

SUNY DOWNSTATE MEDICAL CENTER  
GME POLICIES AND PROCEDURES



**SUNY**  
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Health Sciences University

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Office of Graduate Medical Education

University Hospital of Brooklyn

College of Medicine

School of Graduate Studies

College of Nursing

School of Health Related Professions

School of Public Health

**SUBJECT: GME ACADEMIC PERFORMANCE DUE PROCESS POLICY**

Originating Department: Graduate Medical Education  
Date Approved by GMEC: 12/11/19  
Original Date: 5/13/2011  
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*In accordance with section IV.C.1.b of the ACGME Institutional Requirements, the Sponsoring Institution must have a policy that provides residents/fellows with due process relating to the following actions regardless of when the action is taken during the appointment period: suspension, non-renewal, non-promotion; or dismissal.*

**Purpose:**

To establish a policy and procedure for all graduate medical education programs sponsored by SUNY Downstate Medical Center (“**SUNY Downstate**”) to use in addressing deficiencies in the academic performance, competence or progress of a resident or fellow enrolled in a SUNY Downstate sponsored graduate medical education program (each, a “**GME Program**”). This Policy provides fair, reasonable and readily available policies and procedures for when a resident/fellow is not meeting the academic expectations of a GME Program or fails to progress.

**Scope:**

This Policy applies to all of the GME Programs and residents and fellows participating in such GME Programs. This Policy applies to actions taken as a result of academic deficiencies that may involve the knowledge, skills, behaviors, attitudes or the core clinical competencies of patient care and procedural skills; medical knowledge; practice-based learning and improvement, interpersonal and communication skills; professionalism; and systems-based practice. This Policy describes minimum GME Program expectations and the process for providing residents and fellows with an opportunity to be notified of deficiencies and an opportunity to cure those deficiencies. Misconduct (as defined below) may also constitute unprofessional behavior, which may trigger action under this Policy as well as action under the GME Misconduct Due Process Policy. These actions may proceed simultaneously.

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**Definitions:**

**Ad Hoc Review and Appeal Subcommittee:** refers to an ad hoc Review and Appeal Subcommittee of the GME Committee appointed by the GME Committee to hear and adjudicate resident/fellow grievances.

**Adverse Action:** disciplinary actions taken against a resident which alter the intended career development or timeframe. Such actions are reportable and allow a request for review and due process. Adverse actions include the following:

*Dismissal:* act of terminating a House Officer participating in a GME Program prior to successful completion of the course of training whether by early termination of a contract or by non-renewal of a contract.

*Non-renewal:* act of not reappointing a House Officer to subsequent years of training prior to fulfillment of a complete course of training.

*Non-promotion:* act of not advancing a House Officer to the next level of training according to the usual progression through a GME Program.

*Extension of Training:* act of extending the duration of time required by a House Officer to complete a course of training generally resulting from repeating unsatisfactory rotation assignments or remediating poor performance or needing additional time to demonstrate achievement of required competence in one or more domains.

*Probation:* placement of a resident or fellow under close monitoring for specific performance concerns which if not successfully resolved may result in other Adverse Actions including dismissal. This action is reportable to state licensing authorities and health care institutions.

*Suspension:* withdrawal of privileges for participating in clinical, didactic or research activities associated with appointment to the GME Program or hospital staff. This action is taken if, in the judgment of the Program Director, Department Chairperson or institutional leadership (Associate Dean, Dean, Medical Director) a resident's or fellow's competence or behavior is such that patients may be endangered, the educational process disrupted or other peers, staff, faculty are subjected to an adverse and unacceptable work environment. Under such circumstances, suspension may be implemented immediately pending further investigation and determination of other appropriate action. Suspension may be with salary or salary may be withheld after consultation with the labor relations department of the employing facility.

**Due Process:** an individual's right to be adequately notified of any changes or proceedings involving him or her, and the opportunity to be meaningfully heard with respect to those proceedings.

**GME Program:** refers to a structured educational experience in graduate medical education designed to conform to the GME Program requirements of a particular specialty/subspecialty.

**House Officer or House Staff Officer:** refers to all interns, residents or fellows enrolled in post-graduate medical training or research program or activity at SUNY Downstate or as a visiting rotator to SUNY Downstate.

**Milestones:** refers to a description of performance levels residents and fellows are expected to demonstrate for skills, knowledge, behaviors and attitudes in the following domains: patient care and procedural skills; medical knowledge; practice-based learning and improvement;

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interpersonal and communication skills; professionalism; and systems-based practice.

**Misconduct:** refers to serious departures from standards of professionalism or professional expectations; improper behavior; intentional wrongdoing; violation of law, rule, standard of practice, or policy of the program, department, institution or agency including NYS Education Law Section 6530 (synopsis attached to this Policy as Appendix 1).

