

UNIVERSITY OF UTAH HOSPITALS AND CLINICS

GRADUATE MEDICAL EDUCATION

HOUSESTAFF POLICIES AND PROCEDURES

ACADEMIC ACTION, DISPUTE RESOLUTION, AND HEARING PROCEDURES POLICY

Section 7 No. 5 Rev. 4

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I. PURPOSE

To provide a consistent practice for resolving resident disputes.

II. DEFINITIONS

- a. "Resident" as used herein, identifies interns, residents, and fellows in ACGME-accredited and non-ACGME-accredited training programs overseen by the office of Graduate Medical Education at the University of Utah.

III. ACADEMIC ACTION

- a. Academic Nature of Program Actions. The ACGME has established core competencies in the areas of patient care, medical knowledge, practice-based learning and improvement, interpersonal and communication skills, professionalism, and systems-based practice. In turn, the ACGME requires that each program's academic evaluation of the resident be tied to one of the six core competencies. Because virtually all resident conduct and performance is necessarily tied to one of the six core competencies, virtually all resident conduct and performance is academic in nature.
- b. Factors for Determination of Academic Actions. When a program determines that a resident's performance or conduct is unsatisfactory, the program may impose one or more academic actions on the resident.

Unsatisfactory performance or conduct occurs when a resident violates any of the following standards: legal requirements whether state or federal or international; Houseofficer Agreement; University of Utah Policies and Procedures; School of Medicine policies, standards, practices, and expectations; ACGME core competencies; GME policies, standards, practices, and expectations; program-specific policies, standards, practices, and expectations; University of Utah Hospitals and Clinics policies, standards, practices, and expectations; policies, standards, practices, and expectations of a particular training site; ethical standards for physicians; and any other expectations communicated to resident verbally or in writing (for example, by a supervising physician, chief resident, by the program, or otherwise). In addition, unsatisfactory performance or conduct occurs when a resident engages in any behavior which a reasonable person would believe to be in violation of expectations whether or not such expectation is a defined policy, practice, standard, or expectation. The program, in assessing the severity of the academic action to be imposed, may take into account any of the following factors, which list is not intended to be exclusive:

- i. Physical/safety issues;
- ii. Service impact;
- iii. Financial implications;
- iv. Resultant disruption level;

- v. Violation of University, ACGME, School of Medicine, GME, Hospital, training site, ethical, or Program standards;
 - vi. Violation of law;
 - vii. Magnitude of deviation from standards; and
 - viii. Past history of previous performance or conduct issues.
- c. Types of Academic Actions. Possible academic actions include but are not limited to:
- i. Corrective action (sometimes referred to as letter of warning or letter of expectations);
 - ii. Repeating a rotation or a portion of a rotation;
 - iii. Repeating a year or a portion of a year;
 - iv. Special program such as special supervision or a defined academic reading period;
 - v. Conditions placed in houseofficer contract;
 - vi. Suspension;
 - vii. Non-renewal of contract;
 - viii. Probation;
 - ix. Dismissal.
- d. Severity of Academic Action; No Requirement for Progressive Actions; Possibility of Multiple Academic Actions.
- i. The program director or designee will determine the severity of the academic action depending on the factors in II.b. above and on program director's or designee's determination of the egregiousness of the resident's performance or conduct.
 - ii. There is no requirement that academic actions be progressive in nature.
 - iii. As applicable, a combination of academic actions may be imposed at the same time.
- e. Notification to Resident and Opportunity for Written Response.
- i. The program will notify the resident in writing of any academic action to be imposed and the reasons for that action.
 - ii. In addition to the dispute resolution methods discussed in the policy below, the resident may provide a written response to any such letter imposing academic action. Should the resident so choose, the resident must submit such a written response within five (5) business days of the resident's receipt of written notification of the academic action. The resident's response will be placed in the resident's file along with the written notice of academic action.
- f. Non-Renewal of Contract.
- i. A houseofficer contract does not establish any right of expectancy that the contract will be renewed for a subsequent year.
 - ii. There is no requirement that an academic action must have been imposed prior to non-renewal of contract.
 - iii. In cases of non-renewal, the program must provide the resident with a written notice of intent not to renew a resident's contract no later than four months prior to the end of the resident's current contract. However, if the primary reason(s) for the non-renewal occurs within the four months prior to the end of the contract, the program must provide the resident with as much written notice of the intent not to renew as the circumstances will reasonably allow, prior to the end of the contract.

