

## DISCIPLINARY AND ADVERSE ACADEMIC ACTIONS

**Statement of Policy:** The following outcomes may be the result of disciplinary process or academic (including professionalism) actions by the Graduate Medical Education program. A resident may be subject to any level of Adverse Action without prior improvement actions or ‘steps’ based upon the severity of the act and the judgment of the University. Consistent with other University policies, this policy is not to be construed as a contract and as warranted by the circumstances, the University may terminate or dismiss a resident at any point in the disciplinary or academic process.

### Basis for Action

Disciplinary actions are typically the outcome for acts determined to be violations of University policy.

The policies include, for instance, the Code of Conduct, various published University GME, HR, Fiscal and IT policies, and the Policy on Sexual Misconduct, Relationship violence, Stalking, and Retaliation. These outcomes can include probation, delayed completion, non-renewal, and/or dismissal. The residency program, University of Tennessee Graduate Medical Education, or the University of Tennessee Health Science Center are under no obligation to pursue improvement actions prior to taking a disciplinary action. All disciplinary actions are subject to the University of Tennessee Graduate Medical Education Policy #630 Academic Appeal Process. All disciplinary actions will become a permanent part of the resident training record.

Academic actions may result from continued poor academic performance when improvement actions have been unsuccessful.

Typically, an academic action will follow when attempted improvement (see GME Policy #610 Academic Performance Improvement) has not been successful. These actions address academic and professionalism deficiencies and may include delayed promotion, repeat of an academic year, delayed program completion, academic probation, denial of Certificate of Completion, denial of a recommendation for board eligibility, non-renewal of agreement and/or dismissal, and will become a permanent part of the resident training record. Adverse Academic actions are subject to the University of Tennessee Graduate Medical Education Policy #630 Academic Appeal Process. Academic coaching, such as Performance Improvement Plans, are not considered to be Adverse Actions and are not included as part of the permanent resident training record. Programs should refrain from disclosing performance improvement plans (PIPs) to internal and external entities.

### Disciplinary or Academic Decisions Process:

The Program Director is responsible for and shall administer disciplinary or academic Adverse Action. Typically, the Program Director will make reasonable enquiry into the facts; may conduct an investigation or rely upon others in GME or the University to investigate and provide an investigation report, either verbal or written; may conduct interviews of the resident or other witnesses; must consult with the GME Program Office prior to making a decision; may consult with others and/or convene an advisory board or recommendation of the Clinical Competency Committee or similar group; may consult with legal counsel; or take whatever steps the Program Director deems appropriate in arriving at a *preliminary* decision. If the factual basis is contested, the program director must resolve the conflicting statements and render a decision based upon a preponderance of the evidence.

The Program Director must then consult with the GME Office prior to making a *final* decision:

- a) If the *preliminary* decision would result in non-renewal or dismissal, then the Program Director, in consultation with the GME Office and the Office of the General Counsel, shall issue to the resident a “Pre-Termination Notice” that contains the written basis of the *preliminary* decision or determination, as well as a notice of a date, time, and place for a hearing or meeting. The resident may provide any written argument, documentation, or other information to contest the *preliminary* decision. The resident may invite a faculty member or other person as a support person, but they will not have a speaking role. The resident may consult with an attorney at any time prior to the meeting, but because this is not an adversarial meeting, attorneys are not allowed to be present. At the hearing the resident may make a presentation as to the issues and any other reasons opposing the *preliminary* decision. The resident may present witnesses, but the Program Director does not have the power to compel attendance.

Within five (5) days, generally, after the conclusion of the Pre-Termination Meeting, the Program Director will issue a *final* decision in writing. All appeals are subject to the Academic Appeal Process GME #630.

A decision by the Program Director to dismiss a resident is a final decision and terminates the employment relationship with the university. The resident will no longer be entitled to pay or benefits even during an appeal.

- b) If the *preliminary* decision would result in academic or disciplinary action other than non-renewal or dismissal, then the Program Director, after consultation with the GME Office, shall issue a written *final* decision. All appeals are subject to the Academic Appeal Process GME #630.

- **Administrative Leave Prior to Adverse Action**

A resident may be removed from all program activities and duties and placed on Paid Administrative Leave by his or her Program Director, Department Chair, the Director or Associate Dean for Graduate Medical Education, or the Dean of the College of Medicine. Paid Administrative Leave is not a disciplinary or academic action but may be imposed in order for an investigation into program-related conduct that may be grossly unprofessional; incompetent; erratic; potentially criminal; noncompliant with the University of Tennessee policies, procedures, and Code of Conduct, federal health care program requirements; or conduct potentially threatening to the well-being of patients, other residents, faculty, staff, or the resident. Any imposition of Paid Administrative Leave must be reported to the Associate Dean of GME.

A decision to place a resident on Paid Administrative Leave shall be reviewed within three (3) working days by the department chair and/or the GME Office to determine if the resident may return to some or all program activities and duties and/or whether further action is warranted. In addition to an investigation, a resident may be referred for fitness for duty evaluation, referral to the Aid for Impaired Residents program (*see* GME Policy #260), etc. Administrative Leave shall be with pay, except for extraordinary situations, and then only with the approval of the Associate Dean – GME, in concurrence with the Associate Dean – Finance and Administration, and the Associate Vice Chancellor – Human Resources.

