

## ADVERSE ACTIONS APPEAL PROCESS

### STATEMENT OF POLICY

The purpose of this policy is to set forth the University of Tennessee Health Science Center College of Medicine's ("UT College of Medicine" or "Sponsoring Institution") due process procedures to manage appeals of academic or disciplinary Adverse Actions involving residents enrolled in an ACGME-accredited graduate medical education program sponsored by the UT College of Medicine or non-accredited program administered by the Graduate Medical Education Office (each a "Program" or "GME Program"). For the purposes of this policy, "resident" means any physician in any GME Program including interns, residents, and fellows. Consistent with other University policies, residents are employed on an at-will basis, and this policy is not to be construed as a contract of continued employment.

### REFERENCE

In accordance with the current ACGME Institutional Requirements, the Sponsoring Institution must have a policy that provides residents with due process relating to the following actions, regardless of when the action is taken during the appointment period: non-renewal, non-promotion, or dismissal.

### PROCEDURES FOR APPEAL

The UT College of Medicine assures the resident the right to appeal Adverse Actions, which have resulted from academic or disciplinary proceedings taken by the Program Director or by UT College of Medicine that result in dismissal, non-renewal of a resident's agreement, extension of training, non-promotion to the next level of training, probation, or denial of a Certificate of Completion (an "Adverse Action"). The imposition of a Performance Improvement Plan under GME Policy #610 is not an academic or disciplinary Adverse Action, and thus is not appealable.

Residents who are subject to an Adverse Action (non-renewal or dismissal) for **disciplinary** reasons, who have elected to participate in the Formal Process and have not waived their rights under the Tennessee Uniform Administrative Procedures Act ("UAPA"), Tennessee Code Annotated § 4-5-301 *et seq.* and in accordance with the Contested Case Provisions of the Rules of the University of Tennessee, Rule 1720-01-05-.01, are subject to the exclusive procedures under the UAPA and have waived any rights to appeal under this Policy.

The appeal process set forth in this Policy (the "Appeal Process") is intended to provide a formal, structured, post-action/termination review to determine if (a) the policies and procedures leading up to the Adverse Action were followed in a fair and reasonable manner, and (b) there is a reasonable basis for the decision by the Program Director. The Appeals Process provides a review of the Program Director's decision; an appeal is not a redetermination of the facts or for the reviewer to substitute his or her own determination for that of the Program Director, unless specifically provided for in this policy.

A resident has the right to obtain legal counsel, at their own expense, at any level of the disciplinary or Appeal Process, but attorneys are not allowed to attend or participate at appeal meetings, interviews or reviews under this Policy. Any meeting, interview or review session is at the discretion of the hearing official, and there is no right to an in-person hearing. UT College of Medicine cannot compel participation in the Appeal Process by peers, medical staff, patients, or other witnesses; however, peers and University-employed medical staff will be provided time to participate in an appeal hearing or review, if requested. Residents who have been dismissed by their Program will receive no remuneration during the pendency of the appeal under this policy.

*NOTE: A resident who fails to file an appeal within the time periods specified in this Policy forfeits any further appeal rights. Emails sent to official university accounts are deemed 'received' on the date sent regardless of when the resident actually views or opens the email.*

The Appeal Process has several levels of appeal.

#### 1. *Departmental Review*

Residents may initiate an appeal of an Adverse Action by emailing a written request for review to the Department Chair within five (5) business days following notification of the written final Adverse Action decision. The resident may waive departmental review and begin the review process at the level of the Associate Dean of GME (see the *Waiver of Departmental Review Statement* attached to this policy as Attachment 1). The signed Waiver of Departmental Review Statement along with a written request for review must be emailed to the Associate Dean of GME within five (5) business days following the receipt of the emailed notice of an Adverse Action.

The initial appeal request must include: (i) all information, documents, and materials the resident wants considered, and (ii) a written statement with the reason(s) the resident believes (a) the policies and procedures leading up to the adverse disciplinary or academic action were not followed in a fair and reasonable manner, and/or (b) there is no reasonable basis for the decision by the Program Director.

