

## Dispute Resolution Policy

Last Approved:	NOAMA Board	September 26, 2023
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### A. Background

1. *NOAMA*: The Northern Ontario Academic Medicine Association (NOAMA) is the unincorporated governance organization as constituted and defined under the NOAMA Academic Agreement, dated April 1, 2009, and all subsequent amendments thereto.
2. *Funding and accountability*: The NOAMA Academic Agreement sets out that NOAMA is responsible for managing, allocating, and distributing the organization's Alternative Funding Plan (AFP). As part of this, NOAMA is responsible for allocating financial resources to Physician Clinical Teachers' Association (PCTA) members, defined as "Group Physicians." Group Physicians in turn, use the financial resources to meet the clinical and academic deliverables established under the NOAMA Academic Agreement.
3. *LEG and Non-LEG Group Physicians*: Group Physicians either operate collectively as members of *Local Education Groups (LEGs)* or independently as *non-LEG Group Physicians*. The AFP imposes the obligation on NOAMA to ensure that each LEG has a written governance agreement that complies with the requirements of the AFP.
4. *Physician funding*: Non-LEG Group Physicians are funded directly by NOAMA, either personally or through their Medicine Professional Corporation. LEG Group Physicians are funded indirectly by NOAMA. Specifically, NOAMA provides funds to each LEG, and the LEG then distributes funding to Group Physicians (personally or through their Medicine Professional Corporation) in accordance with the LEG's internal governance agreement.

### B. Purpose

1. NOAMA is required to establish a dispute resolution mechanism as required under section 4.4(g) of the NOAMA Academic Agreement.
2. Scope of this Dispute Resolution Policy:  
This Dispute Resolution Policy applies to disputes that may arise:
  - a. NOAMA and a LEG;
  - b. NOAMA and a non-LEG Group Physician(s);
  - c. NOAMA and NOAMA Signatories (namely PCTA, the Northern Teaching Hospitals' Council, and the Northern Ontario School of Medicine also known as Northern Ontario School of Medicine University [NOSM U]);  
and
  - d. NOAMA and a Group Physician in a LEG exclusively where the dispute relates to a matter within NOAMA's mandate.
3. Matters Outside of the Scope of this Dispute Resolution Policy  
Among other things, this Dispute Resolution Policy does **not** apply:

- a. Disputes within LEGs that do not relate to a matter within NOAMA's mandate. NOAMA approves all LEG internal governance agreements and substantive amendments thereto, including each LEG's dispute resolution process. Complaints and disputes within the mandate of the LEG must be decided within the dispute resolution framework established by the LEG.
  - b. Disputes between physicians and the Northern Ontario School of Medicine University (NOSM U). Disputes between a physician and NOSM U shall be handled pursuant to NOSM U's internal process.
  - c. All other matters not explicitly outlined in section B - 2 above.
4. Review of this Dispute Resolution Policy
- a. This policy shall be reviewed and revised if warranted, by NOAMA on an as-needed basis, but no less frequently than once every three years.

**C. Principles of this Dispute Resolution Policy**

1. Disputes are to be approached through a collegial and transparent process.
2. Parties to a dispute are expected to discuss and negotiate in good faith with the aim of reaching a resolution.
3. Parties are expected to manage conflicts of interest with integrity, honesty, and fairness. A conflict of interest can include, but is not limited to, a pecuniary or non-pecuniary interest in the outcome of a matter. Parties with a conflict of interest, including potential conflicts of interest, are expected to disclose the nature and extent of their conflict, provided that the disclosure does not require sharing personal health information. The Board of NOAMA shall review and determine, in its sole discretion, how to best manage the conflicted party in the dispute resolution process. If the conflicted party is a member of the Board of NOAMA, that member shall recuse themselves from all Board discussion on the matter of managing their conflict and shall follow the Board's direction on conflict management.
4. The NOAMA chairs may, at any time during the Dispute Resolution Process, suspend the process to allow for alternate resolution processes, if the parties so agree.
5. Applicable timelines shall be strictly adhered to by all parties, including those set by external parties such as mediators and arbitrators.
6. Decisions arising out of this Dispute Resolution Policy are final and binding with no right of appeal or review.

## **D. Dispute Resolution Process**

### **Stage 1: The Complaint**

1. The aggrieved party (“appellant”) shall initiate the dispute resolution process by submitting a written complaint to the NOAMA Chairs (via NOAMA administration). The written complaint should identify itself as a complaint and include a detailed summary of the issue(s), relevant supporting documentation, and information outlining what the appellant is seeking as a desired resolution.

### **Stage 2: Informal Resolution**

2. The NOAMA Chairs shall review the written complaint and meet with the appellant with the goal of resolving the dispute through informal discussions. If applicable, the NOAMA Chairs shall provide information on remedies available within NOAMA’s mandate and authority. The parties shall use their best efforts to work together to devise a mutually agreeable outcome.
3. If the matter is not resolved by the Chairs as outlined in #1 above, the Chairs shall bring the matter to the attention of the NOAMA Board of Directors. Where applicable, the Board may offer additional informal resolution ideas, strategies, and efforts to resolve the dispute. Such additional resolution attempts should be timely and meaningful and should not unduly delay escalation to Stage 3, the Formal Dispute Resolution Process.