**Monitored Performance:** an academic function involving the heightened level of monitoring and assessment of House Officer performance in the course of training program activities usually used to further assess for improvement in noted areas of deficiency, often as a part of a program for remediation. This is not an Adverse Action and it is not reportable.

**Structured Feedback:** routine feedback regarding a trainee's performance or behavior and consistent with the educational program. Structured feedback can consist of verbal feedback, rotational and summative evaluations, spontaneous or "on-the-fly" formal evaluations, memos or letters to a resident's or fellow's record or to the Program Director and shared with the resident or fellow, discussion and recommendations of a Program's Clinical Competence Committee or Resident/Fellow Performance or other similar committee.

**Policy:**

**General:** All GME Programs must establish a process for evaluating residents and fellows consistent with sound andragogic practice, ACGME institutional, common program and specialty specific requirements, American Board of Medical Specialties specialty board specific requirements and those of any other agency or accrediting body. Assessment of House Officer performance and competence is made based upon department, program and/or specialty-specific educational requirements and expectations. All residents and fellows should be provided with Structured Feedback that is consistent with the educational program and its policies.

**Clinical Competency Committee ("CCC"):** A Clinical Competency Committee for each GME Program must be appointed by the Program Director. At a minimum, the Clinical Competency Committee must include three members of the GME Program faculty, at least one of whom is a core faculty member. Additional members must be faculty members from the same GME Program or other GME Programs, or other health professionals who have extensive contact and experience with the GME Program's residents/fellows. The Clinical Competency Committee must: (i) review all resident and fellow evaluations at least semi-annually; (ii) determine each resident's and fellow's progress on achievement of the specialty-specific Milestones; and (iii) meet prior to the residents' and fellows' semi-annual evaluations and advise the Program Director regarding each resident's and fellow's progress. *See Sections V.A.3-V.A.3.b.(3) of the ACGME Common Program Requirements (Residency and Fellowship).*

The Clinical Competency Committee should provide recommendations to the Program Director regarding the status of residents and fellows in the GME Program and their progress to advanced training levels and, ultimately, GME Program completion. The Clinical Competency Committee's discussions should be documented in meeting minutes. A Department may have one Clinical Competency Committee that reviews all residents and fellows in all GME Programs in that Department. Alternatively, for Departments with multiple GME Programs, residencies and fellowships, there may be separate and independent Clinical Competency Committees for each GME Program. However, there must be no more than one Clinical Competency Committee with responsibility for assessing progress of all residents and fellows participating in the same GME Program and perspective on how all of the GME Program's residents and fellows are performing relative to one another and longitudinally in time.

**Letter of Deficiency:** When a resident or fellow has been identified as having deficiency, it is

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expected that he/she will receive routine Structured Feedback in order to identify and correct the deficiency. When the Program Director and/or the Clinical Competency Committee deems that routine feedback is not affecting necessary improvements, or if the Program Director and/or the Clinical Competency Committee determines that the deficiency is significant enough to warrant more than routine feedback, the Program Director and/or the Clinical Competency Committee may elect to issue a "Letter of Deficiency." This letter formally provides the House Officer with (a) notice of the deficiency and (b) an opportunity to cure the deficiency. "Letters of Deficiency" must be signed and dated by the Program Director and copied to the resident/fellow's record and to the GME Office. The "Letter of Deficiency" must indicate the possible outcomes of failure to fully resolve the concerns or developing deficiencies or performance problems in additional areas. The issuance of a "Letter of Deficiency" does not trigger a report to any outside agencies. The House Staff Officer should continue to receive Structured Feedback addressing issues consistent with the "Letter of Deficiency." The House Officer may be subjected to a period of Monitored Performance to appropriately assess progress in resolving deficiencies. If the House Officer satisfactorily resolves deficiencies noted in the "Letter of Deficiency," and continues to perform acceptably thereafter, the period of unacceptable academic performance does not affect the House Officer's intended career development.

**Escalation:** If the Program Director and/or the Clinical Competency Committee determine that the House Officer has failed to satisfactorily cure the deficiency and/or improve his/her performance to an expected and acceptable level, with consideration for what is fair and reasonable, the Program Director and/or the Clinical Competency Committee may elect to take further actions. Such actions may include but are not limited to any one or more of the following:

- a) Issuance of another, new "Letter of Deficiency." (Non-reportable, not an Adverse Action);
- b) Placement on probation with establishment of adverse consequences for unsuccessfully meeting conditions of the probation;
- c) Non-promotion to the next PGY or training level and continue in the GME Program;
- d) Require repeat of training experience that in turn results in extension of required period of training;
- e) Extension of contract which may involve extension of the defined training period (extension of training);
- f) Denial of credit for previously completed rotations/experiences;
- g) Non-renewal in the GME Program;
- h) Suspension from training pending further review or determination of other definitive action;  
or
- i) Dismissal from the residency or fellowship program.

