

THE UNIVERSITY OF ARIZONA COLLEGE OF MEDICINE
GRADUATE MEDICAL EDUCATION COMMITTEES'

**DUE PROCESS GUIDELINES
FOR RESIDENTS AND FELLOWS**

Adopted September 24, 2009

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PURPOSE

The College of Medicine Graduate Medical Education Committees adopt these Due Process Guidelines for Residents and Fellows (hereafter “Guidelines”) to comply with the Accreditation Council for Graduate Medical Education’s Institutional Requirements calling for procedures related to grievances and due process. These Guidelines outline the types of discipline that can be imposed and the procedures for requesting and conducting hearings in cases in which training programs impose disciplinary action against residents during the course of their training.

Except as specifically set forth in these Guidelines or in their employment agreements, residents are subject to the provisions of the *University Handbook for Appointed Personnel (UHAP)* Chapter 4, and *ABOR Policy Manual* Policy 6-301, *et seq.*, which govern the appointment and discipline of all professional appointed personnel. The procedures outlined below provide greater rights to due process than the *UHAP* and *ABOR Policy Manual*. Therefore, to the extent that these Guidelines are more specific than similar provisions of the *UHAP* or *ABOR Policy Manual*, these procedures will govern. All references to “Resident(s)” in these Guidelines include “Fellow(s).” References to The College of Medicine, or The University or The Department will include the Arizona Board of Regents.

STATEMENT OF DUE PROCESS

Residents are entitled to due process, **as defined below**, before their Program Director or a Departmental Housestaff Committee may impose disciplinary action. The University’s compliance with the procedures outlined in these Guidelines will fulfill due process requirements for any disciplinary action it takes against a resident.

NATURE OF PROCEDURES AND PROCEEDINGS

These Guidelines and the procedures and proceedings described herein are not judicial. In cases in which residents request a hearing to challenge a proposed disciplinary action, formal rules of evidence will not apply. A hearing committee appointed under these Guidelines may consider any relevant evidence it determines would be helpful in making a decision in a particular matter, including “hearsay,” and will give such evidence the weight it deems appropriate under the circumstances.

Deviation from these procedures will not invalidate a decision or proceedings unless such deviation causes significant and articulated prejudice to the resident. If a resident believes s/he has suffered significant prejudice because of a deviation from procedure, then s/he must bring the matter to the attention of the Department Head immediately upon belief that such prejudice occurred. In determining whether a deviation from these procedures caused significant prejudice, the Department Head will consider whether the course of the proceedings would have been substantially different had the deviation not occurred. The Department Head also will determine whether the resident gave adequate notice of the allegedly prejudicial event to have taken appropriate and timely action.

DEFINITIONS

In this document, unless otherwise stated, the following words have the meanings indicated:

"Academic Deficiency" means an insufficient fund of medical knowledge, an inability to use medical knowledge effectively, a lack of technical skills based upon the resident's level of training, a lack of professionalism, or any other deficiency that bears on the resident's academic performance. Such deficiency may or may not result in formal disciplinary action, but should be documented and brought to the resident's attention at the earliest possible opportunity.

"Adverse witness" means an individual who presents evidence or testimony before a College of Medicine Discipline Review Committee against a resident.

"Advisor" means a faculty or staff member, another resident, a friend or family member, or an attorney, who may accompany a resident at a hearing described in these Guidelines. Only an attorney, licensed to practice law in Arizona, may actively represent a resident at a Discipline Review Committee hearing. An advisor who is not an attorney may not actively participate in a hearing, but may be present to provide support to the resident during a hearing. A resident who retains the services of an attorney or other advisor shall bear any expenses related to those services.

"ABOR" means the Arizona Board of Regents.

"Appeal" means a formal request for review of a decision by a Discipline Review Committee.

"Burden of proof" means the obligation of the Program Director to persuade either a Discipline Review Committee or an Appeals Committee that the disciplinary action proposed is warranted by a preponderance of the evidence.

"Conflict of interest" means an inability to exercise independent judgment in reviewing a matter because that same individual had a substantial role in making an earlier decision that disciplinary action should be taken against the resident.

