

**Title:** Graduate Medical Education Promotion, Remediation, and Grievance Policy

**Reference:** ACGME Institutional Requirements (focused revision effective July 1, 2018)

## I. Purpose

- A. To establish a policy and protocol for residents (where "residents" refers to both residents and fellows) participating in the University of Texas Rio Grande Valley (UTRGV) School of Medicine (SOM) Graduate Medical Education (GME) programs, to be used in the course of evaluating and assessing their competence and progress. Specifically, this policy addresses the process to follow when a resident fails to meet the academic expectations of a program.
- B. To establish that any Corrective Action (including dismissal) may occur due to failure to comply with professional responsibilities, failure to demonstrate appropriate medical knowledge or skill as determined by the program's supervising faculty, or failure to abide by the terms of the resident's employment contract.
- C. To establish an institutional policy and protocol that may be utilized when academic or other disciplinary actions taken against residents could result in dismissal of a resident's agreement or other actions that could significantly threaten a resident's intended career development (including, but not limited to, any Corrective Action). Each ACGME-accredited program is also required to have its own policy regarding criteria for promotion and renewal of resident appointments.
- D. To designate the Graduate Medical Education Committee (GMEC) as the body from which appeals panels are selected for all residents who wish to contest a disciplinary action or Corrective Action.

## II. Definitions

- A. Academic Deficiency: Residents are learners within our programs. A deficiency results when an objective assessment of competence demonstrates deficiency in one or more of the Accreditation Council for GME (ACGME) Core Competencies.
  - i. Examples of academic deficiencies include but are not limited to:
    - 1. Issues involving knowledge, skills, job performance, or scholarship;
    - 2. Failure to timely achieve acceptable scores (USMLE, in-training exam, etc.);
    - 3. Tardiness or absenteeism; and
    - 4. Unprofessional behavior(s).

- B. Misconduct: In instances of misconduct, a resident's conduct or behavior violates workplace rules or policies, applicable law, or widely accepted societal norms.
- i. Examples of misconduct include but are not limited to:
    1. Unethical conduct, such as dishonesty or falsification of records;
    2. Illegal conduct (regardless of criminal charges or criminal conviction);
    3. Sexual misconduct or sexual harassment (with reporting as appropriate to the Office of Institutional Equity and Diversity);
    4. Workplace violence;
    5. Job abandonment; and,
    6. Violation of UTRGV, UT System, State, Federal, or other applicable laws, policies, or procedures.

- C. Warning with Structured Feedback (WSF): After consultation with the Clinical Competency Committee (CCC), a Program Director (PD) may determine a resident to have minor or moderate deficiencies amenable to remediation. A WSF is to be used to provide notice of minor/moderate academic deficiencies or matters of misconduct and represents the initial step in the remediation process. It gives a resident a written assessment of his/her competence in one or more of the ACGME Core Competencies and helps the resident understand deficient aspects of his/her performance in order to reflect on, and where necessary, improve learning and practice.

A WSF is not a Corrective Action or formal disciplinary action, but rather an educational tool to correct areas of unsatisfactory academic performance or misconduct by a resident. **Therefore, a resident may not formally appeal a WSF.** The issuance of a WSF does not trigger a report to any outside agencies, but it may be reported should an outside agency specifically inquire whether a resident ever received a Warning.

- D. Performance Improvement Plan (PIP): After consultation with the Clinical Competency Committee (CCC), a resident may be determined by the PD to have moderate or significant deficiencies amenable to remediation. A PIP is a form of remediation that will typically, but not always, follow an initial WSF. In some cases, a PIP will be the initial remediation approach when the nature or degree of deficiency justifies a more formal and detailed plan of action. The plan of remediation should be designed to address the deficiencies using a ACGME Core Competency based approach.

Like a WSF, a PIP is not a Corrective Action or formal disciplinary action, but rather an educational tool to correct areas of unsatisfactory academic performance by a resident. **Therefore, a resident may not formally appeal a PIP.** The issuance of a PIP does not trigger a report to any outside agencies, but it may be reported should an outside agency specifically inquire whether a resident ever received a PIP.

