



Due Process

PREPARED BY: David A. Carcieri, MD DIO	PAGE: 1 of 3	EFFECTIVE DATE: January 5, 2023	POLICY NUMBER: WIH-GME-011
REVIEWED BY:	REVIEWED BY:	REVIEWED BY:	APPROVED BY: Raymond Powrie, MD, Executive Chief of Medical

- I. **Purpose.** The purpose of this *Resident Physician/Fellow Due Process Policy* (this “**Policy**”) is to establish the procedures for graduate medical education ("GME") training programs to follow if a resident/fellow fails to meet academic expectations and/or engages in misconduct and to set forth a fair and reasonable policy and procedure for residents/fellows to appeal corrective actions. The Policy is intended to summarize the due process, corrective actions, discipline, and appeals processes.
- II. **Scope.** This policy applies to all residents and fellows in both ACGME and non ACGME programs at Women and Infants Hospital (WIH).
- III. **Policy.** When it has been determined through cumulative evaluation and counseling that a resident/fellow is not performing at a satisfactory level (i.e., if the resident/fellow fails to meet academic expectations and/or engages in misconduct), a series of separate actions are available to the Department Chair, and/or the Program Director or his/her designee to address the problem.
- IV. **Procedure.** If an evaluation of the trainee’s performance by the Program Director and/or designee suggests a situation (such as but not limited to: medical/mental health, behavioral and or substance abuse problems) which places the trainee or his/her patients at risk, the Program Director may require an independent evaluation. This evaluation may be requested from The Physician’s Health Committee of the Rhode Island Medical Society or another independent evaluator as deemed appropriate by the Program Director. This independent evaluation may be required on its own or in addition to other formal disciplinary actions

Although there is an expectation for progressive disciplinary action in most cases, the Program Director and/or Clinical Competency Committee (CCC) reserve the right to implement initial action at whatever level deemed appropriate. The following are the progressive levels of disciplinary action:

Warning/ Informal Remediation:

- Process: initiate after identifying a resident's performance is deficient in one or more Milestones or core competencies
- Documentation: record placeholder information in the resident's file
- Disclosure: warning/informal remediation not disclosed externally if the deficiency is corrected

Formal Remediation:

- Process: initiate if the resident demonstrates a substantial deficiency, or fails to correct an identified deficiency in the designated observation period of informal remediation

- Documentation: record the failed informal remediation process, an updated corrective action plan with expected outcomes/ consequences, and the time frame for resolution
- Disclosure: notify the Designated Institutional Officer (DIO) of the formal remediation process. Formal remediation is not necessarily disclosed if the deficiency is corrected within time frame for resolution.

Probation:

- Process: initiate if the resident demonstrates a substantial deficiency, or if the resident fails to correct the deficiency identified in the formal remediation stage
- Documentation: record the failed formal remediation process and update the expected outcomes, consequences, and time frame for resolution
- Disclosure: notify the DIO, include probation status in letters of recommendation and in the final verification of training

Non promotion/Termination/Non-renewal:

- Process: terminate the resident if a substantial deficiency warranting immediate removal from training is demonstrated, if the resident fails to meet the terms outlined in probation, or if it is felt progression to the next year of training is not warranted.
- Documentation: work with the DIO, human resources, and legal counsel, to assure due process and that the resident is given written notification in accordance with ACGME requirements.
- Disclosure: include termination status in letters of recommendation and in the final verification of training

Appeals Process:

Residents and fellows are entitled to appeal any action that results in suspension, non-renewal, non-promotion or dismissal. The appeals process involves the following steps:

A. Notice to Trainee:

When the Program Director, in consultation with the Chair, determines that grounds exist to issue a Notice of: Suspension, Non-renewal, Non-promotion or Dismissal, the Program Director will provide the Trainee with a written notice of the action that must include a statement of the reason(s) for the action; a copy of the materials upon which the intended action is based; and a statement that the Trainee has a right to appeal the decision in writing to the Chair within ten (10) working days of receipt of the notice. The Notice should also include a statement informing the Trainee of any reporting requirements to the Board of Medical Licensure and Discipline and the National Practitioners Databank if the final decision would result in a reportable event.

B. Trainee Appeal to Chair:

- If the Trainee submits a timely appeal to the Chair, the Chair will review the Trainee's written response within ten (10) business days of its receipt. The Chair will notify the Trainee of the decision by letter that shall also be copied to the DIO. If the decision is to uphold the proposed action, the letter must include the reasons for upholding the proposed action; the effective date of the action; and include a copy of this Policy with notification to the Trainee of his or her further right to appeal.

C. Trainee Appeal to Ad Hoc Committee:

- If the trainee wishes to appeal the decision of the Chair the trainee must file a written complaint to the DIO no later than 30 calendar days following the Chair's written decision requesting a hearing before an Ad Hoc Committee. The written complaint should explain

in detail why the Trainee/Complainant believes the Chair's decision was arbitrary and capricious and should address the specific reasons for the dismissal set forth in the Notice of Suspension, Non-Renewal, Non-Promotion or Dismissal, as applicable.

- Within ten (10) working days of receipt of the complaint, or as soon thereafter as is practical, the DIO will appoint an Ad Hoc Formal Review Committee to hear the complaint (the "Hearing"). The Committee will consist of either three or five members, at least one of which shall be a member of the full-time faculty, one senior trainee from another CNE program (PGYIII or higher), and one member of the Graduate Medical Education Committee. The DIO will serve as the Committee Chair. In most cases, one of the Committee members should be from the same department as the Complainant; however, individuals who were substantially involved in any earlier review of the issues raised in the complaint, or who were substantially involved in any incident underlying the complaint, should not sit as a member of the Committee.

Date of Hearing: The hearing will be held not less than thirty and not greater than sixty days after the DIO receives the written complaint from the trainee.

D. **Representation for Committee and Complainant:** The Committee may, at its discretion, request that an attorney from the Office of the General Counsel be appointed to provide independent legal counsel to the Committee. The Complainant may seek legal counsel at his or her own expense, but no attorneys may be present at the hearing.

E. **Hearing Procedure:** The Chairman of the Review Committee shall conduct the hearing. A quorum of at least two members of the Committee is required, and no member shall vote by proxy. The Chairman shall cause a record of the hearing be kept by use of a stenographer or electronic recording device. All participants at the hearing shall have the reasonable opportunity to examine and cross-examine those persons present and present relevant evidence. The Grievance Committee shall not be bound by the law of procedure and rules of evidence inadmissible in a court of law, may be introduced and considered, provided that confidentiality as to name and identities of patients shall be preserved as much as possible. Following the conclusion of the hearing, the committee will evaluate the evidence presented. The decision of the Program Director, as approved by the Chair will be upheld if the Committee finds that the Program Director and Chair have met the burden to prove that the decision was not arbitrary and capricious. The Committee shall present its written recommendation(s) to the Complainant, the Chair, Program Director, and DIO. This recommendation(s) should occur, absent unusual circumstances, within fifteen (15) calendar days of the Hearing's conclusion.

REFERENCES: N/A

APPROVAL/REVISION:

11/06/2019: Initial Version of Policy approved

12/30/2022: Revisions approved

REPLACES: GMEC #54