

ADVERSE ACADEMIC AND DISCIPLINARY ACTIONS

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 academic or disciplinary actions ("Adverse Actions") taken against 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 a 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.

BASIS FOR ACTION

A resident may be subject to any level of Adverse Action as defined under this Policy. There are two forms of activity, which can result in an Adverse Action:

1. Academic actions may result from poor academic performance in any of the ACGME competency domains.

Typically, an Adverse Action will follow when attempted improvement (see GME Policy #610 Academic Performance Improvement) has not been successful. These actions address academic and professionalism deficiencies including, but not limited to, assessments of marginal or unsatisfactory performance in any of the six ACGME competencies, as determined by Clinical Competency Committee review and recommendations and/or Program Director assessment, or academic Adverse Actions by clinical training sites. Adverse Actions include delayed promotion, repeat of an academic year, delayed program completion, academic probation, denial of Certificate of Completion, non-renewal of agreement and/or dismissal. Adverse Academic actions are subject to the University of Tennessee Graduate Medical Education Policy #630 Adverse Actions Appeal Process. Final Adverse Actions will become a permanent part of the resident's training record. However, academic coaching, such as Performance Improvement Plans, if successfully completed, are not considered to be an Adverse Action and are generally not reportable to licensing boards and credentialing agencies.

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

Violations of the following types of policies may result in Adverse Action, including for instance, and without limitation, the Code of Conduct, various published University GME, HR, Fiscal and IT policies, and the *Policy on Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking* (or its current revision). These Adverse Actions can include probation, non-renewal, and/or dismissal. All disciplinary actions are subject to the University of Tennessee GME Policy #630 Adverse Actions Appeal Process. All disciplinary actions will become a permanent part of the resident training record.

The University is not required to pursue any prior improvement actions or ‘steps’ and may take Adverse Actions at any time during the appointment term, based on egregious acts or behavior, or in the interests of patient safety, at the discretion and judgment of the University.

TYPES OF ACADEMIC OR DISCIPLINARY ADVERSE ACTIONS

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

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

Promotion of a resident to the subsequent year of training requires a satisfactory cumulative assessment of the trainee by program faculty and program leadership that indicate satisfactory progress in scholarship and professional growth. An extension or failure to promote may be used in limited situations such as: unsatisfactory performance during the academic year, failure of a discreet training rotation that can be remediated, or failure to pass an annual written in-training examination.(See GME Policy #520 Resident Reappointment and Promotion).

- **Probation**

Probation is a reportable, disciplinary or academic Adverse Action that includes 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, egregious acts or for purposes of patient safety.

Examples of situations meriting probation 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.

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. Probation status is not required prior to non-renewal or dismissal of a trainee. Probation is an Adverse Action and as such, is included as part the the resident’s permanent training record and will be reported to external entities, such as state licensing boards and credentialing agencies.

- **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, or as the outcome of the disciplinary process.

- **Denial of Certificate of Completion**

For non-ACGME programs, 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 academic performance during fellowship training.. Additionally, some programs may deny a certificate of completion to a resident who fails to pass the annual written in-training examination. Each residency program is responsible for establishing specific written criteria for denial of certificate of completion.

- **Dismissal**

Residents may be dismissed by the Program Director for a variety of serious acts or deficiencies. A dismissal decision does not have to be justified by reasons amounting to ‘cause’ as employment is at-will. The GME Associate Dean must be consulted and must review all proposed dismissals. A resident may be immediately dismissed at any time during the appointment year, without the need for remediation or prior written improvement plans or warnings, for egregious acts or critical deficiencies. Dismissal may be imposed for serious acts or deficiencies including, but 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;
- job abandonment;
- falsifying records or lying;
- loss of employment authorization or expiration of visa;
- failure to pass USMLE Step 3 by the end of the PGY-2 year;
- exclusion from training site(s);
- 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’s “List of Parties Excluded from Federal Procurement and Non-Procurement Programs.”

