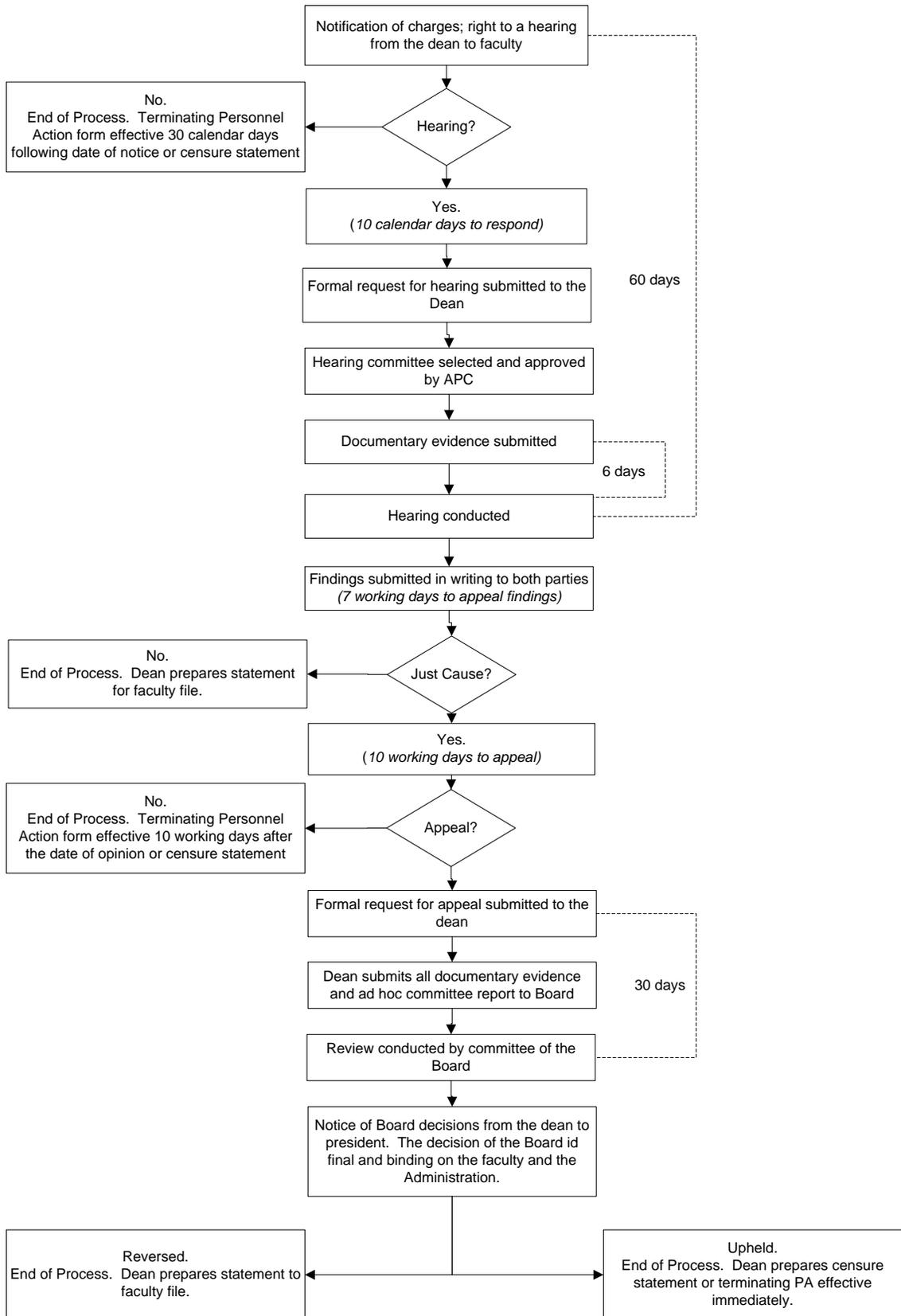


**APPENDIX III**

**DUE PROCESS PROCEDURES GOVERNING FACULTY DISMISSAL FOR JUST CAUSE**

## Due Process Procedures: Just Cause for Censure, Suspension or Dismissal



## APPENDIX TO FACULTY BYLAWS

### **I. Introduction**

The Bylaws of the faculty of Morehouse School of Medicine (the "School of Medicine") provide for the dismissal of a member of the faculty for "just cause." The Bylaws further provide that no member of the faculty may be dismissed for just cause without "due process" (Article VIII).