The resident may submit the names of fact witnesses whom the Department Chair has discretion to interview as a part of the review process. The Department Chair may appoint an advisor or designate an advisory committee to review the decision. The advisor's or advisory committee's recommendation to the Department Chair shall be non-binding. Although the review is on the written record, the Department Chair may schedule a face-to-face meeting with the resident if appropriate. The Department Chair will notify the resident and the Program Director in writing of the decision. If the decision is adverse to the resident, the notice shall also advise the resident of further appeal steps.

#### 2. *GME Review*

If the resident desires further appeal after receiving the decision from the Department Chair or has waived the departmental review, a written request must be emailed to the Associate Dean of GME within five (5) business days following the emailed notification of the departmental decision or election of a waiver of that step. The request must include (i) any documents submitted by the resident to the Program Director and Department Chair; (ii) any additional information the resident wants considered, and (iii) a statement containing the reason(s) the resident believes (a) the policies

and procedures leading up to the disciplinary or adverse academic action were not followed in a fair and reasonable manner, and/or (b) there is no reasonable basis for the decision by the Program Director. The resident may also submit the names of fact witnesses whom the Associate Dean of GME has discretion to interview as a part of the review process. The Associate Dean of GME may appoint an advisor or designate an advisory committee to review the decision. The advisor's or advisory committee's recommendation to the Associate Dean shall be non-binding.

Although the review is on the written record, the Associate Dean GME may schedule a face-to-face meeting with the resident and interviews of witnesses, if appropriate. On reaching a decision, the Associate Dean GME will notify the resident and the Program Director in writing by email. If the decision is adverse to the resident, the notice shall also advise the resident of further appeals steps.

### 3. *Institutional Review – Executive Dean*

After a decision is reached at the GME level, the resident may further appeal on the written record to the Executive Dean of UT College of Medicine by emailing a written request within five (5) business days following receipt of the emailed notification of the outcome of the GME level of review. The request should be emailed directly to the Executive Dean of the UT College of Medicine. The resident must submit a written statement focusing on the reason(s) the resident believes (a) the policies and procedures leading up to the adverse disciplinary or academic action were not followed in a fair and reasonable manner, and/or (b) there is no reasonable basis for the decision by the Program Director.

Although the review is on the written record, the Executive Dean may schedule a face-to-face meeting with the resident if appropriate. The Executive Dean will notify the resident, the Program Director and the Associate Dean of GME in writing of the decision. If the decision is adverse to the resident, the notice shall also advise the resident of further appeals steps.

### 4. *Appeal to the Chancellor*

After a decision is reached at the Executive Dean level, the resident may lodge a final appeal by emailing a written request to the Chancellor within five (5) business days following the emailed notification of the outcome of the Executive Dean level of review. The request should be emailed directly to the Chancellor with copies to the Executive Dean and the Associate Dean of GME. The resident must submit a written statement focusing on the reason(s) the resident believes (a) the policies and procedures leading up to the adverse disciplinary or academic action were not followed in a fair and reasonable manner, and/or (b) there is no reasonable basis for the decision by the Program Director.

The resident, Dean, and Associate Dean of GME will receive written notification by email of the final review decision. This is the final step of the appeals process for Adverse Actions and there is no further right or path of appeal to the President of the University, nor under the Contested Case Procedures of the Rules of the University of Tennessee, or to any other state executive or judicial entity.

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**ATTACHMENT 1**

**WAIVER OF DEPARTMENTAL REVIEW STATEMENT**

I, \_\_\_\_\_, M.D./D.O., hereby waive the first level of review (department-level review) of the disciplinary or adverse academic action(s) taken by my training program or other University of Tennessee Health Science Center officials.

I elect to waive department-level academic review and commence the process with review by the office of the Associate Dean of Graduate Medical Education.

Resident Signature \_\_\_\_\_ (Date) \_\_\_\_\_

Print Name \_\_\_\_\_

Training Program \_\_\_\_\_ PGY Year \_\_\_\_\_