- E. Corrective Action (CA): After consultation with the Clinical Competency Committee (CCC), the PD may determine that a resident has significant or prolonged deficiencies that are amenable to remediation but merit disciplinary action. A CA is a formal disciplinary action issued to a resident as the result of such academic deficiencies and may also be issued as a response to incidents of misconduct. Serious academic deficiencies and/or misconduct may warrant a CA, such as dismissal, regardless of

whether a resident ever received a PIP or any other form of remediation. CAs may trigger a report to outside agencies (e.g. licensing or accreditation boards), and therefore, are **appealable by the resident**. Corrective Actions include the following:

- Repetition of Rotation: due to identified areas of academic deficiency or unsatisfactory conduct, the resident must repeat a rotation and perform at an acceptable level in order to advance to the next level of training.
- Probation: formal notification to the resident that there are areas of identified deficiencies or unsatisfactory conduct that require remediation and improvement, or the resident may not be allowed to continue in the program.
- Non-promotion to the Next Postgraduate Year Level: due to identified areas of unsatisfactory performance, the resident will not be promoted to the next level of training unless the resident's performance improves to the level required.
- Extension of the Defined Training Period: due to identified areas of unsatisfactory performance, the resident will not complete the program on time and the defined training period will be extended to allow the resident an opportunity to remediate and perform at the level required.
- Suspension: the resident is temporarily not permitted to perform any job duties due to unsatisfactory performance or misconduct that requires removal from contact with patients, staff, faculty, residents, or students.
- Dismissal: the resident is permanently separated from the program due to unsatisfactory performance or misconduct.

### III. **Remediation Protocol:**

When a resident is noted to have one or more academic deficiencies, it is the responsibility of the PD or designee to provide the resident with: (1) **notice** of the deficiency; (2) an opportunity to **remediate**; and (3) a careful and reasonable decision-making process using the protocols described in this policy. Dismissal for academic failure without documented attempts at remediation is highly atypical but may be justified in specific circumstances. An example of this is failure to pass the United States Medical Licensing Examination Step 3 by the end of the second postgraduate year.

In the event of incidents of resident misconduct, it is the responsibility of the PD to provide the resident with: (1) **notice** of the alleged incidents of misconduct committed by him/her; (2) an opportunity to **respond** to the allegation(s); and (3) a careful and reasonable decision-making process using the protocols described in this policy. Dismissal without warning may be justified in response to specific instances of misconduct. Examples include (but are not limited to) the following:

- Lying, falsification of a medical record, violation of medical record privacy, being under the influence of intoxicants or drugs, disorderly conduct, harassment of other employees (including sexual harassment), fighting, encouraging a fight or threatening harm, attempting or causing injury to another person on the premises.

It is the responsibility of the PD to notify the Designated Institutional Official (DIO) of the above situations and review the proposed action(s).

F. Warning with Structured Feedback (WSF): Following consultation with the CCC, written notification is provided to the resident regarding concerns that have been raised regarding his/her performance or conduct. A WSF should proceed as follows:

- i. Should submit proposed WSF to DIO or designee for review and approval.
- ii. Meet with the resident and provide/review the written warning, including a discussion of specific deficiencies and strategies for improvement.
- iii. Ensure that the resident understands that if the defined deficiency or behavior is not corrected, or if there is another occurrence of unacceptable performance or behavior, the next step will be formal Remediation with or without Corrective Action.

The program must maintain a copy of the WSF in the resident's permanent file and forward a copy to the UTRGV GME Office. Following CCC re-evaluation, if there is insufficient improvement and the resident has failed to correct the deficiency, the resident may be provided a new updated WSF or be moved to a PIP.

G. Performance Improvement Plan (PIP): Following consultation with the CCC, a formal PIP must be provided in written form by the PD and must be reviewed and approved by the DIO or designee. A PIP must be in the form of a letter from the PD to the resident and must include:

- i. Formal notice of the specific academic deficiencies or incidents of misconduct.
- ii. The remediation action or plan that is required.
- iii. Defined remediation period with start and end date.
- iv. Must be signed by the PD, delivered to the resident in person and/or via university email, and cosigned by the resident. Declining to sign the PIP does not negate or otherwise invalidate the resident's PIP status. Refusal to sign should be documented by the PD on the final, filed copy.