"Day" means a University business day, unless otherwise described in these Guidelines. Only business days will be counted in the calculation of time periods under these Guidelines. Where the last day of any time period falls on a Saturday, Sunday or a University-recognized holiday, the time period will run until 5:00 p.m. of the next University business day that is not a Saturday, Sunday or University holiday. Time periods set forth herein may be extended or decreased, either upon agreement of the parties, or for good cause shown, which reasons must not be solely for purpose of delay.

"Dean," "Vice Dean for Academic Affairs," "Associate Dean for Graduate Medical Education," and "Assistant Dean for Graduate Medical Education" mean those University of Arizona College of Medicine employees holding those job titles at the time of the action.

"Department" means that administrative unit within the College of Medicine that sponsors the residency program in which the resident is participating.

"Department Head" or "Department Chair" means the University of Arizona College of Medicine employee holding that job title in the department that sponsors the residency

program in which the resident is participating.

"Department Housestaff Committee," means that group of faculty members and residents, by whatever name such department calls such group, established within a department or section by the Department Head or Section Head, which is charged with developing graduate medical education policy for that department or section and/or evaluating residents' performance.

"Disciplinary Action" means emergency suspension that results in disciplinary action, probation, retention or non-promotion, non-renewal or dismissal. It does not include a written or verbal notice of academic deficiencies unless that notice constitutes the basis upon which a program subsequently takes disciplinary action against a resident.

"Discipline Review Committee" or "DRC" means that Committee assigned as the hearing body to review a decision to take disciplinary action against a resident following a resident's request for a hearing.

"Dismissal" means permanent removal from a residency program based upon just cause.

"Due Process" means:

- the right to a written Notice of Action contemplated or taken under these procedures; and
- the right to be heard in person and to present witnesses and written documentation in support of his/her position; and
- the right to question adverse witnesses; and
- the right to a hearing before an objective hearing panel if requested; and
- the right to be accompanied by an advisor or to be represented by an attorney licensed to practice law in Arizona at his/her expense at such hearing; and
- the right to receive a written decision prepared by the hearing bodies setting forth their findings, and the facts the hearing body relied upon in reaching such decision; and
- the right to appeal an adverse decision to a subcommittee of the Graduate Medical Education Committee.

"Emergency Suspension" means temporarily removing a resident from the residency program after a determination that his or her continued presence on the campus constitutes a substantial interference with the orderly functioning of the University or of a substantial area, unit, college or department of the University pending a decision whether to permanently dismiss a resident from a training program or to take other disciplinary action.

"GME" means Graduate Medical Education.

"Graduate Medical Education Committee" or "GMEC" means that Committee of the College of Medicine charged with monitoring and advising on all aspects of graduate medical education.

“GME Office” means the College of Medicine’s Graduate Medical Education Office.

“Hearing” means an opportunity for a resident to present evidence and arguments why a proposed disciplinary action is unwarranted or unsupported by available evidence and for the Program Director or departmental representative to provide evidence to support the proposed disciplinary action.

"Just cause" means cause that warrants taking disciplinary action against a resident and will include, but not be limited to, any one or a combination of the following:

- Demonstrated incompetence or dishonesty in professional activities related to the fulfillment of assigned duties and responsibilities;
- Inability to perform satisfactorily functions essential to rendering proper medical care to patients and otherwise required of physicians providing direct patient care;
- Personal conduct that substantially impairs the resident's fulfillment of properly assigned duties and responsibilities;
- Inability or failure to perform the essential functions of the job or tasks assigned, with or without reasonable accommodation;
- Failure to improve performance in an area identified in informal counseling or pursuant to a notice of deficiency or a written warning;
- Failure to complete satisfactorily a period or periods of probation;
- Violation of a resident's employment agreement, ABOR, University or College of Medicine Codes of Conduct or policies;
- Violation of the rules of the program in which the resident is assigned, of the institution to which the resident is assigned, or of the law;
- Inadequate medical knowledge, deficient application of medical knowledge to either patient care or research, deficient technical skills or any other deficiency that adversely affects the resident's performance;
- Disruptive behavior; or
- Conduct that violates the professional standards by which physicians in the State of Arizona are governed, as described in A.R.S. §§ 32-1401, *et seq.*, or 32-1800, *et seq.*, or any amendments thereto.

