GRADUATE MEDICAL EDUCATION

TRAINEE POLICIES AND PROCEDURES

POLICY: Academic Action, Trainee Dispute Procedures
Policy Number: 12.1
Chapter: Academic Actions/Dispute Resolutions

Purpose:
To provide fair and consistent practices and procedures governing academic actions and trainee disputes.

Definitions:
The term “Trainee” as used herein to include, residents and fellows in ACGME-accredited and non-ACGME-accredited training programs administered by the Office of Graduate Medical Education and overseen by the Graduate Medical Education Committee (GMEC) at the University of Utah.

ACGME requirements. 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 assess trainee performance based on these six Core Competencies and the Milestones developed by each ACGME specialty as a framework for determining trainee performance within the Core Competencies. All trainee conduct and performance is linked to the six core competencies. In addition, ACGME institutional requirements specify that sponsoring institutions must have a policy that provides residents and fellows with due process upon probation, nonrenewal, non-promotion, or dismissal.

ACADEMIC ACTIONS

Academic Actions Overview. Except for flagrant or egregious behaviors, or actions that endanger patient safety, a pattern of behavior must be evident to impose an academic action. The academic action process is not intended to be adversarial, but is meant to provide a means for remediating inadequate resident performance, and ideally should represent a constructive problem-
solving collaboration between the resident and his/her program director and faculty.

Factors for Determining Academic Actions. When a program determines that a resident’s performance or conduct is unsatisfactory, the program may impose one or more academic actions.

 Unsatisfactory performance or conduct occurs when a resident violates any of the following standards: legal requirements, whether state or federal or international; terms of the House Staff Agreement (contract); University of Utah Policies and Procedures; University of Utah Health policies, standards, practices, and expectations; policies, standards, practices, and expectations of a particular training site; School of Medicine policies, standards, practices, and expectations; ACGME core competencies; Graduate Medical Education (GME) policies, standards, practices, and expectations; program-specific policies, standards, practices, and expectations; ethical standards for physicians; and any other expectations communicated to the 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. In some situations, the trainee may need to be temporarily suspended from clinical activities (while retaining salary and benefits) while the program evaluates potential issues and determines appropriate recommended academic actions. The program, in assessing the severity of the academic action to be imposed, may take into account any of the following factors, which is not intended to be exclusive:

1. Physical/safety issues
2. Service impact
3. Financial implications
4. Resultant disruption level
5. Violation of law
6. Past history of previous performance or conduct issues

Types of Academic Actions. Depending on the concerns, the process may start at different phases, but in general, progressive academic actions are recommended. Possible academic actions include but are not limited to:

1. Informal Remediation – Informal resolution within the program (non-appealable to the Program or the Trainee Appeal Committee (TAC))
   a. This is typically the first step to any academic action. Informal remediation is directed at improving performance and is a part of clinical education for a subset of learners. The informal remediation plan must be provided to the trainee with a beginning date and a deadline for completion, written in concrete and behavioral language, and contain objective criteria for determining success. The required action(s) must be
achievable by the trainee at his/her current stage within the training program in the time available.

b. When possible, before informal remediation action, it is recommended the PD consult with the Clinical Competency Committee (CCC).

c. Consider contacting GME to discuss the informal remediation plan and letter.

d. It is generally managed within the program and not reportable on future reference letters.

2. **Formal Remediation** – Resolution within the program (non-appealable to TAC)

a. This is typically the second step and a result of learner performance or conduct not meeting program expectations. The remediation plan must be provided to the trainee in writing and state that the trainee is required to complete Formal Remediation with a beginning date and a deadline for completion, written in concrete and behavioral language, and contain objective criteria for determining success. The required action(s) must be achievable by the trainee at his/her current stage within the training program in the time available.

b. May extend training beyond original graduation date.
   i. Repeating a rotation or a portion of a rotation
   ii. Special program such as additional supervision or a defined academic study period

c. When possible, before a formal remediation action, it is recommended that PD consult with the CCC, GME, and legal.

d. Formal remediation letter requires GME review.

e. Formal remediation may be reportable on future reference letters.