For all such actions, the House Officer must be notified verbally, when possible, and in writing. A copy of the notification signed and dated by the Program Director with documentation that it was received by the House Officer (House Officer signed acknowledgement or witnessed or other receipt verification) must be included in the House Officer's record and copied to the GME Office. Notice of Adverse Action or any action which can interfere with the House Officer's intended career development must be in writing and inform the House Officer of his/her right to review and appeal of such Adverse Action, along with a copy of the GME Grievance Procedures and Due Process Policy. Notifications of Adverse Action should be done in consultation with the GME Office.

**Reportable Actions:** The decision not to promote a House Officer to the next PGY level, to extend training, to deny credit for a period of training, suspension, probation, and/or terminating a House Officer's participation in a GME Program are each considered reportable actions (each a "Reportable Action"). Such Reportable Actions must be disclosed to others upon request, including without limitation, future employers, privileging hospitals, and licensing and specialty



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boards. House Officers who are subject to a Reportable Action are permitted to request a review of the decision and seek to appeal that decision. Note that routine academic performance evaluations and assessments even when unsatisfactory are standard procedures in a training program and in and of themselves are not considered Adverse Actions, are not Reportable Actions and are not subject to appeal under this Policy.

**Request for Review and Appeal:** A review and appeal of a GME Program's decision to take a reportable Adverse Action or any action interfering with the House Officer's intended career development may be requested by the House Officer. The request must be made in writing, addressed to the Associate Dean for GME, signed and dated, and submitted to the Director of Graduate Medical Education within 14 calendar days of the House Officer learning of the Reportable Action. The request should clearly describe the reason for requesting the review and any basis upon which an appeal is being made.

Upon receipt of a Request for Review and Appeal, the Associate Dean for GME will determine whether the matter is subject to review under this Policy. If so, the Associate Dean for GME will direct the Director of GME to appoint an Ad Hoc Review and Appeal Subcommittee. The Ad Hoc Review and Appeal Subcommittee will be composed of neutral reviewers from Departments other than the one in which the requesting House Officer is appointed. The Ad Hoc Review and Appeal Subcommittee will consist of at least two SUNY Downstate faculty members and one resident or fellow. Additional committee members may be assigned at the discretion of the Associate Dean for GME/DIO. The Ad Hoc Review and Appeal Subcommittee may also include institutional GME Department leadership such as the Vice Dean for GME, Associate Dean for GME, the DIO or GME Office administrative officers. SUNY Downstate legal counsel may serve in an advisory capacity.

The Ad Hoc Review and Appeal Subcommittee will perform the following functions:

- a) Conduct confidential meeting(s) open only to Ad Hoc Review and Appeal Subcommittee members, GME Office and GMEC staff, and any participants invited by and approved by the Ad Hoc Review and Appeal Subcommittee .
- b) Identify one faculty member who will serve as Chairperson of the Ad Hoc Review and Appeal Subcommittee. The Ad Hoc Review and Appeal Subcommittee Chairperson should be a participant on the SUNY Downstate GME Committee.
- c) Arrange for an individual to take notes and document a summary of minutes of meetings held.
- d) Ad Hoc Review and Appeal Subcommittee meetings will be scheduled at the discretion of the committee Chairperson.
- e) Establish a process for the review. Such process will not be rigidly prescribed and is not conducted in the manner of a legal hearing process. No legal representation will be permitted. No opportunity for cross examination or questioning is offered.
- f) Review the House Officer complaint and request for review/appeal.
- g) Provide the House Officer requesting the review or appeal the opportunity to appear before the Ad Hoc Review and Appeal Subcommittee to make a statement and/or present evidence of relevance for rescinding the action under review. The Ad Hoc Review and Appeal Subcommittee may also require the House Officer to respond to questions posed by the Ad Hoc Review and Appeal Subcommittee . As an academic review panel and not a legal hearing, when appearing before the Ad Hoc Review and Appeal Subcommittee , the House Officer may be accompanied by an advocate who is not an attorney. Failure of an appealing House Officer to appear as scheduled before the Ad Hoc Review and Appeal Subcommittee without just cause could result in a summary determination against the House Officer.