"Non-renewal" means the decision not to renew a resident's employment agreement beyond the expiration of the current fiscal year. When a program decides not to renew a resident's agreement, the Program Director must provide the resident a written Notice of Action *no later than* four (4) months (120 days) prior to the end of the resident's current agreement unless the primary reason(s) for the nonrenewal occurs within the four months prior to the end of the agreement. In such case, the Program Director may seek to nonrenew the

resident's contract without giving such notice, however, the Program Director must be able to demonstrate to the GME Office that the primary reason(s) for such nonrenewal occurred within the four-month (120-day) period prior to the expiration of the contract, and thereafter provide as much written notice of the intent to nonrenew as circumstances will reasonably allow. In no event may a resident be given less than 90 days notice of nonrenewal.

"Notice of Action" means the written notice provided to the GME Office and to a resident of a Program Director's intention to take disciplinary action against the resident and the justification for taking such action. Every Notice of Action will include a copy of these Guidelines. Except with regard to notices of non-renewal and retention (non-promotion), no specific period of prior notice is required to take disciplinary action against a resident.

When a program decides not to renew a resident's agreement or to retain the resident at the same level for an additional period, the Program Director must provide the resident a written Notice of Action form, along with the bases for such action, *no later than* four (4) months (120 days) prior to the end of the resident's current agreement. Only if the primary reason(s) for the nonrenewal or retention occurs within the four months prior to the end of the agreement, may a Program Director seek to nonrenew the resident's contract or retain the resident at the same level of training. In that case, the Program Director must be able to demonstrate to the GME office that the primary reason(s) for such nonrenewal or retention occurred within such four-month (120-day) period prior to the expiration of the contract, and thereafter provide as much written notice of the intent to nonrenew or retain the resident as circumstances will reasonably allow prior to the end of the agreement. In no event may a resident be given less than 90 days notice of nonrenewal.

To ensure that the Program Director or Department Housestaff Committee provides adequate notice under this policy and that sufficient cause for disciplinary action exists in the resident's record for the proposed disciplinary action, the Program Director must first consult with the GME Office to determine whether such cause exists and that adequate notice can be provided and confirm that, if four (4) months (120 days) notice will not be given, the resident's record reflects that the primary reason(s) for a nonrenewal or retention occurred within the four (4) months (120 days) period. If just cause exists to nonrenew or retain the resident, and the reasons for such action occurred within the four (4) months (120 days) period prior to the expiration of the current contract, then the Program Director must give as much notice as circumstances will reasonably allow and document those reasons.

"Notice of Deficiency(ies)" means either verbal or written notice advising a resident that his/her performance is deficient, but not so deficient to warrant a formal Notice of Action.

"Preponderance of the evidence" means that quality of evidence which, when fairly considered, produces the stronger impression, and has the greater weight, and is more persuasive regarding the truth than the evidence presented in opposition. The standard of proof in disciplinary proceedings is "by a preponderance of the evidence."

"Probation" means an action taken by a residency program to advise a resident of: his/her need to correct behavioral deficiencies; violations of the resident's contract, ABOR or University of Arizona rules or policies; violations of rules of a training site; or violations of rules or statutes governing conduct of physicians practicing medicine in the State of Arizona, which is supported by "just cause." Probation also is imposed to correct academic

deficiencies that render a resident's performance below a minimally acceptable standard for a resident's level of training.

Probation may be imposed only after a resident has been accepted and begun participating in a residency program. The terms of any probation established as a condition of acceptance into a residency program will be specifically set forth in the resident's initial employment agreement, which contractual provisions will govern.

When a Program Director or Housestaff Committee seeks to place a resident on probation, the Notice of Action will also set forth specific requirements to improve the resident's performance and state the terms and duration of the probation. During a probation period, the Program Director or Department Head will make efforts to offer guidance, counsel and supervision to aid the resident in correcting the noted deficiencies with the acknowledged goal of retaining him/her in the program. It will, however, remain the resident's responsibility to correct any noted deficiencies.