#### *Outcomes:*

4. Where a matter is considered resolved by all affected parties, no further steps are warranted. The NOAMA Board shall send a letter to the applicant outlining this outcome.
5. Where a dispute falls wholly outside of the scope of this Dispute Resolution Policy as defined above, the NOAMA Board may make a binding decision to dispose of the dispute and not refer the matter to Stage 3. The Board will send a letter to the applicant outlining this outcome.
6. Where a dispute falls within the scope of this Dispute Resolution Policy and is not resolved through Informal Resolution efforts, the Board shall refer the matter to Stage 3.

### **Stage 3: Formal Resolution**

7. Where a matter is not resolved through Informal Resolution Stage 2, an external qualified alternative dispute resolution professional will be engaged to facilitate a formal dispute resolution process consisting of **mediation, mediation-arbitration, or arbitration**. The Chairs shall, in their sole and absolute discretion, determine whether to refer the matter for mediation, mediation-arbitrations, and/or arbitration.

8. Considerations in determining whether to proceed with mediation, mediation-arbitration, or arbitration can included, but are not limited to:
  - The stated interests of each party
  - The likelihood of success of the dispute resolution process
  - The availability of external mediators/med-arbitrators/arbitrators
  - Cost considerations
  - Time considerations
  - Relational considerations

#### **Retaining a qualified mediator, med-arbitrator, arbitrator**

9. The individual selected as the mediator, med-arbitrator, and/or arbitrator shall be qualified by education and experience to decide the matter in dispute. Unless otherwise agreed, the individual shall be at arm's length from all parties and shall not be a member of the audit or legal firm or firms who advise any party, nor shall the individual be a person who is otherwise regularly retained by a party.
10. This Dispute Resolution process shall be private and confidential, unless all parties otherwise agree.
11. The parties may be, but do not need to be, represented by legal counsel.

#### **Mediation process:**

12. All parties are strongly encouraged to consider engaging in mediation or mediation-arbitration prior to pursuing arbitration.
13. The mediation process shall be as designed and proposed by the qualified mediator (the "Mediator" or "Med-Arbitrator"). All parties are expected to participate respectfully and be willing to listen and discuss matters in good faith with an aim of reaching resolution.
14. The mediation process shall be concluded within 30 days of the retention of the Mediator, subject to extension of such time period for a fixed period by written agreement of the parties or by notice given by the mediator to same because of factors beyond the Mediator's control.

#### **Outcomes:**

15. If the parties reach a settlement occurs, the matter will be considered concluded. The Mediator, or the NOAMA Board as appropriate, will draft a letter of settlement.
16. If the parties are unable to reach settlement, outstanding issue(s) shall be referred to for arbitration.

## Arbitration process:

17. Arbitration shall be heard by a single arbitrator appointed in accordance with the rules set out pursuant to and in accordance with the *Arbitration Act, 1991 (Ontario)*.
18. The parties shall work together to select a single arbitrator. If the parties do not agree upon a single arbitrator within a 60-day period, any party may apply to a judge of the Superior Court of Justice under the *Arbitration Act, 1991 (Ontario)*, as amended or substituted for from time to time, for the appointment of a single arbitrator (the "Arbitrator").
19. The arbitration process shall be as designed and proposed by the qualified Arbitrator. All parties are expected to participate respectfully, be willing to listen and discuss matters in good faith with an aim of reaching resolution.
20. Pursuant to this Dispute Resolution Policy, the parties shall be taken to have conferred on the Arbitrator the following jurisdiction and powers, to be exercised at the Arbitrator's discretion subject only to the terms of this Policy.
21. Without limiting the jurisdiction of the Arbitrator at all, the parties agree that the Arbitrator shall have jurisdiction to:
  - a. determine any question of law arising in the arbitration;
  - b. determine any question as to the Arbitrator's jurisdiction;
  - c. determine any question of good faith, dishonestly or fraud arising in the dispute;
  - d. order the parties to furnish further details or his or her case, in fact or in law;
  - e. proceed in the arbitration notwithstanding the failure or refusal of a party to comply with the terms of this Policy or with the Arbitrator's orders or direction, or to attend any meeting or hearing, but only after giving the party sufficient written notice that the Arbitrator intends to do so;
  - f. receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;
  - g. make one or more interim awards including interim orders to secure all or part of any amount in dispute in the arbitration;
  - h. hold meetings and hearings, and make a decision (including a final decision) in Ontario;
  - i. order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any documents or classes of documents in their possession or power which the Arbitrator determines to be relevant; and
  - j. order oral discovery, provided that oral discovery of the parties shall be completed within a 14-day period unless agreed otherwise by the parties.
22. The Arbitrator shall send the decision to the parties as soon as practicable after the conclusion of the final hearing, but in any event no later than 60 days thereafter, unless that time period is extended for a fixed period by the Arbitrator on written notice to each party because reasons beyond the Arbitrator's control.

23. The decision arrived at by the Arbitrator, howsoever constituted, shall be final and binding and no appeal lie therefrom provided the Arbitrator has followed the rules provided herein in good faith and has proceeded in accordance with the principles of natural justice. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

**Mediation, Med-Arbitration, Arbitration cost considerations:**

24. The general presumption is that NOAMA, in fulfilling its obligation to establish a dispute resolution mechanism to resolve disputes that may arise between or among Signatories, shall assume all reasonable costs associated with retaining an external Mediator, Med-Arbitrator, and Arbitrator. However, where warranted, NOAMA may make ask the appellant to share a portion of the costs and/or may ask the Arbitrator to render a decision on costs.

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