

Grievance Procedures Policy

March 1998 *

The intent of this policy is to provide a fair, uniform method for resolving disputes between residents and residency programs or UMRS/UDRS that arise from participation in a residency program or appointment as a resident.

These procedures replace the established UB Grievance Procedures (revised December 1996). They are the exclusive mechanism for redress of a resident grievance.

Section 1. Definitions

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| A. Program | Residency training program sponsored by the University at Buffalo (UB) and accredited by the Accreditation Council for Graduate Medical Education (ACGME), the American Osteopathic Association (AOA), or the American Dental Association (ADA). |
| B. Program Director | "This person is authorized to make judgments regarding a resident's academic performance, including without limitation, the development of clinical skills and professional competencies, and to take corrective action to address identified deficiencies in a resident's or fellow's training or performance."
"Program Director shall mean the Director of an ACGME Residency Program that is involved in the grievance." |
| C. Grievant | A resident or fellow in a program who files a written complaint under these grievance procedures with the Associate Dean on a grievable matter (as defined in Section 3) |
| D. UB | University at Buffalo (UB). University at Buffalo (UB) is the "sponsoring institution" of programs for ACGME purposes. |
| E. Sr. Associate Dean | The Sr. Associate Dean for Graduate Medical Education at the State University of New York at Buffalo and Designated Institutional Official (DIO) |
| F. Associate Dean | The Associate Dean for Graduate Medical Education at the State University of New York at Buffalo |
| G. Permanent Resident Files | Information placed in a resident's personnel file by representatives of the Program or the Office of Graduate Medical Education pertaining to the resident's appointment as a resident or participation in a residency program. |
| H. UDRS | University Dental Resident Services, P.C. is the formal employer of dental residents/fellows enrolled at the University at Buffalo (UB) |
| I. UMRS | The University Medical Resident Services, P.C., is the formal employer of the medical residents/fellows enrolled at the University at Buffalo (UB) |
| J. OGME | Office of Graduate Medical Education |
| K. Grievance | A grievable matter on which a written request for review has been timely submitted by the resident to the OGME |
| L. Days | Refers to "working days", Monday through Friday, exclusive of holidays |

Section 2. Communications with Grievant

Requests for a Level II Grievance Hearing or Level III Review and the resulting reports should be delivered to the OGME through US Mail, postage paid and Return Receipt requested. All other communications pertaining to grievances may be delivered by US Mail *or* by fax to the OGME.

Section 3. Grievable Matters

A. Grievable Matters

University at Buffalo (UB) recognizes the responsibility and authority of program directors to make judgments regarding a resident's academic performance, such as the development of clinical skills and professional competencies, and to take corrective action to address identified deficiencies in a resident's training or performance. These deficiencies include, but are not limited to, clinical experience or skills, knowledge, and ethics. Residents who believe a corrective action taken (or proposed to be taken) is not in accordance with University at Buffalo (UB) policies and procedures are entitled to grieve the following corrective action(s):

- 1) Probation
- 2) Suspension
- 3) Termination or non-renewal (except under B2)
- 4) Restriction in clinical privileges

University at Buffalo (UB) grievance procedures are the exclusive administrative procedures available to residents for review of any corrective action(s) taken or proposed by the University at Buffalo (UB), UMRS or UDRS in respect to a resident.

B. Non-grievable matters

Non-grievable matters include, but are not limited to:

- 1) Salary or benefits issues
- 2) Termination or non-renewal based on falsification or omission of application information and supporting documents

Section 4. Confidentiality

All participants in the Grievance must maintain confidentiality of the grievance process by not discussing the matter under review with any third party except as may be required for purposes of the grievance procedures.

Section 5. Process

Level I (pertains to all grievable matters):

A. Purpose

- A Level I discussion is a mandatory meeting between the resident and program director that is initiated by the program director and scheduled to take place prior to the effective date of the corrective action taken (or proposed to be taken) involving a grievable matter (probation, suspension, non-renewal, termination, or restriction of clinical privileges as outlined in Section 3A.).
- The purpose of the discussion is to review the rationale for a proposed corrective action, identify any circumstances that should modify the proposed action, and determine if there is acceptance of the proposed course of action.
- Participation in a Level I discussion as requested by the program director is a prerequisite to filing a written request for a Level II Grievance Hearing under Section 5.II.A. of these grievance procedures. Residents failing to participate in a requested Level I discussion waive any further rights to hearing and appeal.

B. Discussion Procedure

The purpose of the Level I discussion must be stated at the time of the meeting (Section 5, Level I.A). Information from the resident's permanent file supporting the proposed course of action should be available for review.

C. Report

- The program director should prepare a written summary of the meeting within ten (10) working days of the Level I Discussion and forward the written summary to the resident and OGME. The written summary is placed in the Permanent Resident File.
- Residents are entitled to submit a personal statement in response to the written summary to the OGME for placement in the Permanent Resident File.

Level II (pertains to all grievable matters)

A. Filing Request

- The resident must send a written request for a Level II Grievance Hearing to the OGME with a copy to the program director. This request must be filed within twenty (20) working days of receiving written notice of any grievable matter. Residents failing to do so waive their right to hearing and appeal.
- The Level II Grievance Hearing should be conducted within twenty (20) working days after receipt of the written request. The Associate Dean, or designee, will:
 - select a hearing committee
 - select a committee chair
 - schedule the hearing and issue a notice of same to all parties
- The Associate Dean may, at his or her unreviewable discretion, extend the applicable time period for convening a Level II Grievance Hearing. The committee chair may postpone a grievance hearing for reasonable cause.