Periods of probation will last no longer than six (6) consecutive months. Probation may be extended for up to six (6) months; however, any extension of probation may occur only after the Program Director has evaluated the resident's performance, and determines that another period of probation is necessary to improve the resident's performance with the acknowledged goal of retaining the resident in the program. Before extending probation, the Program Director must follow each of the steps outlined in these Guidelines and afford the resident another opportunity for hearing.

If, at the end of the probation period the Program Director and/or Housestaff Committee determines that the resident successfully met the terms of the probation, then the Program Director will notify the resident in writing that s/he has successfully completed probation. The Program Director will place a copy of the notice of successful completion in the resident's personnel file, and forward a copy to the GME Office. Successful completion also will be noted in the resident's summative letter.

If the Program Director determines that the resident either is making inadequate progress during a period of probation, or has failed to meet the terms of probation at its conclusion, then s/he may initiate further disciplinary action in accordance with these Guidelines. The resident's personnel record will reflect all periods during which s/he was on probation, and the disciplinary nature of such action, even if the resident resigns while on probation.

"Program Director" or "Director" means the Program Director of the residency program in which a resident is participating.

"Resident" or "Fellow" means an individual who has earned a Doctor of Medicine or Doctor of Osteopathy degree who is employed by the Arizona Board of Regents as a Clinical Assistant in any graduate medical education training program at The University of Arizona College of Medicine. All references to "resident" in these guidelines will apply equally to fellows.

"Retention" means continuing a resident at his or her current level of training. Non-promotion will have the same meaning as retention. When a program decides to retain a resident at his/her current level of training, the Program Director must provide the resident a written

Notice of Action *no later than* four (4) months (120 days) prior to the end of the resident's current agreement unless the primary reason(s) for the retention occurs within the four months prior to the end of the agreement. In such case, the Program Director may seek to retain the resident without giving such notice; however, the Program Director must be able to demonstrate to the GME Office that the primary reason(s) for such retention occurred within the four-month (120-day) period prior to the expiration of the contract, and thereafter provide as much written notice of the intent to retain as circumstances will reasonably allow.

"University representative" means the Department Head or Program Director or his or her designee who will represent the interests of the residency program in any disciplinary proceeding contemplated under these Guidelines.

REQUIREMENTS FOR IMPOSING EMERGENCY SUSPENSION

If a Program Director or Department Head believes that a resident has engaged in conduct that justifies temporarily removing him/her from the residency program because his or her continued presence on the campus constitutes a substantial interference with the orderly functioning of the University, a substantial area, unit, college or department of the University or of a hospital or clinic to which a resident has been assigned pending an investigation and decision to impose discipline, then s/he may place the resident on an emergency suspension, in accordance with the procedures below.

Procedures

After the Program Director or Department Head determines that just cause exists to suspend a resident on an emergency basis, the Program Director or Department Head immediately will meet with the resident and advise him/her that s/he is suspended with pay pending an investigation to determine whether the resident either should be dismissed or that other discipline should be imposed. The resident may be directed not to appear at a particular work site or to appear at a different work site, including the resident's place of residence, pending the outcome of the investigation. The resident may be required to cease providing clinical care to patients, and may be reassigned to other duties during the period of the suspension. Any investigation will occur expeditiously, and may be done by the Program Director, the Department Head, or someone directed by either the Program Director or Department Head to conduct such investigation.

If time permits prior to meeting with the resident, the Program Director or Department Head will prepare and hand-deliver a written Notice of Action form to the resident and the GME Office stating the reasons the resident has been placed on emergency suspension pending investigation. If the Program Director or Department Head does not have time prior to meeting with the resident to prepare the written Notice of Action form because of the emergency nature of the situation, then s/he will prepare the Notice of Action form immediately following the meeting with the resident in accordance with the procedures set forth above, and hand-deliver the Notice to the resident as soon as practicable thereafter.

An emergency suspension may be imposed independently of or in addition to any other disciplinary action provided in these Guidelines.

If, after the investigation, the Program Director or Department Head determines that just cause exists for dismissal or other disciplinary action, then the Program Director or Department Head will proceed with such action in accordance with these Guidelines. A resident is not entitled to a hearing or an appeal of a decision to suspend him/her on an emergency basis.

If the Program Director does not pursue disciplinary action following an investigation, then the resident may continue in his/her program after the conclusion of the investigation without prejudice, and such emergency suspension will not be considered disciplinary action nor documented in the resident's personnel file.

