

Due Process Policy #0.13

I. Purpose

This policy provides residents/fellows with due process procedures related to the following actions, regardless of when the action takes place during the appointment period: probation, suspension, non-renewal, or dismissal.

II. Policy

Residents/Fellows may request due process, as described in this policy, when any of the following corrective actions are proposed:

- Probation
- Suspension
- Non-renewal
- Dismissal

Residents/Fellows may NOT request due process, as described in this policy, for proposed remediation. Remediation is the process in which the program faculty works with a resident/fellow judged to be performing at a less than satisfactory level to identify, understand, and correct the cause(s) for the resident's/fellow's deficiencies. The process can include the repetition of rotation/educational units or the extension of training.

All corrective actions must comply with the appropriate accrediting body and specialty in question. Criteria for corrective action, probation, suspension, non-renewal, or dismissal may include, but are not limited to:

- a. Academic
 - i. Unsatisfactory performance based on in-service examinations, quizzes, and/or oral/written examinations and evaluations;
 - ii. Failure to show expected rate of improvement in fund of knowledge; or
 - iii. Unsatisfactory participation and/or performance in conferences.

- b. Clinical
 - i. Unsatisfactory acquisition of clinical or technical skills;
 - ii. Unsatisfactory performance in the clinical setting;
 - iii. Deviation from the professional standard of care;
 - iv. Provision of care without appropriate supervision; or
 - v. If the safety of patients is threatened.

- c. Administrative
 - i. Misconduct;
 - ii. Violations of institutional and/or program policies and procedures or those of an affiliate site;
 - iii. Unsatisfactory completion of charts or other deficiencies or delinquencies of the medical record;
 - iv. Unexcused absences;

- v. If resident/fellow is impaired, intoxicated, or shows evidence of substance abuse;
- vi. If resident/fellow is convicted of a felony or a crime that could have an adverse effect on the reputation of the institution, the program, or an affiliated site;
- vii. If resident/fellow demonstrates unethical or unprofessional behavior;
- viii. If resident/fellow demonstrates insubordination;
- ix. If resident/fellow harasses staff or personnel including, but not limited to, sexual harassment or racial/ethnic discrimination; or
- x. If resident/fellow is unable to perform the essential duties regularly required of all trainees in a program.

d. Unprofessional conduct

- i. Failure to be truthful in all circumstances;
- ii. Violation of state and federal rules/laws as standards of practice;
- iii. Chronic tardiness and/or failure to complete tasks in a timely manner;
- iv. Disregard for other team members;
- v. Disrespect for authority;
- vi. Inappropriate behavior with patients, families or other members of the health care team;
- vii. Public or physical displays of anger;
- viii. Failure to follow up on clinical activities;
- ix. Abuse of power; or
- x. Failure to respect/abide by KCU-GME Consortium, program or any hospital affiliates' policies.

Programs can site multiple criteria within a single category and/or deficit in more than one category when dealing with probation, suspension, non-renewal, or dismissal. The authority to propose or initiate probation, suspension, or dismissal is reserved to specific officials of the program and sponsoring institution. These include:

- a. The PD
- b. The employer's Human Resources Department or CEO;
- c. The DIO; and/or
- d. The Chair of the GMEC.

In the event that the resident/fellow jeopardizes patient welfare, the Program Director is empowered to suspend a resident/fellow from clinical activity, pending a hearing. The DIO will be notified immediately of a suspension from clinical activity.

Depending on the situation, the probation, suspension, or dismissal may or may not include mandatory counseling or administrative leave, as determined by the Program Director.

III. Procedure

Residents/Fellows may seek review of probation, suspension, non-promotion, non-renewal, or dismissal, by requesting due process as described in this policy.