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- h) If applicable, review relevant records and documentation such as the House Officer's file, program records, policies, meeting minutes, etc.
- i) Consider any extenuating circumstances.
- j) The Ad Hoc Review and Appeal Subcommittee may meet with the Program Director or other program representative(s) and request presentation of evidence for upholding the proposed action.
- k) The Ad Hoc Review and Appeal Subcommittee may request statements from or interview other House Officers, faculty, staff, administrators or members of the academic or health care team in order to gather additional information.
- l) The Ad Hoc Review and Appeal Subcommittee may consult with others, as appropriate, to assist in the decision making process.
- m) Determine whether this Policy was followed, the House Officer received notice and an opportunity to cure, and the decision to take the Reportable Action was reasonably made.
- n) The Ad Hoc Review and Appeal Subcommittee Chairperson is responsible for preparing the committee's report summarizing findings and making recommendations to the Associate Dean for GME/DIO regarding the review and request for appeal of Reportable Actions.
- o) The Ad Hoc Review and Appeal Subcommittee Chairperson or designee will report the outcome of the review and appeal process to the GME Committee.

Upon receipt of the Chairperson's report from the Ad Hoc Review and Appeal Subcommittee, the Associate Dean for GME shall review said findings and recommendations. The Associate Dean for GME/DIO finding the committee's review process to have followed procedure and be fair, reasonable and appropriate shall make notification to the House Officer of the Ad Hoc Review and Appeal Subcommittee's decision in writing with a copy to the Program Director, Department Chairperson, the employing institution, if applicable, and others as appropriate.

The decision resulting from this review is a final and binding decision. It is not subject to further formal review within the State University of New York Downstate Medical Center (Health Science Center at Brooklyn).

**No Retaliation:** Under no circumstances may anyone retaliate against, interfere with or discourage anyone from participating in good faith in Due Process under this Policy. A House Staff Officer who believes he/she may have been retaliated against in violation of this Policy should immediately report it to his/her supervisor, the Director of GME, resident ombudsman, Associate Dean for GME, DIO or other any other supervisor.

**Approved by the GMEC and DIO, Effective 12/11/ 2019**

  
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**Chairman of the GMEC**

  
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**DIO**

***This Policy supersedes all prior, similar and/or related versions and revisions.***

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Appendix 1:

Synopsis of NYS Education Law Section 6530

- a) Obtaining a license or permit fraudulently;
- b) Practicing the profession fraudulently or beyond its authorized scope;
- c) Practicing the profession with gross negligence on a particular occasion or negligence on more than one occasion;
- d) Practicing the profession with gross incompetence or incompetence on more than one occasion;
- e) Practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability;
- f) Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, except if maintained on an approved therapeutic regimen which does not impair the ability to practice;
- g) Having a psychiatric condition which impairs the ability to practice;
- h) Being convicted of committing an act constituting a crime under New York State law, federal law or another jurisdiction which, if committed within New York State, would have constituted a crime under New York law;
- i) Refusing to provide professional service to a person because of such person's race, creed, color or national origin;
- j) Permitting, aiding or abetting an unlicensed person to perform activities requiring a license;
- k) Any willful violation of New York State Public Health Law or Education Law or Public Officers Law;
- l) A willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine;
- m) Exercise undue influence on the patient in such a manner as to exploit the patient for financial gain;
- n) Directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a patient or in connection with the performance of professional services;
- o) Conduct in the practice of medicine which evidences moral unfitness to practice medicine;
- p) Willfully making or filing a false report, or failing to file a report required by law or by the Department of Health or the Education Department, or willfully impeding or obstructing such filing, or inducing another person to do so;
- q) Revealing of personally identifiable facts, data, or information obtained in a professional capacity without the prior consent of the patient, except as authorized or required by law;
- r) Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which the physician knows or has reason to know that he or she is not competent to perform, or performing without adequate supervision professional services which the physician is authorized to perform only under the supervision of a licensed or appropriate privileged professional, except in an emergency situation where a person's life or health are in danger;
- s) Delegating professional responsibilities to a person while knowing or having reason to know that such person is not qualified, by training, by experience, or by licensure, to perform them;

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- t) Performing professional services which have not been duly authorized by the patient or his or her legal representative;
- u) Abandoning or neglecting a patient under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care, or abandoning a professional employment without reasonable notice and under circumstances which seriously impair the delivery of professional care to patients or clients;
- v) Willfully harassing, abusing, or intimidating a patient either physically or verbally;
- w) Failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient;
- x) Failure to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the physician;
- y) Ordering of excessive tests, treatment, or use of treatment not warranted by the condition of the patient;
- z) Failing to wear an identifying badge, which shall be conspicuously displayed and legible, indicating the practitioner's name and professional title while practicing as an employee offering health services to the public; aa) Failure to use scientifically accepted barrier precautions and infection control practices as established by the Department of Health pursuant to section 230a of the public health law.