PROGRESSIVE DISCIPLINE NOT REQUIRED

A Program Director or Departmental Housestaff Committee is not required to place a resident on probation before taking more serious disciplinary action.

INITIATING DISCIPLINARY ACTION

The following individuals or agencies may recommend that a Program Director initiate disciplinary action against a resident: 1) any hospital to which the resident is assigned, has been assigned, or in which duties under the residency agreement are otherwise performed; 2) any attending supervisor at such hospital; 3) any faculty member from The University of Arizona College of Medicine serving in a supervisory position; or 4) any Department Head within The University of Arizona College of Medicine. The individual or agency must submit a written recommendation to the individual's Program Director, outlining the specific bases for the recommendation, including documentation related to a specific activity, conduct, deficiency or other reason constituting the grounds for initiating disciplinary action.

Before a Program Director or Department Housestaff Committee may take disciplinary action against a resident, s/he or a representative from the Department's Housestaff Committee must consult with the GME Office to ensure that just cause exists; that appropriate notice will be given, as required hereunder; that such action is consistent with actions taken in similar cases; that such action complies with accreditation and due process requirements; and that adequate documentation exists in the resident's personnel record to support such action.

Notice of Action and Justification for Imposing Discipline

After meeting with the Departmental Housestaff Committee and determining that disciplinary action is warranted and after consulting with the GME Office, the Program Director or Department Head will prepare a Notice of Action form (an example of which is available on the GME website at <http://www.gme.medicine.arizona.edu/policy/noticeofactionform.pdf>), as well as a detailed statement justifying the disciplinary action, and deliver them to the GME Office. The statement will include the specific bases for the proposed action and the just cause upon which the action is based. It will include a statement of relevant facts, including, if known, the time, date, and place of any incident or incidents giving rise to the action. The notice also will state the name of the reporter of such incident or individual recommending disciplinary action. Where probation is sought, the terms of probation also must be included in the statement.

The Program Director or Department Head may also provide other documentation at the same time to the GME Office that justifies the recommendation to impose discipline.

Notice to the Resident

The Program Director will meet personally with the resident to discuss the proposed disciplinary action, and will, at that time, hand-deliver to the resident: the Notice of Action form and statement related to the reasons for taking such disciplinary action; these Guidelines; and accompanying documentation supporting the recommendation to take disciplinary action. If the resident is either unwilling or unable to meet with the Program Director when requested to do so, then the Program Director will mail such documentation by first-class postage prepaid mail to the resident's address on record with the program. The date of hand-delivery will be considered the date of receipt of the notice; if mailed by first-class mail, the notice and accompanying documentation will be considered delivered five (5) days from the date of mailing.

Acceptance of Disciplinary Action

A resident may accept the proposed disciplinary action by signing a statement to that effect, which will also waive his/her right to a hearing on the decision to impose disciplinary action. If a resident accepts the discipline, the discipline will become effective on the date the resident signs the Notice of Acceptance of Disciplinary Action. A copy of that form is attached to these Guidelines, as Exhibit A.

Resignation

If a resident resigns after receiving a Notice of Action, but prior to requesting a hearing, the resignation will waive all rights under these Guidelines to a hearing. If the resident resigns, the program will retain a copy of the Notice of Action form and accompanying supportive documentation in the resident's official personnel file, along with the resident's written resignation, which will reflect the program's intention to take the proposed disciplinary action against the resident. The resident's personnel file will reflect a "*resignation pending [disciplinary action]*." The terms contained within the brackets will describe the proposed disciplinary action, and will note that the resident resigned before such action was officially taken. A resident's decision to resign from a training program must be voluntary and not be the result of coercion or duress.

Request for Hearing

If a resident desires to pursue a hearing on a decision to impose discipline, s/he shall provide a written notice to the Department Head and the GME Office within seven (7) days of receipt of the Notice of Action form and accompanying documentation. At the time the resident requests a hearing, s/he also may submit a written response to the proposed action, along with documentation supporting that response. The GME Office will forward copies of all documents it receives to the Chair of the GMEC, the Associate and Assistant Deans for Graduate Medical Education, the Vice Dean for Academic Affairs, and the Office of General Counsel.