The program must maintain a copy in the resident's permanent file and forward a copy to the UTRGV GME Office. At the end of the PIP period, the PD must provide the resident written notice as to whether s/he has corrected the deficiency. This must also be maintained in the resident's permanent file and forwarded to the GME Office. If there has been insufficient improvement and the resident has failed to correct the deficiency, the resident may be provided a new updated PIP or be moved to a Corrective Action.

H. Corrective Action (CA): When a PD (following consultation with the CCC) determines that a CA is warranted, the PD should consult first with the UTRGV GME Office. All CAs must be reviewed by the DIO, and if appropriate, the UTRGV SOM Legal Department. CAs must be issued in the form of a letter from the PD to the resident and must include:

- i. Specific CA measure(s) to take place.
- ii. Description of the academic deficiencies or incidents of misconduct that are the basis for the CA.

- iii. Specific remedial action or improvement required (unless the action taken is dismissal).
- iv. Defined period, with start and end date.
- v. Notice to the right of appeal.
- vi. Must be signed by the PD, delivered to the resident (preferably in person, or via university email if in-person is not possible), and cosigned by the resident. Declining to sign this document does not negate or otherwise invalidate CA status. Refusal to sign should be notated on final copy maintained in the resident's permanent file.

The program must maintain a copy in the resident's permanent file and forward a copy to the UTRGV GME Office. At the end of the CA period, the PD must provide the resident written notice as to whether s/he has corrected the deficiency. This must also be maintained in the resident's permanent file and forwarded to the GME Office. If there has been insufficient improvement, and the resident has failed to correct the deficiency, the resident may be provided a new updated CA, including probation, suspension, or dismissal.

Per ACGME requirements (institutional requirement IV.C.1.), the program is responsible for providing a resident with a **written notice of intent** when that resident's agreement **will not be renewed**, when that resident **will not be promoted** to the next level of training, or when that resident **will be dismissed**.

#### IV. Due Process and Grievance Protocol

- I. Informal Procedure: Residents who are concerned about actions within their programs that could significantly threaten their intended career development are encouraged to discuss their concerns with their PD and/or Chair and also to contact the DIO regarding their concerns. The DIO will work with the resident and the program as the situation requires.

Formal Procedures: Any resident notified of a CA or non-renewal is entitled to due process. In the event that a resident is to be non-renewed or placed in any CA status, s/he may initiate a formal grievance procedure. The resident shall present the grievance in writing to the DIO within ten (10) business days after the date of notification of proposed adverse status. The grievance shall state the facts upon which the grievance is based, and the remedy sought. The DIO or designee shall respond to the grievance via written response no later than ten (10) business days after s/he received it. If the resident is not satisfied with the response, s/he may then submit a written request for a hearing within ten (10) business days after the date of receipt of the DIO's response.

- i. *Hearing*: The hearing procedure will be coordinated by the DIO or designee, who will preside at the hearing, but will not be a voting participant. The hearing should be scheduled within thirty (30) days of the resident's request for a hearing. The hearing panel will be appointed by the DIO and consist of at least three (3) faculty members of the GMEC, none of whom should be in the resident's program. The DIO will determine the time and site of the hearing in consultation with the resident and program leadership. The resident shall have a right to obtain legal counsel at his/her own expense; however, retained counsel may not

actively participate or speak to the hearing panel or participants, nor perform cross-examination.

- ii. The format of the hearing will include a presentation by a program representative; an opportunity for a presentation of equal length by the resident; an opportunity for response by the representative, followed by a response of equal length by the resident. This will be followed by a period of questioning by the hearing panel. The DIO, in consultation with the program representatives and the resident, will determine the duration of the presentations and the potential attendees at the hearing. The resident will have a right to request documents for presentation at the hearing and the participation of witnesses. The DIO, at his/her discretion, will invite the latter, following consultation with the hearing panel. Any issues or questions that arise regarding the hearings process or format before, during, or after the hearing will be resolved by the DIO. A final decision will be made by a majority vote of the hearing panel and will be communicated to the resident within ten (10) business days after the hearing. This process will represent the final appeal.