IV. DISPUTE RESOLUTION

- a. **Informal Resolution:** The interests of the University of Utah, the School of Medicine, the various Graduate Medical Education programs, and the residents are best served when problems are resolved as part of the regular communication between the resident and the appropriate program director, Division Chief, Department Chair, and/or GME Director, as appropriate. Residents should first attempt to resolve any disputes concerning academic actions through informal discussions with appropriate individuals within the residency program. If informal discussions are not successful in resolving disputes, the resident may appeal the academic action according to the following procedures.
- b. **Applicability of Formal Dispute Resolution Processes:** The formal dispute resolution processes described below apply only when a specific academic action has occurred that the resident views as being unfair or improper, and when this specific academic action has a direct and adverse effect upon the resident. These processes do not apply to:
 - i. claims that University, GME, or program policies or procedures are unfair generally;
 - ii. complaints involving discrimination or harassment on the basis of race, color, sex, age, religion, sexual orientation, national origin, ethnic origin, disability, or veteran status; these complaints are to be referred to the University of Utah Office of Equal Opportunity and Affirmative Action;
 - iii. complaints pertaining to general levels of salary, fringe benefits, or other broad areas of financial management and staffing; and
 - iv. disputes that are personal in nature and do not involve the grievant's duties as a resident.
- c. **Resident Review Committee.**
 - i. **Applicability:** When a resident is notified of suspension, termination, probation, or non-advancement (including non-renewal of contract), the resident may request a hearing by the Resident Review Committee. To initiate a hearing before the Resident Review Committee, the resident must make written request to the Director of the GME within seven (7) business days after the resident's receipt of notification of suspension, termination, probation, or non-advancement (including non-renewal of contract). If the resident does not submit a written request within this timeframe, the resident will have waived the right to the dispute resolution process.
 1. The resident's written request for review must contain the following elements:
 - a. A brief description of the action being disputed;
 - b. A brief statement as to why the resident feels the action is unfair or inappropriate; and
 - c. A statement of the requested remedy.
 2. **Hearing procedures:** the hearing before the Resident Review Committee shall be conducted as set forth below in IV. Hearing Procedures.
 3. The Resident Review Committee will issue a written report of findings and recommendations to the Dean of the School of Medicine, or designee, within ten (10) business days after the conclusion of the hearing.
 - ii. **Review and Decision by Dean of School of Medicine or Designee.**

1. The Dean of the School of Medicine, or designee, shall consider the documentation submitted to the Resident Review Committee and the findings and recommendations of the Resident Review Committee, in making a decision. Based upon such review, and without conducting further hearings, the Dean or designee shall, within ten (10) business days, take one of the following actions:
 - a. Accept the findings and recommendations of the Resident Review Committee;
 - b. Return the report to the Committee chair, requesting that the Committee reconvene to reconsider or clarify specific matters, materials, and issues, and forward to the Dean or designee a revised report relating to the specific matters referred by the Dean or designee, for further consideration; or
 - c. Reject all or parts of the Committee's findings and recommendations, stating reasons and actions to be taken therefore.
 2. Written notice of the Dean's or designee's decision shall be communicated to the relevant parties within ten (10) business days of the Dean's or designee's receipt of the findings and recommendations.
 3. The Dean's or designee's decision is final unless appealed by either party to the (Senior) Vice President for Health Sciences within seven (7) business days of receipt of the written decision of the Dean or designee.
- iii. Appeal to (Senior) Vice President for Health Sciences or Designee.
1. Within seven (7) business days of receipt of the written decision of the Dean or designee, either party may appeal the decision by filing a written notice of appeal with the (Senior) Vice President for Health Sciences or Designee with a copy to the Director of the GME and to the other party. The other party may file a response to the appeal within five (5) business days of receipt of the appeal.
 2. In making a decision, the (Senior) Vice President for Health Sciences or designee shall consider the appeal and the response and may solicit whatever counsel and advice s/he deems appropriate to arrive at a final decision. Based upon such review, and without conducting further hearings, the (Senior) Vice President for Health Sciences or designee shall, within fifteen (15) business days, take one of the following actions and provide written notification to the parties of the action:
 - a. Affirm the Dean's or designee's decision;
 - b. Return the report to the Committee chair, requesting that the Committee reconvene to reconsider or clarify specific matters, materials, and issues, and forward to the (Senior) Vice President for Health Sciences or designee a revised report relating to the specific matters referred by the (Senior) Vice President for Health Sciences or designee, for further consideration; or
 - c. Reject all or parts of the Dean's or designee's decision, stating reasons and actions to be taken therefore.
 3. The standard of review on appeal is whether there were substantial defects that denied basic fairness and due process. If the (Senior) Vice President for Health Sciences or designee determines that there were no substantial defects that denied

basic fairness and due process, the decision of the Dean or designee shall be affirmed.