ACADEMIC OR DISCIPLINARY DECISIONS PROCESS

The Program Director is responsible for and shall administer disciplinary or academic Adverse Actions. Typically, the Program Director will make reasonable inquiry 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.

Upon arriving at the *preliminary* decision, the Program Director, in consultation with the GME Office, must determine which procedural path is appropriate:

a) **ACADEMIC ISSUES:**

If the Program Director's *preliminary* decision would result in an Adverse Action for an academic reason, then the Program Director, in consultation with the GME Office, shall issue to the resident a "**Pre-Adverse Action Notice**" that contains the written basis of the *preliminary* decision, as well as a notice of a date, time, and place for a hearing/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 that individual will not have a speaking role. The resident may consult with an attorney at any time prior to the hearing/meeting, but because this is not an adversarial hearing/meeting, attorneys are not allowed to be present. At the hearing/meeting 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 witness participation in the process.

Within five (5) days, generally, after the conclusion of the hearing/meeting, the Program Director will issue a *final* decision in writing. All appeals are subject to the Adverse Actions Appeal Process GME #630.

A decision by the Program Director to dismiss a resident for an academic issue 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) **DISCIPLINARY ISSUES:**

(i) If the Program Director's *preliminary* decision for a disciplinary issue would result in an Adverse Action of probation or sanction other than job loss, then the Program shall follow the procedures specified in the Academic Issues paragraph, above.

(ii) If the Program Director's *preliminary* decision for a disciplinary issue would result in job loss (e.g. 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 notice will contain the written basis of the *preliminary* decision, as well as a notice of a date, time, and place for a hearing/meeting. At this point, the resident may elect an **informal** resolution track or the **formal** resolution track. Once the resident chooses either the

informal or **formal** track, that election is final and tracks cannot be changed except by written approval by the Associate Dean for GME.

(1) Discipline - Formal Track: The resident may select a **formal** track and hearing under the 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. The resident may chose to be represented by an attorney throughout the **formal** process, including at trial, but at the resident’s sole expense.

(2) Discipline - Informal Track: The resident may submit the final decision to the Program Director, with appeal rights under the Adverse Actions Appeal Process GME #630. The resident must sign the “**Tennessee Uniform Administrative Procedures Act Waiver Form,**”¹ to authorize the informal resolution track.

If the resident waives the right to a UAPA hearing and elects the **informal** track with the Program Director, 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 the resident’s expense, at any time prior to the hearing/meeting, but because this is not an adversarial hearing/meeting, attorneys are not allowed to be present. At the hearing/meeting 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 witness participation in the process..

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

Although the resident remains employed by the University during both the informal and formal the disciplinary tracks, at the discretion of the Program Director, the resident may be placed on Administrative Leave with, or without, pay.

ADMINISTRATIVE LEAVE PRIOR TO ADVERSE ACTION

A resident may be removed from all program activities and duties and placed on Administrative Leave by the Program Director, Department Chair, Associate Dean for GME, or the Dean of the College of Medicine. Administrative Leave is not a disciplinary or academic action but may be imposed to allow for an investigation into conduct. Any request for Administrative Leave must be submitted to the Associate/Assistant Deans of GME for approval. In addition to an investigation,

¹ Attachment 1.

a resident may be referred for fitness for duty evaluation and/or given a referral to the Tennessee Medical Foundation/PHP (*see* GME Policy #680), etc.

WAIVER FORM**Tennessee Uniform Administrative Procedures Act Waiver**

I, _____, a resident in the
_____ residency or fellowship training program of the
UTHSC College of Medicine Office of Graduate Medical Education, hereby
acknowledge and voluntarily waive my right to participate in a hearing under the
Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 *et seq.*,
and hereby elect to request the *informal* hearing track with the Program Director
pursuant to GME Policy #620, *Adverse Disciplinary and Academic Actions*. I understand
that my choice of the *informal* track and waiver of the UAPA is final and irrevocable.

(Resident Signature)_____
(PGY Year)_____
(Date)