Probation

Placing a resident/fellow on probation is a corrective action that may be taken by a program. Probation identifies a resident/fellow as requiring more intensive levels of supervision, counseling and/or direction compared to residents at the same training level in the same program. Placement of a resident/fellow on probation implies that the program will be responsible for documenting the necessary increase in staff supervision, counseling, and evaluation that will allow the resident/fellow to address the deficiencies, if possible. Unlike other corrective actions, which occur at the program level, placement on probation also serves to notify the KCU GME Department that the resident/fellow is experiencing difficulty in the training program. A corrective action that includes probation is reviewed by the DIO on behalf of the GMEC.

Suspension

Suspension is the revocation of any or all of a resident's/fellow's clinical, academic, and/or administrative privileges, rights, and/or responsibilities. A period of suspension is intended to:

- Allow a full investigation of an alleged complaint, problem, or incident; or
- Allow the resident/fellow an opportunity to definitively address significant, persistent, or recurrent deficits in their performance or behavior that, if uncorrected, would prevent their successful completion of the program.

At the end of the initial period of administrative leave following notice of suspension, during the meeting to review the corrective action with the resident/fellow, the resident/fellow will be informed of:

- The specific deficits in performance or behavior that are considered the cause(s) for the suspension;
- The specific clinical, academic, and administrative duties and activities from which the resident/fellow is to be suspended;
- The specific length of the suspension;
- The specific steps that must be taken to correct the cause(s) for the suspension;
- The right of the program and institution to pursue dismissal of their appointment should the cause(s) for the suspension persist; and
- The provisions for due process and the right of the resident/fellow to pursue an appeal and hearing.

Once a suspension is imposed, the PD will meet with the resident/fellow on the last day of the specified period of suspension and advise them of the resolution of the suspension. There are three possible resolutions:

- The resident/fellow is allowed to return to duty;
- The resident/fellow will be proposed for dismissal; or

- The resident/fellow may be placed on a leave of absence until appropriate treatment or therapy has progressed to the point that they can return to duty. Such leave of absence will commence on the last day of the period of suspension. The program policies with regard to leaves of absence will apply. Should treatment or therapy be incomplete or unsuccessful, the resident/fellow may be proposed for dismissal.

Limitations

- The maximum cumulative time that any one resident/fellow may spend on suspension during their program of training is ninety (90) days.
- The maximum number of suspensions for a given resident/fellow is one (1).
- Residents/Fellows exceeding these limits will be proposed for dismissal.
- A corrective action that includes suspension is reviewed by the GMEC.

Dismissal

Dismissal is the severance of an appointment to the resident/fellow and of all obligations of and benefits to the parties of the agreement of appointment. Residents/Fellows who are proposed for dismissal are relieved of all program duties and activities pending final resolution of their status. At the end of the initial period of notice of proposed dismissal, during the meeting to review the proposed corrective action, the resident/fellow will be informed, in writing, of:

- The specific deficits in their performance or behavior that are considered the cause(s) for the proposed dismissal;
- The effective date of the proposed dismissal, after the initial notification of the proposed corrective action and initiation of administrative leave;
- The continuation of their administrative leave pending final resolution of the resident's status; and
- The provisions for due process and of the right to appeal and have a fair hearing.

The resident/fellow proposed for dismissal will have electronic and clinical access suspended pending review by the GMEC.

If after due process, the dismissal is finalized, the resident/fellow will:

- Vacate any and all call rooms, laboratories, and/or office spaces provided by the program, if any, on or before the effective date of the dismissal according to employer policy;
- Return all program and participating site property on or before the close of business on the effective date of the dismissal of their appointment according to employer policy, and;
- Pay any monies owed to the program, institution, and participating sites including, but not limited to, activity fees, tickets and fees, fees for hospital and professional services, and/or library fees and fines.

Initiating an Appeal

In the event the resident/fellow disagrees with a grievable corrective action, the resident/fellow has the option to appeal the decision. To initiate the appeal process, the

resident must submit a written appeal to the DIO (gme@kansascity.edu) within five (5) business days of being informed of the grievable corrective action. The appeal should state the facts on which the appeal is based, the reason(s) the resident/fellow believes the corrective action was in error, and the remedy requested.