3. **Probation (Final Warning)** – Qualifies for an appeal to TAC

a. A formal plan to correct unacceptable performance or conduct including non-promotion. The plan must be provided to the trainee in writing and state that the trainee is on Probation. The plan should outline specific behavioral criteria for the trainee to come off probation. The required action(s) must be achievable by the trainee at his/her current stage within the training program.

b. Regular and frequent meetings with the Program Director or faculty mentor to review progress should be a part of the plan.

c. When possible, before a probation action, it is recommended the PD consult with the CCC, GME, and legal.

d. Probation letter requires GME review.

e. Probation is reportable on future reference letters and to licensing boards.
4. **Non-renewal of contract** - Qualifies for an appeal to TAC
   a. The Resident Agreement (contract) does not establish any right of expectancy that the contract will be renewed for a subsequent year.
   b. The trainee will normally have gone through a corrective action plan (Informal Remediation, Formal Remediation or Probation) before not having their contract renewed except in the case of egregious behavior. However, there is no requirement that an academic action must have been imposed prior to non-renewal of contract.
   c. Notification of non-renewal must be provided, whenever possible, to the trainee no later than four months prior to the end of the trainee’s contract. However, if the primary reason(s) for the non-renewal occur(s) within the four months prior to the end of the existing contract, the program must provide the trainee with as much written notice of the intent to not renew as the circumstances will reasonably allow, prior to the end of the contract.
   d. When possible, before a non-renewal of contract action, it is recommended the PD consult with the CCC, GME, and legal.
   e. Non-renewal of contract letter requires GME review.
   f. Non-renewal of contract is reportable on future reference letters and to licensing boards.

5. **Dismissal** – (termination of employment) – Qualifies for an appeal to TAC
   a. When possible, before a dismissal action, it is recommended the PD consult with the CCC, GME, and legal.
   b. Program must consult with the Director of Graduate Medical Education and University of Utah Legal Counsel before dismissing a trainee.
   c. Dismissal letter requires GME review.
   d. Dismissal is reportable on future reference letters and to licensing boards.

**Offer to Allow Trainee to Resign.** In certain circumstances a trainee may be allowed to resign from the program to avoid dismissal or non-renewal of contract. This is on a case-by-case basis and determined by the training program upon consultation with the GME Office and legal review. Resignation is generally not allowed in cases of flagrant or egregious behaviors as well as actions that endanger patient safety. Resignation is not eligible for a formal institutional appeal. Care should be taken not to coerce, or appear to coerce, trainees to resign rather than appeal.
**Dismissal Considerations.** A program may consider continuing pay and benefits beyond the termination/dismissal/resignation date. The Office of General Council and the GME office are required to approve such action.

**General Considerations.**
- Corrective actions should be addressed in person with the trainee when possible, however, emails or certified letters are considered an official form of communication at the University of Utah.
- It is advisable to have a third party present when discussion of any actions take place with the trainee.
- Written remediation plans and corrective action plans should contain the following elements: 1) list each problem, 2) list what the resident needs to do to address the problem, and 3) list what the program will do to help the resident address the problem (be sure the program is willing or able to do the things listed). The GME office has academic action letter templates available on the GME Pulse Website.
- During any period of academic action the Program Director should schedule frequent meetings with the trainee to discuss progress and provide adequate and timely feedback. Consider meeting with the trainee monthly until the performance or behavior has improved.
- When appropriate the trainee can be referred to the GME Wellness Office for mental health counseling, testing referrals, or other wellness related needs.

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**DISPUTE RESOLUTIONS**

**Dispute Resolutions Overview.** The interests of the University of Utah, University of Utah Health and its associated Graduate Medical Education programs, and the trainees are best served when problems are resolved as part of the regular communication between the trainee and the Program Director, Division Chief, Department Chair, and/or GME Director, as appropriate. Trainees who feel that an academic action is unfair should first attempt informal resolution to any disputes concerning academic actions through discussions with appropriate individuals within the training program. If informal discussions are not successful in resolving disputes, the trainee may appeal the academic action according to the following procedures.

**Informal Remediation Response.** Informal Remediation does not allow for any type of appeal. A written response to the informal remediation may be submitted to the Program Director by the trainee within five (5) business days for inclusion in their training record.

**Formal Remediation Appeals.** These written appeals are resolved with the Program Director, and as applicable with the Department Chair/Division Chief
or designee, and not through a written appeal to the Trainee Appeal Committee (TAC).

1. **Written Appeal to Program Director**
   a. Written appeal must be submitted within five (5) business days after the trainee’s receipt of notification of the informal or formal remediation. The trainee may submit written materials to the Program Director in support of the appeal. If the trainee does not file a written appeal within this time frame, the trainee will have waived the right to dispute the academic action.
   b. The Program Director or designee will respond in writing to the trainee’s written appeal within fifteen (15) business days.
   c. The decision of the Program Director or designee is final unless the trainee submits a written appeal to the Division Chief or designee within five (5) business days of the trainee’s receipt of the written response from the Program Director or designee.