The following provisions apply to matters relating to "just cause," but do not apply to procedures regarding "intent not to reappoint" after expiration of a faculty appointment. The latter procedures are described in the Faculty Appointment and Promotion Process and Policies.

Dismissal of a member of the School of Medicine's faculty may be recommended, depending on the circumstances, by a department chairperson, dean, or the president. The faculty member shall continue to hold his/her faculty appointment and shall receive his/ her salary and other employment benefits until a final decision has been made regarding the Faculty Member's employment status with the School of Medicine.

If possible, prior to recommending a Faculty Member for dismissal, the chairperson and/or dean should make a good faith effort to resolve the problem or dispute that supports the underlying recommendation of dismissal.

In order to recommend dismissal of a Faculty Member, the chairperson or dean must send a letter to the faculty member, with a copy to the dean, informing the faculty member of his/her intention to recommend dismissal from the School of Medicine. The letter of intent must contain a reasonable statement of the problem at issue and, if applicable, efforts made to resolve the problem. The faculty member has the right to submit a written response before the formal dismissal process is initiated.

Upon receipt of such letter, the dean shall contact the faculty member to solicit a written response and may attempt to resolve this issue informally before initiating the formal process. If unsuccessful, the dean shall initiate the formal process. Both the Faculty Member and the School of Medicine shall substantially comply with the process and procedures described herein.

If, in the judgment of the dean or president, the continued activity of the Faculty Member is considered undesirable, he or she may be suspended from duty pending a final decision. The decision as to whether the Faculty Member may continue employment related activities or use institutional facilities shall be made by the dean or president. The interim suspension is without loss of salary.

## **II. Dismissal Process**

- A. A faculty member must be notified in writing (the “Notice”) by the dean of the School of Medicine (the dean<sup>1</sup>) if he or she is charged with one or more of the following “just causes” for dismissal:
1. Professional incompetence;
  2. Neglect of duty, including but not limited to, serious violation of faculty rules for governance or corporate bylaws, rules and regulations;
  3. Misconduct in teaching or in the conduct of research. Misconduct shall be interpreted to include, but not be limited to, the present and then current definition of charges of misconduct in research as stated by the United States Public Health Service which presently defines “misconduct” as (1) serious deviation from accepted practices such as fabrication, falsification, or plagiarism, in carrying out research or in reporting the results of research; or (2) material failure to comply with federal requirements affecting specific aspects of the conduct of research (e.g., the protection of human subjects and the welfare of laboratory animals);
  4. Conduct which significantly impairs his or her ability, or that of others to carry out academic and/or administrative responsibilities to the School of Medicine;
  5. Violation of generally accepted standards of professional ethics;
  6. Breach of confidentiality as required by law or established by School of Medicine policy concerning faculty, staff, residents, students, or patient records or data, research data, or School of Medicine procedures in which the participants are promised confidentiality;
  7. Refusal to perform legitimate work assigned by the faculty member’s supervisor or department chair; Violation(s) of other School of Medicine policies, including but not limited to the Code of Conduct and Human Resources Policy Manual.
- B. The Notice must include:
1. A reasonably specific description of the violation;
  2. A description of the evidence supporting the charge;
  3. The name(s) of the person or persons providing the evidence;
  4. Notice that the faculty member Faculty Member has the right to a hearing. The Faculty Member may exercise such right by sending a written notice stating the

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<sup>1</sup> If the dean is being recommended for dismissal from the faculty, then the president of the School of Medicine shall designate a person to carry out the responsibilities described herein which normally would be done by the dean.

desire for a formal hearing (the "Request for Hearing Notice") to the dean within ten (10) working days of his/her receipt Faculty Member of the Notice. 5. Notice that dismissal will be recommended to the president by the dean [(to become effective thirty [(30)] calendar days following the date of notice)] unless the right to a hearing is exercised.