Representation by an Attorney

A resident may retain an attorney to represent him/her at a hearing, at his/her own expense. If a resident retains an attorney to represent him/her at a hearing, then s/he must notify the GME Office of the name, e-mail and other address and telephone number of that attorney as soon as s/he engages his/her services, but in no event fewer than ten (10) days prior to a scheduled hearing. Any delay in communicating this information to the GME Office may result in a continuance of the scheduled hearing.

If a resident retains an attorney to represent him/her at the hearing, then the University's Office of General Counsel will retain counsel to represent the Program Director at the hearing. The Office of General Counsel will notify the resident's attorney of the name and contact information of such attorney as soon as s/he is appointed.

A University attorney from the Office of General Counsel will advise the Discipline Review Committee (DRC) at all hearings conducted under these procedures. The University Attorney may attend the deliberations following a hearing and advise on questions of procedure and otherwise assist in the deliberations, but will not vote. The University Attorney also may assist

the DRC in preparing its findings and decision.

Expenses Associated with the Hearing

The resident will bear the expenses of retaining his/her counsel. The Department will bear the expenses of retaining counsel to represent the department at the hearing, the reporting of the hearing and the cost of a transcript prepared for purposes of appeal.

HEARING PROCEDURES

Upon receipt of notice that a resident has requested a hearing, the Department Head will appoint a Departmental Discipline Review Committee (DRC), which will consist of no fewer than three (3) faculty members, one of whom the Department Head will appoint as Chair, and at least one (1) resident within the program. Neither the Program Director nor the Department Head may serve as a member of the DRC.

The Chair of the DRC will, within ten (10) days after his/her appointment, set a date and time for a hearing, and will provide notice to the GME Office and the resident of the date, time and place of the hearing, as well as the names of the members of the DRC. The hearing should be set expeditiously, taking into consideration the schedules of the resident, the potential witnesses, the parties' attorneys, if any, and the committee members. The GME Office will provide this information to the Office of General Counsel. The resident will be responsible for notifying his/her counsel regarding the details of the hearing.

If the resident believes that any member of the DRC has a conflict of interest, as defined in these Guidelines, then s/he will immediately notify the Department Head and identify the circumstances s/he believes will prevent the member from objectively considering the evidence and rendering a decision based upon the evidence presented at the hearing. The Department Head will meet with such member and determine whether the individual will, because of the circumstances described, be unable to consider the evidence objectively and render a decision based upon the evidence presented. If the Department Head determines that a conflict of interest exists, then the Department Head will disqualify the member and appoint a substitute member, subject to the same provisions regarding disqualification. Any DRC member may disqualify him- or herself, if s/he believes a conflict of interest exists such that s/he will be unable to consider the evidence fairly and render a decision based solely upon the evidence presented, whether or not the resident identifies a conflict of interest. It will not be a sufficient basis to disqualify a member of the DRC solely because the individual served on the Departmental Housestaff Committee that recommended disciplinary action, noting that some departments are small and have insufficient faculty and residents to constitute a DRC solely from individuals who had no involvement in the evaluation of the resident's performance or the recommendation to impose disciplinary action.

No later than five (5) days prior to the scheduled hearing, the parties will provide a copy of all documentary evidence s/he plans to present at the time of the hearing and the names and addresses of the witnesses s/he intends to question at the hearing to the Chair of the DRC. The Chair will furnish copies of the list of witnesses, any documentary evidence submitted, a copy of the Notice of Action form, the resident's response and any other supporting documentation to the other party, his/her attorneys, and the University attorney prior to the hearing. No witnesses will be called at the hearing other than those listed except for good cause shown or upon written agreement of the parties.

Conduct of the Hearing

The Chair of the DRC will preside over the hearing, which will be conducted in an expeditious manner. No hearing should last more than one-half day, except for good cause shown, which cause shall be presented to the Chair of the DRC prior to the scheduled hearing explaining why the hearing should take longer than one-half day. The Chair, in his/her discretion, may extend the length of the hearing if s/he determines that the resident or Program Director would suffer prejudice if the amount of time allotted for the hearing were not extended.

