined herein.

- 3.2. Marshall University Joan C. Edwards School of Medicine (MUSOM) prohibits retaliation against an individual who appeals a disciplinary action or participates in reviewing or resolving a disciplinary action under this policy.
- 3.3. As defined in the Graduate Medical Education Committee (GMEC) Disciplinary Action Policy, no report of disciplinary action to any outside entity, including but not limited to any certifying body, professional association, or another training program, unless authorized in writing by the resident or Marshall University Office of General Counsel until:
 - 3.3.1. The appeal process has concluded,
 - 3.3.2. Any appeal rights have expired, or
 - 3.3.3. The resident has withdrawn the appeal.
- 3.4. Nothing in this policy, however, shall prevent the Program or GME Office from notifying necessary persons or entities that the resident is on leave.

SECTION 4. APPEAL PROCESS

- 4.1. A resident may appeal disciplinary action recommended pursuant to the Disciplinary Action Policy steps as listed below:
 - 4.1.1. Initiating the Appeal;
 - 4.1.2. Convening and Constitution of Ad Hoc Appeal Review Panel;
 - 4.1.3. Scheduling of Hearing;
 - 4.1.4. Notice of Hearing;
 - 4.1.5. Appeal Hearing;
 - 4.1.6. Deliberation and Decision.
- 4.2. Specific time limits outlined in this policy must be adhered to by both the resident and MUSOM unless extended at the discretion of the DIO or DIO's designee.
- 4.3. A resident who fails to meet the time limits for submitting a request for an appeal hearing shall forfeit any right to an appeal.
- 4.4. A resident who fails to appear at a hearing will be deemed to have withdrawn the appeal.
- 4.5. Failure to file an appeal or failure to appear precludes further legal action.

SECTION 5. INITIATING THE APPEAL

- 5.1. To initiate the appeal process, the resident must submit a written or e-mail request for appeal to the DIO or designee by 4:30 p.m., within five (5) working days of receipt of the notice of a recommendation of disciplinary action.
- 5.2. After this specified period of receipt by 4:30 p.m. within five (5) working days of receipt of the notice of a recommendation of disciplinary action as provided in 5.1. above, the resident's right to appeal is forfeited, and the recommended disciplinary action shall become final.

SECTION 6. CONVENING AND CONSTITUTION OF AD HOC APPEAL REVIEW PANEL

- 6.1. Within ten (10) working days of receipt of the request for appeal to the DIO or designee, the DIO or designee will appoint an Ad Hoc Appeal Review Panel to hear the resident's appeal consisting of the following:
 - 6.1.1. DIO or designee;
 - 6.1.2. A resident within the same Sponsoring Institution; and,
 - 6.1.3. Two (2) Program Directors from the same Sponsoring Institution or one Program Director and one physician faculty member from the same Sponsoring Institution.
- 6.2. In addition to those members noted in 6.1. above, the appealing resident will select either one resident or one faculty member who shall be from the same Sponsoring Institution.
- 6.3. The Panel Chair will be selected by the DIO or designee from the Ad Hoc Appeal Review Panel, which hereafter may be referred to as the Panel.
- 6.4. No person who has actively participated in the initiation or recommendation of the disciplinary action or who has direct personal knowledge of the facts underlying the basis for the proposed disciplinary action shall be appointed to the Panel. For this policy, direct personal knowledge is defined as the person has either witnessed the facts in question underlying the proposed adverse action or has first-hand knowledge of the resident's performance (e.g., participated in the evaluation of the resident and such evaluation is a basis for the proposed disciplinary action).

SECTION 7. SCHEDULING OF HEARING

- 7.1. The GME Office must schedule the appeal hearing within fifteen (15) working days of the appointment of the Panel.
- 7.2. The Panel Chair may, upon written request of either the resident or the Program Director, request DIO or designee approval to extend or reschedule the hearing date. Any extension of the hearing date shall require a new hearing notice to be sent via the provisions outlined in Section 8.
- 7.3. Only one extension may be granted and must occur within five working days of the original hearing date. The granting of the extension will be the only exception to the time specified in the provisions of 7.1.

SECTION 8. NOTICE OF HEARING

- 8.1. The GME Office will send a hearing notice to the Program Director and appealing resident at least five (5) working days prior to the hearing date. The resident's notice shall be sent via certified US Postal Service mailing with a copy to the resident's MUSOM e-mail address and appropriate secured messaging system (such as Doc Halo). The notice date indicated on the e-mail and secured messaging system shall be considered the official hearing notification date.

- 8.2. The hearing notice shall contain the appeal hearing's date, time, and location and the deadline to submit evidence.

SECTION 9. SUBMISSION/ADVANCE REVIEW OF EVIDENCE

- 9.1. All evidence must be submitted to the DIO or designee via written statement or e-mail by 4:30 p.m., at least five (5) working days prior to the appeal hearing date. Failure to submit evidence by the deadline date will result in the exclusion of Panel consideration.
- 9.2. The DIO or designee will facilitate the exchange of evidence between the resident, the Program Director, and the Panel. Should the resident, Program Director, or Panel Member wish to review evidence before the hearing, the DIO or designee may schedule review sessions. All advanced review of evidence must be in person at a scheduled time and shall not be electronically or otherwise disseminated.

SECTION 10. WITNESSES

- 10.1. The resident and the Program Director may invite up to three (3) witnesses each to physically present to the Panel.
- 10.2. Additional witness testimony may be submitted via written or e-mail statements to the DIO or designee for Panel consideration. Such submissions must be made by 4:30 p.m., at least five (5) working days prior to the original hearing date. Failure of the witnesses to comply with the submission deadline will result in exclusion from Panel consideration.