### **III. Right to Hearing**

Upon receipt of a Request for Hearing Notice, the dean, or his or her designee shall:

- A. Consult with the Faculty Member and the dean to set a date for the hearing. The date should provide the Faculty Member sufficient time to prepare a defense but, unless otherwise agreed by the dean and the Faculty Member, shall not be later than sixty (60) calendar days from the date the Notice was sent to the Faculty Member.
- B. Provide the Academic Policy Council ("APC") with the names of ten (10) faculty members from which the APC shall appoint an ad hoc faculty committee (the "Ad Hoc Committee") to conduct the hearing and to render a written recommendation to the dean. The Ad Hoc Committee shall have no fewer than three or more than five faculty members. None of the faculty members shall have a collaborative working relationship with, or be from the same department as, the Faculty Member. If any member of the faculty, in his or her sole discretion, determines he or she has a conflict of interest which would hamper his/her ability to be fair to the Faculty Member subject to dismissal proceedings or the School of Medicine, the faculty member shall not be required to serve on the Ad Hoc Committee. The Ad Hoc Committee make-up is not subject to challenge.
- C. Provide the Faculty Member and the dean with the names of the members of the Ad Hoc Committee.
- D. Advise the Faculty Member of his or her right to:
  1. Be present at the hearing;
  2. Present a defense;
  3. Be assisted in his or her defense by a member of the faculty of his or her own choosing (the "Assisting Faculty Member");
  4. Call witnesses;
  5. Rebut evidence;
  6. Question adverse witnesses.
- E. Further advise the Faculty Member that the hearing will be a faculty hearing, and will not be conducted as a legal hearing. The Faculty Member may consult with legal counsel prior to the hearing. Persons who are not specifically authorized by these procedures may not attend the hearing, including without limitation legal counsel and members of the media.

#### **IV. Preparation for the Hearing**

- A. Once APC selects the Ad Hoc Committee the dean appoints the committee chairperson;
- B. No less than five (5) days prior to the hearing, the Faculty Member shall provide the Ad Hoc Committee and the dean with the name of the Assisting Faculty Member, if any;
- C. No less than five (5) days prior to the hearing, the dean shall provide the Ad Hoc Committee and the Faculty Member, with any and all documentary evidence relating to the charges and shall identify to both groups the names of persons who the dean shall call to testify with respect to the alleged offense;
- D. No less than five (5) days prior to the hearing, the Faculty Member shall provide the Ad Hoc Committee and the dean with any and all documentary evidence relating to the charges and shall identify the names of persons who the Faculty Member shall call to testify with respect to the alleged offense;
- E. The dean shall prepare the information against the Faculty Member to be presented at the hearing;
- F. The Faculty Member or the Assisting Faculty Member shall prepare the information in defense of the Faculty Member;
- G. The Ad Hoc Committee may have an initial meeting to review the charges and documentary evidence. After this review, the Ad Hoc Committee may choose to call witnesses other than those identified by the dean or the Faculty Member, but shall notify both parties of any additional witnesses. The Committee may also request additional documentary information of either or both parties, but shall make same available to the other party at or before the hearing. No documentation or other information from any source shall be accepted less than five (5) days prior to the hearing.
- H. Prior to the hearing neither the Faculty Member nor the dean shall contact any member of the Ad Hoc Committee for the purpose of persuading the Committee in connection with the dismissal process.

#### **V. The Hearing**

- A. The hearing shall be closed. To the extent required by law, the evidence received during the hearing and the deliberations of the Ad Hoc Committee shall be kept confidential. A meeting record will be made of the hearing. The Ad Hoc Committee chairperson shall maintain possession of the record until all appeals authorized by these Bylaws have been completed or for sixty (60) days, whichever is longer. The chairperson shall release copies of the meeting record only to members of the Ad Hoc Committee, the dean, the president or the Faculty Member.
- B. The hearing is a faculty hearing and rules of procedure and/or evidence that would be applicable in a court of law are not applicable to this hearing.

- C. The dean and the Faculty Member may make opening statements. The dean shall present the charges and documentary evidence on behalf of the School of Medicine. The dean may ask an associate dean; a department chairperson or another designee, to serve as his / her alternate. The chairperson of the Ad Hoc Committee shall set the order of the presentation of evidence and, upon notifying all parties, may exclude irrelevant or unduly repetitious evidence or argument and at all times shall have final authority to conduct the hearing. Each party shall have the right to confront and question the witnesses of the other. Witnesses other than the Faculty Member, the Assisting Faculty Member, the dean and/or the person recommending the faculty member for dismissal are to be present only when testifying or responding to questions.
- D. The proceedings shall take place under the direction of the chairperson of the Ad Hoc Committee, any member of the Ad Hoc Committee, with the permission of the chairperson, may question the Faculty Member, dean and the witnesses. The chairperson of the Ad Hoc Committee shall have sole discretion for determining all procedural issues not specifically discussed herein.
- E. The chairperson of the Ad Hoc Committee, with the consent of a majority of the Ad Hoc Committee, may, if necessary, continue the hearing an additional day in order to provide for the testimony of all witnesses or review of all materials; however, the entire hearing is expected to be completed within sixty (60) calendar days of the date of notification of the charges. This time may be extended at the sole discretion of a two-thirds majority of the Ad Hoc Committee. At the conclusion of the hearing, the Faculty Member, followed by the dean, shall be accorded an opportunity for a summation.
- F. The chairperson of the Ad Hoc Committee shall declare the hearing closed.