The Chair may conduct the hearing in an informal manner, noting that the formal rules of evidence governing court proceedings do not apply. The Chair may exclude irrelevant, immaterial, or unduly repetitious evidence. The Chair also may, either on his/her own, or at the request of a party, subpoena documents or other materials necessary for a fair consideration of the evidence. If a party requests the Chair to issue a subpoena, s/he must make such request within adequate time to produce the documents requested by the time of the hearing. Failure to do so may result in a continuance of the hearing.

A court reporter will record the proceedings. The court reporter will administer an oath to witnesses before they testify.

With the exception of the resident and the Program Director, no other witnesses will be permitted in the hearing room while other witnesses are presenting evidence to the Committee. The hearing will be closed to members of the public, unless they are participating in the hearing as a witness, party, or representative of the party. The resident may be accompanied by a member of his/her immediate family for support; however, if the family member will provide testimony at the hearing, then that individual will be excused from the hearing room during opening statements, and will testify first, before any evidence is presented. S/he may thereafter remain in the hearing room, but will be admonished not to discuss any evidence or arguments s/he hears during the hearing with anyone other than the resident. All participants, including the DRC members, will be reminded that the proceedings are confidential and shall not discuss anything learned during the proceeding with anyone without the resident's express written permission.

Each party may present an opening statement describing their evidence, call witnesses to testify, cross-examine witnesses called by the other party, and make a closing statement summarizing the evidence presented.

The University representative bears the burden of proof; therefore, s/he will present his/her evidence first and may present evidence in rebuttal after the resident presents his/her evidence.

The Committee members may question any witness, including the Program Director and the resident, at any time during the proceedings. At the conclusion of the evidence, each party will be permitted to make an oral or written summation. The DRC will deliberate in closed session after the hearing concludes.

Decision of the DRC

The DRC will consider all evidence presented in a judicious manner. The DRC members will consider the evidence and the disciplinary issues before it, noting that the purpose of their

review is to safeguard and protect patients and other individuals, as well as to preserve the resident's rights. Any decision must also consider the integrity of the University and its programs.

The DRC will prepare a written statement, setting forth its finding of facts, conclusions and decision, based solely on the evidence presented (hereafter "decision"). The DRC may uphold the proposed disciplinary action, or remand the matter to the Program Director or Departmental Housestaff Committee for further consideration. The DRC also may include recommendations in the decision.

The Chair of the DRC will deliver the decision to the GME Office within ten (10) days after the conclusion of the hearing. The GME Office will provide a copy of the decision to the Department Head, the Program Director, the Vice Dean for Academic Affairs, the Associate and Assistant Deans for Graduate Medical Education, and the Office of General Counsel.

The GME Office will hand-deliver the decision to the resident, which will constitute the date of receipt. If the GME Office is unable to contact the resident to deliver the decision by hand, then the GME Office will mail a copy of the decision to the resident's address of record, which will be considered delivered five (5) days from the date of mailing.

APPEAL PROCESS

The sole bases for appealing a decision of the DRC follow:

1. The DRC did not conduct the hearing in a manner substantially consistent with the procedures set forth in these Guidelines, abused its discretion, or acted arbitrarily or capriciously.
2. Either the Committee members or one of the parties engaged in misconduct.
3. The decision resulted from accident or surprise, which could not have been prevented by ordinary prudence.
4. The resident obtained newly discovered *material* evidence, which with reasonable diligence could not have been discovered and produced prior to or at the time of the hearing. In that event, the resident must first notify the Chair of the DRC that such evidence has been discovered and make a request for a new hearing to consider such evidence. The Chair will determine whether such evidence could not have been discovered prior to the hearing, and whether it would have made a material difference in the outcome of the hearing had it been presented. If the Chair believes that such evidence could have been discovered with due diligence or that its consideration would not have made a difference to the outcome, s/he shall make a written finding to that effect. If the Chair determines that a new hearing should occur as a result of this newly discovered evidence, then the Chair will reconvene the DRC to address this evidence.
5. Error occurred either in the admission or rejection of evidence, or in the charge to the Committee, or other errors of law occurred before or at the hearing that resulted in significant prejudice to the resident.

6. The DRC's decision was not supported by a preponderance of evidence or is contrary to the law.
7. The decision was the result of passion or prejudice.