## **Disciplinary or Academic Adverse Action**

The following are Adverse Actions which can give rise to an Appeal under GME Policy #630 Appeal Process:

- **Extension of Training or Failure to Promote**

Promotion of a resident to the subsequent year of training requires satisfactory cumulative evaluations by faculty that indicate satisfactory progress in scholarship and professional growth. An extension or failure to promote may be used in limited situations such as: overall unsatisfactory performance during the academic year, or failure to pass an annual written in-service examination. Each residency program is responsible for establishing specific written criteria for repeating an academic year. At least 30 days prior to the end of the academic/appointment year, the resident/fellow will receive written notice of his/her requirement to repeat the academic/appointment year. If the primary reason(s) for non-promotion occurs during the last 30 days of the academic year, the program will provide the resident with as much written notice of non-promotion as circumstances reasonably allow.

- **Probation**

Probation is a disciplinary or academic adverse action that is formal notification to the resident that dismissal from the program can occur at any time during or at the conclusion of a probationary period. In most cases, improvement actions including but not limited to Academic Performance Improvement Plans (*see* GME Policy #610) are utilized prior to placement on probation; however, a resident may be placed on probation without prior performance improvement actions based upon individual program policies. A copy of the probation notification, signed by the Program Director and resident, must be sent to the GME Associate Dean.

Probation is typically the last opportunity to correct deficiencies and the final step before dismissal occurs. However, dismissal prior to the conclusion of a probationary period may occur if there is further deterioration in performance or additional deficiencies are identified.

Each residency program is responsible for establishing written criteria and thresholds for placing residents on probation. Examples include, but are not limited to, the following:

failure to complete the requirements of a Performance Improvement Plan (PIP), not performing at an adequate level of competence, unprofessional or unethical behavior, misconduct, disruptive behavior, or failure to fulfill the responsibilities of the program in which he/she is enrolled, including excessive tardiness or absenteeism which disrupts training.

- **Non-renewal of Agreement**

Non-renewal of the annual Agreement of Appointment (*see* GME Policy #115) will occur for residents who have not demonstrated adequate evidence of satisfactory progress in knowledge, skills, scholarship, and/or professional growth, as set forth in GME Policy #520 – Resident Reappointment and Promotion. A written notification of non-renewal shall be communicated to the resident in writing by the Program Director at least 30 days prior to the end of the academic year (June 1 for residents/fellows on normal July 1 appointment cycle). If the reason for non-renewal occurs during the last 30 days of the academic/appointment year, the program will provide the resident with as much written notice as circumstances reasonably allow. A copy of the notification, signed by the Program Director and resident, must be sent to the GME Associate Dean.

Note: A resident may be immediately dismissed without prior written notification at any time during the appointment year due to the occurrence of serious acts as described below.

- **Denial of Certificate of Completion**

A resident may be denied a certificate of completion of training, as well as refusal to provide a recommendation for board eligibility, as a result of overall unsatisfactory performance during the final academic year of residency training. This may include the entire year or overall unsatisfactory performance for at least 50% of rotations during final academic year. Additionally, some programs may deny a certificate of completion to a resident who fails to pass the annual written in-service examination during the final year of training. Each residency program is responsible for establishing specific written criteria for denial of certificate of completion.

Residents denied a certificate of completion must be notified in writing of unsatisfactory performance by the program director at least 30 days prior to scheduled completion of program. In most situations, the resident should be notified of this pending action as soon as possible. A copy of the notification, signed by the program director and resident, must be sent to the DIO.

In certain situations, a resident denied a certificate of completion may be offered the option of repeating the academic year but only at the discretion of the Program Director. (*See Academic Performance Improvement Actions, GME Policy #610*)

- **Dismissal**

Residents may be dismissed for a variety of acts which are of a serious nature. A dismissal decision does not have to be justified by reasons amounting to 'cause'. The GME Associate Dean must review all dismissals. Prior written notice will not be provided to the resident when it is determined that the seriousness of the act requires immediate dismissal. Prior performance improvement steps are encouraged but are not necessary, such as a written warning or probation for this action to be taken. Dismissal may be imposed for actions including, but are not limited to, the following:

- serious acts of incompetence;
- failure to successfully complete probation or a PIP;
- reporting for duty while under the influence or refusal to undergo a drug/alcohol test;
- unprofessional behavior including failure to timely update EMR records;
- job abandonment;
- falsifying records or lying;
- violation of University or GME Policy;
- loss of employment authorization or expiration of visa;
- failure to pass Step 3 by the end of the PGY-2 year;
- exclusion from training site(s) rendering program completion impossible or impractical;
- or behavior that undermines patient safety.

Immediate dismissal will occur if the resident is listed as an excluded individual by any of the following:

- Department of Health and Human Services Office of the Inspector General's "List of Excluded Individuals/Entities;" or
- General Services Administration "List of Parties Excluded from Federal Procurement and Non-Procurement Programs."