## **VI. The Decision**

The Ad Hoc Committee shall deliberate to reach its findings. The Ad Hoc Committee shall submit its findings in writing (the "Opinion"). The Opinion shall be based solely on the hearing record. The Opinion shall include a statement that either there is, or there is not, just cause for dismissal. The Opinion shall further include a statement as to whether the Faculty Member shall be dismissed. The Ad Hoc Committee shall provide copies of the Opinion to both the dean and the Faculty Member as soon as practicable and generally within seven (7) days of the hearing.

## **VII. Administrative Action after Ad Hoc Committee Decision**

- A. If the Ad Hoc Committee finds that there is not just cause dismissal, the dean shall prepare a statement for the faculty file of the Faculty Member to include only the following information:
  - 1. That a charge was brought against the Faculty Member giving the date but not the nature of the charge;
  - 2. That a hearing was held before a faculty committee giving the date of the hearing;

3. That the opinion of the faculty committee was rendered in writing and that just cause was not established to warrant dismissal of the Faculty Member.
4. All other documents relating to the hearing and to the Opinion shall be placed in a sealed envelope in the faculty file in the dean's office. The file shall only be opened if the Faculty Member is charged again and requests a faculty hearing. Under such circumstances, the new Ad Hoc Committee shall have access to and may consider the full file.

- B. If the Ad Hoc Committee finds that there is just cause for dismissal, the dean shall recommend to the president that the Faculty Member be dismissed, the dismissal to become effective ten (10) working days after the date on which the Ad Hoc Committee provides the Opinion to the Faculty Member, unless the Faculty Member exercises his or her right to appeal as set forth below.

## **VII. Right to Appeal**

The Faculty Member may appeal the Ad Hoc Committee's finding that there is just cause for dismissal by notifying the dean in writing, of his/ her election to appeal such finding (the "Notice of Appeal"). The Notice of Appeal must be received by the dean within ten (10) working days of the date on which the Ad Hoc Committee provides the Opinion to the Faculty Member.

If a Notice of Appeal is received within that time, then no action will be taken until the appeal is completed. If the Faculty Member files an appeal, the dean shall forward a copy of the Notice of Appeal, all documentary evidence, and the Opinion to the Board of Trustees<sup>2</sup>. The Board of Trustees, or a committee thereof, shall review the decision of the Ad Hoc Committee pursuant to procedures established by the Board of Trustees. The Board of Trustees shall render its decision to the dean, within a reasonable time and generally no later than thirty (30) days after receipt of the Notice of Appeal. The decision of the Board of Trustees is final and binding on the Faculty Member and the Administration of the School of Medicine.

## **VIII. Administrative Action after Board of Trustees Decision**

- A. If the decision to dismiss the Faculty Member is reversed on appeal to the Board of Trustees, then the dean shall prepare a statement for the faculty file of the Faculty Member to include only the following information:
1. That a charge was brought against the Faculty Member giving the date of the charge but not the nature of the charge;
  2. That a faculty hearing and an appeals hearing were held giving the dates of the hearings;

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<sup>2</sup> All references to the Board of Trustees in this appendix shall mean either the entire Board of Trustees or a committee of the Board of Trustees.

3. That the decision of the Board of Trustees was rendered in writing and that just cause was not established to warrant dismissal of the Faculty Member.
  4. All other documents relating to the hearing and to the decision of the Board of Trustees shall be placed in a sealed file to be opened only with the joint consent of the dean and the Faculty Member, unless the Faculty Member shall again be charged and again request a faculty hearing. Under such circumstances, the new Ad Hoc Committee shall have access to and may consider the full file.
- B. If the decision is made by the Board of Trustees to uphold the Ad Hoc Committee's finding of just cause for dismissal, the dean shall recommend to the president that the Faculty Member be dismissed effective the date on which the Board of Trustees provides its decision regarding Faculty Member, and shall forward to the president the decision of the Board of Trustees as well as the Opinion.
- C. An action to dismiss a faculty member severs that person's connection with the School of Medicine including remuneration and all rights regarding continued further employment.