The DIO will appoint an ad hoc review panel from the members of the GMEC to hear the resident's/fellow's appeal. The Panel shall consist of one program director, acting as the chairperson, and two other GMEC members, one who must be a resident/fellow member and none of who are from the resident's/fellow's program. The Panel will schedule the hearing as soon as possible but no later than 30 days from the DIO's receipt of the resident's/fellow's appeal. The resident/fellow, the program director, and the DIO will be notified of the scheduled hearing. The notice shall contain the names of Panel members, the date, time and location of the hearing, and the deadline to submit evidence. The notice must be sent at least ten (10) days prior to the hearing date.

Evidence

Any evidence the resident/fellow or the program director want the Panel to consider must be submitted to KCU GME, at gme@kansascity.edu, no later than the deadline stated in the hearing notice. Evidence can include witness statements, written, recorded, or electronic material believed to be relevant to the appeal. Failure to submit evidence by the deadline may result in the material not being considered by the Panel.

Appeal Hearing

The Panel chairperson has discretion with respect to conducting the appeal hearing. In general, appeal hearings will proceed according to the following format:

- a. The program director may make a presentation to the Panel up to twenty (20) minutes.
- b. The resident/fellow may make a presentation to the Panel up to twenty (20) minutes.
- c. The program director will have up to ten (10) minutes to respond to the statements made by the resident/fellow.
- d. The resident/fellow will have up to ten (10) minutes to respond to the statements made by the program director.
- e. Panel members may ask questions of the resident/fellow and/or the program director.

Witnesses other than the program director and the resident/fellow will not be permitted to participate in the appeal hearing unless called by the Panel. In the event the Panel elects to hear from additional witnesses, the program director and the resident/fellow may question those witnesses.

The resident/fellow may be assisted during the appeal process and accompanied at the appeal hearing by a faculty advocate of the resident's choosing. Faculty advocates may consult with the parties, but shall not actively participate in the appeal hearing. Appeal hearings are confidential. Only participants, faculty advocates, and Panel members may attend. Prior to the hearing, the resident/fellow must notify KCU GME of the number of

witnesses (if any) the resident/fellow requests to be called by the Panel and if the resident/fellow will be accompanied by a faculty advocate. The Panel will let the resident/fellow know if the witnesses are allowed to be called for the hearing, and notify all parties involved.

Panel Deliberation and Decision

Following the appeal hearing, the Panel shall deliberate privately. The final decision will be made by a majority vote of the Panel members. The Panel will prepare a written decision setting forth its conclusions and its reasoning in support of those conclusions. The Panel's decision will be sent to the resident/fellow, the program director and the DIO within ten (10) business days after the hearing. The decision of the Panel is final and binding.

Burden of Proof

The appealing resident/fellow has the burden to demonstrate, by clear and convincing evidence, that the grievable Corrective Action issued by the program was arbitrary and capricious. "Clear and convincing evidence" means the evidence presented by the resident/fellow is highly and substantially more probable to be true than not. "Arbitrary and capricious" means there was no reasonable basis for the Program's decision to take the Corrective Action.

Time Limits

Time limits set forth in this procedure must be adhered to unless extended for good cause at the discretion of the DIO. A resident/fellow who fails to meet the time limits for appealing grievable Corrective Action may be deemed to have withdrawn the appeal.

Voluntary Withdrawal from a Program

Consistent with program policy and applicable state and federal law, the resident/fellow proposed for probation, suspension, non-renewal, or dismissal may voluntarily withdraw from a program at any time after the initial notice of the proposed action, or at any time up to the actual commencement of the hearing.

Reporting Obligations

The program and sponsoring institution will comply with the obligations imposed by state and federal law and regulations to report instances in which a resident/fellow is subject to corrective action for reasons related to alleged mental or physical impairment, incompetence, malpractice or misconduct, or impairment of patient safety or welfare. Corrective Action will be reported to various boards when required. Corrective Actions will become part of the permanent record.

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