4. The decision of the (Senior) Vice President for Health Sciences or designee is final.
- d. Appeals to Program Director, and Division Chief or Department Chair.
- i. Applicability: Appeals of academic actions not involving suspension, termination, probation, or non-advancement (including non-renewal of contract) are resolved by the program director, and as applicable by the relevant Division Chief or Department Chair. Thus, disputes involving actions such as corrective action letters, letters of warning, letters of expectation, verbal or written reprimands, letters of admonishment, evaluations (whether written or verbal), final evaluation letters, letters of reference, academic verification letters, placement on special programs, or imposition of new contractual conditions are resolved with the program director, and as applicable with the Division Chief or Department Chair, and not through the Resident Review Committee process described above.
 - ii. Discussion with Program Director or Designee.
 1. Residents who feel that an academic action is unfair and who have been unable to resolve the problem through informal discussion shall, within seven (7) business days after the resident's receipt of notification of academic action, submit to the program director a formal written appeal of the academic action. The resident may submit written materials to the program director in support of the resident's appeal. If the resident does not file a written appeal within this time frame, the resident will have waived the right to dispute the academic action.
 2. The program director or designee consulted will respond in writing to the resident's claim within fifteen (15) business days.
 3. The program director's or designee's decision is final unless the resident submits a written appeal to the Division Chief or designee within five (5) business days of the resident's receipt of the written response from the program director or designee.
 - iii. Appeal to Division Chief or Designee (or Department Chair or Designee).
 1. As used herein, Division Chief or designee means the Division Chief or designee of the School of Medicine Division in which the program is located. If there is no applicable Division Chief or designee, then the relevant Department Chair or designee will be substituted.
 2. If the dispute is not resolved by appeal to the program director or designee, the resident may file a written appeal with the Division Chief or designee. The resident's written appeal must contain the following elements:
 - a. A description of the matter in dispute;
 - b. A summary of previous attempts at resolution; and
 - c. A statement of the requested remedy.
 3. The resident's written appeal must be submitted to the Division Chief or designee within five (5) business days of the resident's receipt of the written decision from the program director. If the resident does not file a written appeal within this time frame, the resident will have waived the right to refer this matter to the Division Chief or designee (or to the Department Chair or designee).

4. The Division Chief or designee shall discuss the dispute with the resident and the appropriate individual(s) within the program or division or elsewhere in an effort to resolve the matter and will issue a written determination within fifteen (15) business days. If the Division Chief or designee needs additional time to issue a written decision, the resident shall be notified accordingly. In no event will there be an extension of time beyond thirty (30) business days after the Division Chief's or designee's receipt of the written statement of dispute.
5. To overturn the original academic action, the Division Chief or designee must find that the academic action was arbitrary or capricious.
6. The determination of the Division Chief or designee will be final.

V. HEARING PROCEDURES

- a. Applicability: these procedures apply to hearings before the Resident Review Committee.
- b. Program's response to appeal. The program whose decision is being reviewed by the Committee may deliver a response to the resident's request for review to the chair of the Resident Review Committee, with a copy to the other party, no later than five (5) business days after receipt of the resident's written notice of request for hearing. The Program is not required to submit such a response.
- c. Makeup of Committee. The Director of the GME will facilitate the appointment of the Resident Review Committee including a Committee Chair. The Resident Review Committee will consist of two faculty members and three residents, none of whom should have had substantial prior involvement in the dispute. Knowledge of the matter involved does not preclude any individual from serving as a member of the Committee.
- d. Conflict of Interest. Upon written request of one of the parties or Committee members, the Committee Chair may but is not required to excuse any member of the Committee if the Committee Chair determines that the member has a conflict of interest and cannot consider the appeal in an unbiased fashion. The Committee Chair shall coordinate with the Director of the GME to select an appropriate replacement for the excused member.
- e. Scheduling of Hearing. When an appeal is filed in a timely manner, the Committee Chair shall schedule a hearing date and notify the parties in writing of the date of the hearing, the names of the Committee members, and these hearing procedures at least seven (7) business days prior to the hearing.
- f. Timing of Hearing. Hearings shall be conducted within a reasonable time after the resident's initiation of the request for review by the Resident Review Committee.
- g. Exchange of Documents and Witness Lists. At least three (3) business days prior to the date of the hearing, the parties shall make available to each other and to the Committee: (i) a list of their witnesses; (ii) a copy of the documents to be offered at the hearing; and (iii) a brief summary of the party's position on the issues being grieved. In exceptional circumstances, the Committee may allow a party to call witnesses not listed or to submit additional documents at the hearing.
- h. Right to Advisor. The parties have a right to be accompanied by any person as advisor, including legal counsel, who will be permitted to attend, but not directly participate in, the proceedings. Each party is entitled to only one advisor. If the resident chooses to hire legal counsel, the resident shall be responsible for the legal fees of that lawyer.
- i. Hearings not Public. Hearings shall be closed to the public.
- j. Copies. Hearings, except Committee deliberations and voting, shall be recorded and a copy made available to any party upon request. Committee deliberations and voting shall take place in closed sessions.

- k. Quorum. The Committee must have a quorum present to hold a hearing. A quorum consists of three (3) members of the Committee, including at least one resident. All decisions of the Committee shall require a majority vote of the Committee members present at the hearing.
- l. Presentation of Evidence. At the hearing, the parties shall have the right to present questions to witnesses through the Committee chair, to present evidence and to call witnesses, in accordance with the Committee's established internal procedures. Cross examination of witnesses is only allowed through the Committee Chair.
- m. Rules of Evidence. The Committee shall not be bound by strict rules of legal evidence or procedure and may consider any evidence it deems relevant.
- n. Role of the Office of General Counsel. A member of the Office of General Counsel shall serve as a resource to the Committee and may be present at the hearing and at post-hearing deliberations to provide guidance on substantive law and procedural matters.
- o. Standard of Review. To recommend overturning the original academic action, the Committee must find that the academic action was arbitrary or capricious.
- p. Absence of Party. If either party to the appeal fails to attend the hearing without good cause, the Committee may proceed with the hearing and take testimony and evidence and reach a decision on the basis of such testimony and evidence.

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