2. **Written Appeal to Department Chair/Division Chief or Designee**
   a. If the dispute is not resolved by written appeal to the Program Director or designee, the trainee may file a written appeal with the Department Chair/Division Chief or designee within five (5) business days of the trainees’ receipt of the written decision by the Program Director.
   b. The trainee’s written appeal to the Department Chair/Division Chief or designee must contain the following elements:
      i. Description of the matter in dispute
      ii. Summary of previous attempt at resolution (i.e. written formal appeal to Program Director and Program Director’s written response)
      iii. Statement of the requested remedy
   c. The Department Chair/Division Chief or designee shall discuss the dispute with the trainee 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 trainee shall be notified accordingly. In no event will there be an extension of time beyond thirty (30) business days after the Department Chair/Division Chief or designee’s receipt of the written statement of dispute.
   d. To overturn the original academic action, the Department Chair/Division Chief or designee must find that the academic action was arbitrary or capricious.
   e. The determination of the Department Chair/Division Chief or designee will be final.
Probation (Final Warning), Non-Renewal of Contract, and Dismissal Appeals.
These appeals are resolved through a written appeal to the Trainee Appeal Committee (TAC).

1. **Written appeal to the TAC** –
   a. The trainee must make a written request to the Director of Graduate Medical Education within five (5) business days after the trainee’s receipt of notification of probation (final warning), non-renewal of contract, or dismissal. If the trainee does not submit a written request within this timeframe, the trainee will have waived the right to the dispute resolution process.
   b. The trainee’s written request must contain the following elements:
      i. A brief description of the action being disputed;
      ii. A brief statement as to why the trainee feels the action is unfair or inappropriate; and
      iii. A statement of the requested remedy.

2. **Schedule Hearing** –
   a. The Director of Graduate Medical Education will schedule the hearing with the Trainee Appeal Committee within a reasonable time (within ten (10) business days if possible).
   b. The hearing shall be conducted as set forth in the Hearing Procedures section below.

3. **Trainee Appeal Committee Recommendation** – The committee will issue a report of findings and recommendations to the Senior Vice President for Health Sciences or designee, within ten (10) business days after the conclusion of the hearing.

4. **Review and Decision by the Senior Vice President for Health Sciences or designee** –
   a. The Senior Vice President for Health Sciences or designee, shall review the documentation submitted to the TAC and the findings and recommendations of the TAC. Based upon such review, and without conducting further hearings, the Senior Vice President for Health Sciences or designee shall, within ten (10) business days, take one of the following actions:
      i. Affirm the findings and recommendations of the TAC;
      ii. 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
iii. Reject all or parts of the Committee’s findings and recommendations, stating reasons and actions to be taken.

b. Written notice of the Senior Vice President for Health Science or designee’s decision shall be communicated to the relevant parties within fifteen (15) business days of the Senior Vice President or designee’s receipt of the Resident Review Committee’s findings and recommendations.

c. The decision of the Senior Vice President for Health Sciences or designee is final.

Hearing Procedures

1. Applicability – These procedures apply to hearings before the Trainee Appeal Committee (TAC).

2. Program’s response to appeal – The program whose decision is being reviewed by the Trainee Appeal Committee may deliver a response to the trainee’s request for review to the chair of the Trainee Appeal Committee, with a copy to the other party, no later than five (5) business days after receipt of the trainee’s written notice of request for hearing. The Program is not required to submit such a response.

3. Makeup of Committee – The Director of Graduate Medical Education will facilitate the appointment of the TAC, including a Committee Chair. The Trainee Appeal Committee will consist of the committee chair, two faculty members and two trainees with no substantial prior involvement in the dispute. However, knowledge of the matter involved does not preclude any individual from serving as a member of the Committee. In emergency situations, a hearing can be conducted with only three members of the TAC, so long as at least one member of the TAC is a trainee.

4. 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 Graduate Medical Education to select an appropriate replacement for the excused member.

5. Scheduling of Hearing – The Director of Graduate Medical Education shall notify the parties through the Notice of Hearing document of the date of the hearing, the names of the Committee members, and the hearing procedures at least five (5) business days prior to the hearing.
6. **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.

7. **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 trainee chooses to hire legal counsel, the trainee shall be responsible for all legal fees incurred.

8. **Hearings not Public** – Hearings shall be closed to the public.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **Standard of Review** – To recommend overturning the original academic action, the Committee must find that the academic action was arbitrary or capricious.

15. **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.