B. Grievance Committee Selection & Composition

- The Associate Dean will select the hearing committee from an established pool of forty members (20 residents and 20 faculty). Two year appointments to this pool are made annually by the Dean of the School of Medicine and Biomedical Sciences with 20 new members (10 residents and 10 faculty) rotating on each year.
- The Level II Grievance Committee shall consist of three members, two faculty and one resident.
- The committee shall not include any members who had been assigned to supervise the resident at any time during his residency program or are members of the University or Hospital department involved in the grievance.

C. Documents

Either party may submit one or more written statements concerning the grievable matter to the OGME for distribution to the other party and Level II Grievance Committee. All written material must be received by the OGME within five (5) days before the hearing date inasmuch as the OGME serves as the grievance facilitator.

D. Conduct of the Level II Grievance Hearing

1) Attendance

- All committee members should be present throughout the hearing.
- The resident must personally appear at the Level II Grievance Hearing. A resident who fails to appear within 30 minutes of the scheduled hearing starting time, without good cause, forfeits rights to review of the matter. The committee chair, in consultation with the Associate Dean, determines if good cause existed.
- Attorneys are barred from attending grievance hearings. The resident may be accompanied by another individual. This individual is not permitted to participate in the discussions. Each party has the right to call and examine witnesses and cross-examine any witness, including representatives from the program.

2) Conduct of Hearing

- The chair shall preside over the hearing, determine procedure, assure there is reasonable opportunity to present relevant oral or written information and maintain decorum.
- The chair determines if information is relevant to the hearing and should be presented or excluded.
- The chair is authorized to exclude or remove any person who is disruptive.

3) Recesses and Adjournment

- The committee chair may recess and reconvene the hearing. Upon conclusion of the presentation of oral and written information, the hearing record is closed.
- The Grievance Committee will deliberate outside the presence of the parties and/or their respective representatives.

- 4) Decisions
 - Decisions are determined by a majority of members of the Committee.
 - In the event a majority is unable to render a decision, a second Level II Grievance Committee must be convened by the Associate Dean, or his or her designee.
 - 5) Meeting Record
 - One member of the Grievance committee will take minutes of the hearing.
 - Audio and Videotaping is not permitted.
- E. Grievance Committee Report
- A written report should be generated by the Chair and forwarded to the Associate Dean of GME for review within ten (10) working days after the conclusion of the Level II Grievance Hearing. The Associate Dean shall review and offer recommendations to the Chair within 5 days of receipt of the written report. Upon the subsequent receipt of a final written report, the Associate Dean should obtain signatures from each committee member within 5 days of distributing the report to the committee members. The Associate Dean may extend the applicable time period for issuing the Grievance Committee Report. The Associate Dean will issue copies of the signed written report to each party, the Sr. Associate Dean, and the Dean.
 - The report must include the basis for the Grievance Committee findings. Each party to the hearing may place a written statement in the file in response to the Grievance Committee Report. Both the Grievance Committee Report and the written statement(s) in reply, if any, shall become a part of the Hearing Record.

Level III Review

Residents or programs involved in a grievable matter involving termination or non-renewal action may seek a Level III review:

- 1) in cases where either party believes the Level II outcome is contrary to University at Buffalo (UB) policy or law, or;
 - 2) in cases where relevant new information is presented to the OGME within fifteen (15) days of receipt of the written report of the Grievance Committee, and the Level III Chair determines that the information was not available at the time of the Level II Grievance Hearing.
- A. Filing Request
A written request should be received by the OGME within fifteen working days of the grieving parties' receipt of the Level II grievance report. It must specify the grounds for the request.
- B. Review Process
The Sr. Associate Dean will convene a Review Panel, consisting of three (3) members: a member of the University at Buffalo (UB) Graduate Medical Education Committee (GMEC), a resident, and a faculty member (the latter two selected from the pool of forty (40) members as described under Section 5. Level II.B.). The Panel shall not include any members who had prior involvement with the grievance or any representatives from the University or Hospital department involved in the grievance. The Level III Review should be scheduled within twenty (20) working days from receipt of the Request for Level III Review.
- C. Documents
Written statements and pertinent documents, including, but not limited to, the Level II minutes and report, must be delivered to the members of the Review Panel, and each other, no less than five working days before the scheduled Level III review date.
- D. Conduct of the Level III Review
- 1) Attendance
 - The party requesting the Level III Review must appear at the Level III Review hearing.
 - A party who fails to appear at the appellate hearing within 30 minutes, without good cause, waives the right of Level III review on the matter.
 - Attorneys are barred from attending Level III hearings.
 - Each party is entitled to be accompanied by one individual. This individual may not participate in the discussions. All Review Panel members must be present at the hearing.

- 2) Proceedings
 - The Sr. Associate Dean will select a chair who is responsible for overseeing the proceedings and drafting the Level III Review Report
 - Both parties are permitted to make an oral presentation and respond to questions.
 - Audio or video taping the proceedings is not permitted.
 - At the discretion of the Chair, each party may call and examine witnesses, and cross-examine any witness.
 - 3) Recess and Adjournment
 - The review panel may recess and reconvene, without additional notice, provided the hearing is reconvened in the presence of both parties and their respective representatives.
 - The Review Panel deliberates outside the presence of the parties and/or their respective representatives.
- E. Report of the Review Panel
A written report, reviewed and signed by all panel members, should be forwarded to the Sr. Associate Dean by the Chair within ten working (10) days after adjournment of the Level III Review. Findings of the review panel are binding and must reflect the majority opinion. The decision will be distributed to each party and to the Dean.