SECTION 11. APPEAL HEARING

- 11.1. The resident must be physically present at the hearing. Failure to be present in person shall be deemed a withdrawal of the appeal by the resident.
- 11.2. Appeal hearings shall proceed in the following format:
 - 11.2.1. The Program Director may make a presentation to the Panel for up to twenty (20) minutes.
 - 11.2.2. The Program Director shall then have an opportunity to present witnesses.
 - 11.2.3. The resident may make a presentation to the Panel for up to twenty (20) minutes.
 - 11.2.4. The resident shall then have an opportunity to present witnesses. Each witness shall have a maximum of ten (10) minutes to present.
 - 11.2.5. The Program Director and the resident can ask witness questions.
 - 11.2.6. The Program Director and the resident will each have up to ten (10) minutes to respond to the statements made by the other.
 - 11.2.7. At any time during the hearing, the Panel may ask questions of witnesses, the resident, and/or the Program Director.
 - 11.2.8. Neither the resident nor the Program Director may be assisted or represented during the appeal hearing by counsel.
- 11.3. Nothing in this policy shall be construed as prohibiting either the Program Director or the resident from soliciting the advice of counsel at any time before or after the hearing. No

retribution may be drawn against an individual as a result of that individual's having sought the advice of counsel.

- 11.4. Appeal hearings are confidential. Only participants, as outlined in this policy and Panel Members, may attend. The hearing may not be audio or video recorded.
- 11.5. To the greatest extent permitted by law, the hearing shall be confidential and protected under West Virginia Quality Assurance statutes or other state and federal confidentiality laws.
- 11.6. Legal rules of evidence or procedure do not control the hearing procedure. The Panel shall consider such evidence as reasonable persons are accustomed
- 11.7. The Panel shall decide all other procedural matters not specified in this policy.

SECTION 12. DELIBERATION AND DECISION

- 12.1. The Panel shall deliberate privately following the appeal hearing. The Panel or its Chair may determine that additional meetings are required after the initial appeal hearing above but must remain within the final determination being issued by the Panel within ten (10) working days of the initial hearing date.
- 12.2. A written consensus decision setting forth its conclusions and reasoning in support of those conclusions to uphold, modify, or reverse the proposed disciplinary action shall be sent to the resident, the Program Director, and the DIO by 4:30 p.m., within ten (10) working days after the final determination of the Panel and documented in the resident's file. The consensus decision shall serve as minutes for the hearing.
- 12.3. The decision of the Panel shall be final.

SECTION 13. WITHDRAWAL OF APPEAL

- 13.1. The resident may, at any time, withdraw the appeal by informing the DIO in writing or e-mail of the decision to withdraw the appeal.
- 13.2. The withdrawal of the appeal shall become final immediately upon receipt and will not be reinstated.

SECTION 14. RESIGNATION FROM THE PROGRAM

- 14.1. At any time before the hearing decision, the resident may resign from the program by informing either in writing or by e-mailing the Program Director.
- 14.2. This declaration will automatically cancel the appeal, and the resignation shall immediately become final. The appeal may not be reinstated.

SECTION 15. REPORTING REQUIREMENTS

Under West Virginia law, certain actions involving physician discipline or adverse action must be reported to either the Board of Medicine or the Board of Osteopathic Medicine. The DIO shall consult with the Marshall University Office of General Counsel for guidance in making required reports.

SECTION 17. POLICY APPLICATION TO PASSAGE OF USMLE STEP 3 OR EQUIVALENT EXAMINATION POLICY

For actions related to the failure of the resident to pass the United States Medical Licensing Examination (“USMLE”) Step 3 or Equivalent Examination, the requirements and specified timeframe are outlined in the Sponsoring Institution’s Passage of USMLE Step 3 or Equivalent Examination Policy. This policy will apply to appeals of immediate dismissal as stated in 4.5 of that policy.

**Marshall University Joan C. Edwards School of Medicine
Graduate Medical Education Committee
Ad Hoc Appeal Review Panel
Consensus Decision Template**

RESIDENT NAME: _____

Pursuant to your request-----, and in accordance with the Marshall University Joan C. Edwards Graduate Medical Education Committee Policy on Due Process, an Ad Hoc Appeal Review Panel met on ----- , to consider and issue a consensus opinion on your appeal request.

SUMMARY STATEMENT OF PROPOSED DISCIPLINARY ACTION:

AD HOC APPEAL REVIEW PANEL CONSENSUS DECISION:

After consideration of the material and presentations provided to the Ad Hoc Appeal Review Panel at the hearing, members deliberated and rendered the following consensus decision to **Uphold, Modify, Or Reverse** your appeal.

CONSENSUS REASONING TO UPHOLD, MODIFY OR REVERSE THE PROPOSED DISCIPLINARY ACTION:

After consideration of the material and presentations provided to the Ad Hoc Appeal Review Panel at the Hearing, members' consensus reasoning to uphold, modify or reverse your appeal is based upon the following:

FINAL DECISION:

The deliberation and consensus decision of the Ad Hoc Appeal Review Panel is final. There is no appeal.

A copy of this official opinion is being provided to you via the preferred method of notification with an electronic copy to the Vice Dean for Graduate Medical Education, Residency Program Director, and Department Chair and documented in your file.

Chair, Ad Hoc Appeal
Review Panel Signature
Official Date of

Notification: