

Postgraduate Education Intimidation, Harassment, Discrimination and Violence, Policy and Procedure

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Responsible Office: Postgraduate Education (PGE) & Learner Affairs

Responsible Officer(s): Associate Dean, Postgraduate Education

Preamble

The Northern Ontario School of Medicine (NOSM) is committed to providing a learning atmosphere of inclusiveness, responsiveness, understanding and respect for the dignity and worth of every person in order to create the best possible environment for working, learning and research. NOSM is further committed to maintaining an environment in the Postgraduate Education (“PGE”) programs and office that is free from intimidation, harassment, discrimination or violence.

NOSM and its affiliated hospitals and teaching sites (also referred to as “Affiliated Hospitals” or “Affiliated Teaching Sites”) have a joint responsibility to create a learning environment that is free from intimidation, harassment, discrimination or violence. Residents are also prohibited from engaging in intimidation, harassment, discrimination or violence.

This obligation is in accordance with their joint responsibilities under the Ontario Human Rights Code, the Ontario *Occupational Health and Safety Act* as well as the standards and requirements imposed by the Royal College of Physicians and Surgeons of Canada (RCPSC) under the *Accreditation and the Issue of Intimidation and Harassment in Postgraduate Medical Education (Guidelines for Surveyors and Programs)*.

This document is to be used in conjunction with the Northern Ontario School of Medicine (NOSM) policy on Discrimination and Harassment as approved by the NOSM Board of Directors.

Definitions (see Appendix 1)

Relevant Documents for Reference:

[NOSM Discrimination & Harassment Policy](#)

RCPSC, *Accreditation and the Issue of Intimidation and Harassment in Postgraduate Medical Education: Guidelines for Surveyors and Programs.*

PG 1.3 Postgraduate Harassment & Discrimination Protocol Approved: 2007 09 20 Page 1 Revised (the "Protocol"):¹

This Policy and Protocol shall be available:

- in all resident handbooks
- on the MyNOSM intranet & PGE external web-site intranet
- by presentation at resident orientation sessions

A. Residents should report intimidation, harassment, intimidation or violence

A Resident who witnesses or experiences intimidation, harassment, discrimination or violence is encouraged to bring the concern to the attention of one of the following at the earliest possible: the Program Director, Associate Dean, PGE (NOSM)² or the designated individual for such matters under any applicable policies established by the Affiliated Hospital or Teaching Site.

Appendix 2 sets out which institution has primary responsibility in different types of situations. Regardless of who has jurisdiction, the Resident can choose whom he or she wishes to approach about his or her concerns.

B. Confidentiality

¹ The Protocol establishes six principles: 1. Timely identification of a concern about discrimination and harassment should be the goal of all programs; 2. Residents are reminded at orientation and their twice yearly meetings with the Program Director to inform their Program Director or NOSM administration of concerns; 3. The initial discussion about any issues related to intimidation, discrimination or harassment must occur in a confidential setting; 4. There shall be a process to clarify the facts concerning the allegation; 5. The process of clarification must occur in an atmosphere free of retribution; 6. Allegations should be addressed and resolved in a timely manner.

² NOSM recognizes that in some rare cases, the Resident will not wish to bring his or her concerns to the Program Director or the Associate Dean, PGE. In such cases, the Resident may express his or her concerns to the Director of Human Resources of NOSM. In such cases, the Director of Human Resources (NOSM) will undertake the steps and processes in this Policy that would otherwise have been undertaken by the Program Director or the Associate Dean, PGE and the Policy will be read accordingly.

All individuals involved in a report of intimidation, harassment, discrimination or violence are expected to make every attempt to respect the confidential nature of any complaint and all matters related to the complaint to the extent practical and appropriate in the circumstances.

If an individual wishes to pursue a formal complaint, an investigation is likely to occur. The person(s) who is/are the subject matter of the complaint will have to be advised of the identity of the person making the complaint and the nature of the complaint.

Exceptions to the general principle of confidentiality may be made in the event of suspected imminent danger, health or safety considerations or where required by law.

C. Informal resolution

A Resident may express concerns on an informal basis to the Program Director or the Associate Dean, PGE, who will discuss the matter with the Resident, consult with NOSM resources, and attempt to resolve the matter on a confidential basis.

Where appropriate and with the knowledge of the Resident, the Program Director or the Associate Dean, PGE, will consult with the appropriate personnel in the Affiliated Hospital or Teaching Site.

The Program Director or the Associate Dean, PGE, may also provide the Resident with referrals to resources that may be of assistance in resolving the concerns. The Program Director or the Associate Dean, PGE, will confirm in writing to the Resident that the Resident has requested that the concern be dealt with on an informal basis.

Residents are welcome to involve their PARO representative at any stage of the process.

Discussions will be kept confidential to the extent possible and every reasonable effort shall be made to protect the privacy of all parties.

Where such informal and confidential discussion is ineffective in resolving the concern of the Resident, the resident may bring forward a written complaint directed to the NOSM Program Director, the Associate Dean, PGE, or to the designated individual under the applicable Affiliated Hospital or Teaching Site policy.

D. Written (formal) complaint

A Resident may bring a written complaint forward to the Program Director or the Associate Dean, PGE.

The Associate Dean, PGE or delegate will advise the Affiliated Hospital or Teaching Site where it appears that the matter involves the Affiliated Hospital or Teaching Site as well.

In such cases, NOSM and the Affiliated Hospital or Teaching Site will discuss and decide which institution has primary jurisdiction to deal with the complaint. It is expected

that where the Resident brings a complaint to the attention of the Affiliated Hospital or Teaching Site, the Affiliated Hospital or Teaching Site will reach out to the Associate Dean, PGE regarding the complaint.

NOSM will cooperate with the Affiliated Hospital or Teaching Site and will take appropriate steps to safeguard the interests of the Resident.

E. Avenues for resolution

Administrative Measures

The Program Director or the Associate Dean, PGE, may decide to implement certain interim administrative measures, if there is a concern regarding the mediation/ complaint process being tainted by the current situation. Such interim administrative measures are not disciplinary and do not represent a decision on the merits of the complaint by NOSM. Interim measures could include, without limitation, temporary re-assignment of personnel, imposition of administrative paid leave or scheduling changes that would reduce contact between persons involved in the complaint.

Mediation:

If NOSM has primary jurisdiction, the Associate Dean, PGE or the Program Director will review the nature of the complaint.

Where it appears that the complaint involves matters under the jurisdiction of the Affiliated Hospital or Teaching Site as well as NOSM, the Associate Dean, PGE and the Affiliated Hospital or Teaching Site will discuss the appropriateness of mediation and the mediation process to be used.

If the Resident is agreeable to mediation, the individuals complained about will be advised of the complaint and the Resident's desire to mediate a resolution. Mediation will only proceed if the parties responding to the complaint are also agreeable to a mediation.

Where the complaint involves NOSM's general practices or procedures, NOSM itself may become a party to the mediation. Similarly, where the general practices or procedures of the Affiliated Hospital or Teaching Site are at issue, the Affiliated Hospital or Teaching Site may become a party to the mediation.

Mediation is a voluntary process in which the complainant and the respondent(s) meet with a neutral third party (mediator) who is trained to help them develop a solution with which both are comfortable. NOSM (and where appropriate, the Affiliated Hospital or Teaching Site) will pay for the expenses of a qualified mediator. All parties involved will be required to sign a mediation agreement and the mediation will be a confidential, voluntary process.

Where no resolution is reached during the mediation process, the complaint will ordinarily be referred to investigation, unless the Associate Dean, PGE, determines that the issues relate to systemic matters that do not require an investigation process.

Where the Associate Dean, PGE determines that the unresolved matters do not require an investigation process, the Associate Dean, PGE will provide a written report to the Resident as to NOSM's position regarding the complaint and where appropriate, provide a copy of the report to the Affiliated Hospital or Teaching Site.

Investigation:

If the matter has not been resolved by an informal process (and/or mediation), a qualified external and unbiased investigator will be appointed by the Associate Dean, PGE. Where there may be issues pertaining to the Affiliated Hospital or Teaching Site, NOSM will cooperate with the Affiliated Hospital or Teaching Site with respect to the choice of investigator.

An investigation will involve:

- gathering all pertinent information from the complainant, respondent and relevant witnesses, considering potential witnesses identified by the complainant or respondent;
- advising all witnesses in writing of the duty of confidentiality and the duty to answer questions posted by the investigator truthfully and completely;
- reviewing any relevant documents or physical evidence;
- determining procedural issues regarding the conduct of the investigation;
- providing the complainant and respondent with particulars of allegations to enable a full response as required in the course of the investigation;
- assessing the evidence including consideration of conflicting evidence, direct knowledge, relationship of witnesses to the complainant or respondent, opportunity for observation, ability to recall, and other relevant factors;
- determining the allegations/issues relating to the complaint and deciding whether, on a balance of probabilities, the reported discrimination or harassment or intimidation occurred; and
- suggesting remedies, disciplinary action(s), or other measures, which suggestions are not binding on NOSM; and
- keeping the parties informed about the progress of the complaint
- Respecting the rights of parties responding to complaint to have representation, as applicable, through their union or faculty association, where applicable.

The investigator will submit a written report to the Associate Dean, PGE.

A summary of the findings and conclusions of the report will be provided to both the Resident and the individuals who were subject to the investigation. All parties will be entitled to comment on the report and provide any comments or additional information to the Associate Dean, PGE.

Where there is Affiliated Hospital or Teaching Site involvement, such comments or additional information will be provided to the Affiliated Hospital or Teaching Site as well.

Final Resolution: Based on the report and the additional comments/information received from any of the parties, the Associate Dean, PGE may determine any remedy that NOSM has jurisdiction to implement and shall implement same. NOSM shall advise the Affiliated Hospital or Teaching Site of any such decision.

Where NOSM does not have jurisdiction to implement some or all of the remedy because the matter requires the involvement or cooperation of the Associated Hospital or Teaching Site, the Associate Dean, PGE, will cooperate with the Associated Hospital or Teaching Site in order to provide a remedy to the resident.

While the Affiliated Hospital or Teaching Site is at liberty to impose its own remedies, it is expected that NOSM will be advised of any remedies implemented.

NOSM and the Affiliated Hospital or Teaching Site are expected to collaborate to ensure that there is an appropriate remedy to the issues raised by the Resident.

Depending on the circumstances, NOSM reserves the right to report the circumstances to the CPSO.

F. General

The Resident is protected against reprisal for bringing a complaint forward in good faith, regardless of the ultimate decision on the merits of the complaint.

Complaints that are made in bad faith or maliciously, however, are considered to be a form of harassment and may be subject to discipline.

Nothing in this policy is to be interpreted as limiting or restricting the rights of any individual under any other applicable policy of NOSM, the Affiliated Hospitals and/or the Affiliated Teaching Sites.

Nothing in this policy is to be interpreted as limiting or restricting the rights of any individual under the Ontario Human Rights Code or any other law.

The Program Director and the Associate Dean, Postgraduate Education are expected to monitor trends and report same to the Director of Equity and Quality Control. Such reports are to be based on aggregate data. Regardless of the resolution of a specific complaint, the nature of the complaint and the issues raised should be reviewed to determine whether there is an underlying issue that should be addressed or process that needs to be improved.

Throughout the process, it is expected that NOSM and the Affiliated Hospitals and Teaching Sites will collaborate in ensuring that the rights of residents to an environment free of intimidation, harassment, discrimination and violence are respected. Where the specific policies do not address a situation specifically, NOSM will be guided by the

principles in this Policy and recognition of the shared responsibility for creating an environment that is free from intimidation, harassment and discrimination.

Definitions (Appendix I)

Discrimination

Discrimination can be direct or indirect.

Direct discrimination is treating someone unfairly by either imposing a burden on them, or denying them a privilege, benefit or opportunity enjoyed by others, simply because of their race, creed, colour, ethnic origin, citizenship, disability, sex, sexual orientation, gender identity, gender expression, marital status, family status (including pregnancy), record of offences or any other personal characteristic protected by the Ontario Human Rights Code (“Code”). It can be based on perceived or real characteristics of individuals. Harassment is one type of direct discrimination that many can recognize.

Systemic discrimination happens when rules, standards, practices or requirements appear to be neutral and fair but, in fact, have a discriminatory impact on people with the protected characteristic protected by the Code.

Systemic discrimination is often unconscious and built into an organization’s administrative structures. Organizations are often unaware of its presence until there is an inquiry or challenge. Where there is a systemic negative impact, NOSM (in conjunction with its partners) is required to accommodate the individual experiencing the negative impact “up to the point of undue hardship.”

Harassment: a course of vexatious comment or conduct that is known or ought reasonable to be known to be unwelcome; this can include:

- Shouting or raising one’s voice
- Constant interruption
- Disrespectful jokes
- Use of vulgarity and profanity, especially after being asked not to
- Singling out an individual for criticism, grilling or interrogation
- Racist, homophobic or sexist remarks or epithets
- Generalized negative comments about a group (e.g. sex, race)
- Displaying pictures or materials that are offensive (e.g. pornography)
- Sarcasm or ridicule
- Unjustified negative remarks
- Malicious and unjustified complaints

Harassment includes psychological harassment.

Where an incident of harassment is significant or severe, a single incident may be sufficient to constitute harassment.

Harassment also includes “sexual harassment”, which includes:

- Bragging about sexual prowess or activities
- Asking questions about an individual’s sex life
- Spreading sexual rumours or innuendo
- Homophobic comments or slurs

- Sexual solicitation and advances (e.g. implied or explicit requests for sexual contact)
- “Quid pro quo” solicitation (e.g. exchange of sexual relationship for job advancement or favours)

Harassment does not include:

- The good faith exercise of supervisory responsibilities, including, without limitation, assessment and criticisms of the resident’s performance or academic efforts, even where the resident does not agree with such assessment(s) or criticism(s) or finds the process uncomfortable or difficult.
- The good faith imposition of high standards of academic performance;
- Personality or interpersonal conflicts, provided that the conduct complained about does not generally meet the definition of Harassment; or,
- Academic disagreements, even if intense, which are conducted in an otherwise respectful manner.

Intimidation

The term “intimidation” is often used synonymously with “harassment”.

In this policy, intimidation is used to denote conduct that is designed to force someone to do something they would ordinarily not do or alternatively, refrain from doing something they would ordinarily do, where the conduct is contrary to the policies of NOSM (or one of its affiliated teaching hospitals).

Intimidation does not include:

- The good faith exercise of supervisory responsibilities, including, without limitation, assessment and criticisms of the resident’s performance or academic efforts, even where the resident does not agree with such assessment(s) or criticism(s) or finds the process uncomfortable or difficult.
- The good faith imposition of standards of academic performance; or,
- The good faith exercise of management or supervisory powers.

Reprisal

- Threats or penalties against someone who declines sexual advances
- Threats or penalties against someone who reports or complains about harassment or discrimination, regardless of the underlying validity of the complaint.

Violence

- The exercise of physical force by a person against a resident that causes or could cause physical injury to the resident;
- An attempt to exercise physical force against a resident that could cause physical injury to the resident;
- A statement or behaviour that is reasonable for the resident to Interpret as a threat to exercise physical force against the resident, that if the threat were carried out, could cause physical injury to the worker.

Appendix II – Who has primary jurisdiction

NOSM will normally have primary responsibility in the following situations:

- A complaint by a resident about the behavior of a member of the teaching faculty in an academic context;
- A complaint by a resident about the behavior of another learner in an academic context;
- A complaint by a member of the teaching faculty about the behavior of a resident in an academic context; or,
- A complaint by a resident about a faculty member or other learner in a clinical context where the Affiliated Hospital or Teaching Site is not involved.

The Affiliated Hospital or Teaching Site will have primary responsibility in the following situation:

- A complaint by a resident about the behaviour of a staff or physician associated with the Affiliated Hospital or Teaching Site where the conduct complained about occurred in connection with the hospital or teaching site;
- A complaint by a resident about the behaviour of another learner in the hospital or teaching site setting, particularly where the other learner has no affiliation with NOSM; or,
- A complaint about a resident by someone associated with the Affiliated Hospital or Teaching Site, including patients, staff or physicians, where the incident or issue arose in the hospital or teaching site context.

In cases involving both NOSM and an Affiliated Hospital or Teaching Site, NOSM and the Affiliated Hospital or Teaching Site in question will determine which entity ought to have primary responsibility and if unable to agree, shall work cooperatively in resolving the matter of jurisdiction and responsibility in a prompt manner. The primary goal shall be to respond to the complaint or concern in a fair, prompt and efficient manner.