If the resident appeals the DRC's decision, then s/he must submit a Notice of Appeal, evidencing his/her intention to appeal, on a form similar to Exhibit B, to the GME Office within five (5) days of receipt of the decision, which the GME Office will deliver to the resident's Department. Upon receipt of the Notice of Appeal, the Department will order a copy of the hearing transcript from the court reporter who reported the hearing. Upon receipt of the transcript, the Department will provide one copy of the transcript, free of charge, to the resident.

Within ten (10) days after receipt of the transcript, the resident must submit a written statement outlining the alleged grounds for appeal to the GME Office, and must support those grounds by citing to the transcript and other evidence submitted at the hearing. Upon receipt of the statement, the GME Office will provide a copy of the Notice of Appeal, the written statement outlining the alleged grounds for appeal, the hearing transcript, and all documents and evidence submitted at the DRC hearing, as well as the DRC decision (hereafter "the record on appeal"), to the Chair of the Graduate Medical Education Committee (GMEC).

The GMEC Chair will appoint a subcommittee, consisting of no fewer than three (3) Program Directors and at least one (1) resident, to review the record on appeal. The subcommittee will meet within ten (10) days of receipt of the record on appeal to discuss the issues and make a decision. The subcommittee will consider the entire record in reaching its decision and may uphold, overrule, or modify the DRC's decision based solely on the record before it. It may entertain no new evidence nor hear from the parties directly. It will prepare written findings and a decision, and provide that decision to the GME Office within ten (10) days following its meeting. The decision of the GMEC subcommittee is final and not subject to further review.

The GME Office will hand-deliver the decision to the resident, if possible, and will provide a copy of the decision to the DRC members, the Program Director, the Department Head, the Vice Dean for Academic Affairs, the Associate and Assistant Deans for Graduate Medical Education, and the Office of General Counsel. If The GME Office is unable to hand-deliver the decision to the resident, then it will mail a copy of the decision to the resident's address of record by first-class postage paid mail. The decision becomes effective upon hand-delivery to the resident, or five (5) days from the date on which it is mailed.

FAILURE TO APPEAR AND CONTINUANCES

A resident's failure to request a hearing to review a decision to impose discipline, to appear at a scheduled hearing, or to appeal from an adverse decision, will be treated as consent to the action. If a resident requests a hearing but fails to attend the hearing, or if a resident files a Notice of Appeal, but fails to provide a written statement outlining his/her grounds for appeal within the time allowed under these Guidelines for doing so, such failure to attend or failure to file the statement will result in the cancellation of the hearing or waiver of his/her right to appeal, except that, for good cause shown, a hearing may be rescheduled or continued.

If a hearing must be rescheduled, the time lines set forth above shall not apply; however, due regard will be given to scheduling a time that is mutually convenient to the resident, witnesses, DRC members, the attorneys for the parties, and the University representative.

PAYMENT OF SALARY PENDING FINAL DISCIPLINE

A resident will continue to receive his/her full compensation and benefits pending a final decision on any disciplinary action.

NOTIFICATION TO STATE LICENSING BOARD

The Program Director, the Department Head, the Vice Dean for Academic Affairs or his/her designee, or the Associate or Assistant Dean for Graduate Medical Education may be required to notify either the Arizona Medical Board or the Arizona Board of Osteopathic Examiners when a resident has been disciplined under these Guidelines if the reason for discipline constitutes unprofessional conduct, as defined by A.R.S. §§ 32-1401, *et seq.*, or 32-1800, *et seq.*, or as otherwise required by state law.

The University of Arizona College of Medicine
Graduate Medical Education

NOTICE OF ACCEPTANCE OF DISCIPLINARY ACTION

I, _____, a resident in the Department of _____, consent to the disciplinary action taken by Notice of Action form dated _____ and forego my right to a hearing to challenge that decision.

Signature of Resident

Date _____

The University of Arizona College of Medicine
Graduate Medical Education

NOTICE OF APPEAL

I, _____, hereby give notice that I intend to appeal the decision of the Department of _____ Residency Program's Discipline Review Committee, dated the ____ day of _____, 2009.

Signature of Resident

Date _____

DUE PROCESS FLOWCHART