

**SUNY Downstate Medical Center
Graduate Medical Education**

GME ACADEMIC PERFORMANCE DUE PROCESS POLICY

Purpose:

To establish a policy and procedure for all post-graduate medical programs of SUNY Downstate Medical Center to use in addressing deficiencies in the academic performance, competence or progress of a resident or fellow enrolled in a graduate medical education program. To provide fair, reasonable and readily available policies and procedures when a resident/fellow is not meeting the academic expectations of a program or fails to progress.

Scope:

This policy applies to all programs and house officers (residents and fellows) participating in graduate medical education programs sponsored by SUNY Downstate. This policy applies to actions taken as a result of academic deficiencies that may involve the knowledge, skills, attitudes or the core clinical competencies of medical knowledge, patient care, systems-based practice, practice-based learning and improvement, communications and interpersonal skills and aspects of professionalism which are not addressed by the GME Misconduct Policy. This policy describes minimum expectations providing residents with an opportunity to be notified of deficiencies and an opportunity to cure those deficiencies.

Definitions:

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.

House Staff or House Officer: refers to all interns, residents or fellows enrolled in post-graduate medical training or research program or activity. The terms house officer, house staff, residents, fellows or subspecialty residents or fellows may be used interchangeably.

GME Program: refers to a residency or fellowship educational program

Letter of Deficiency: a non-reportable warning issued to a resident/fellow when there are concerns that routine feedback is not effecting necessary improvement. Such a letter provides the house officer with formal notice and opportunity to cure any deficiencies. The Program Director can choose to alter a resident's assignments or have a resident repeat rotation(s) or make other adjustments in the resident's program in order to provide opportunity to cure the deficiency. It is an academic notification which is not reported to outside agencies and is not subject to appeal or review. The letter should summarize deficiencies and may identify expectations for demonstrating improvement as well as the consequences of not successfully resolving the deficiencies. Copies of Letters of Deficiency, signed and dated by the Program Director, should be retained in the resident's training record with copies to the GME Office. It is advisable to have the resident indicate receipt of Letters of Deficiency by signature or by witness or other documentation. These letters are sometimes also referred to as "Letter of Warning."

Monitored Performance: an academic function involving a 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 part of a program for remediation. This is not an adverse action, not reportable and not subject to appeal.

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 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 under close monitoring for specific performance concerns which if not successfully resolved can result in further adverse actions including dismissal. This action is reportable to state licensing authorities, employers and health care institutions.

Suspension: withdrawal of privileges for participating in clinical, didactic or research activities associated with appointment to the training 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.

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 record or to the Program Director and shared with the resident, discussion and recommendations of a Program's Clinical Competence or Resident Performance or other similar committee.

Policy:

All programs must establish a process for evaluating residents 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 routine structured feedback that is consistent with the educational program and its policies.

Each department should establish a committee of faculty who meet regularly, no less frequent than four times per year, to review the performance, competence and/or standing in the program and progress toward program completion for all enrolled residents. This committee which may be referred to as a Clinical Competence Committee (CCC) or Performance or Evaluation Review Committee or House Staff Affairs or Assessment Committee, for example, should provide recommendations to the Program Director regarding the status of residents in the program and their progress to advanced training levels and, ultimately, program completion. The Committee's

discussions should be documented in meeting minutes. A Department can have one committee that reviews all residents and fellows in all programs in that Department. Alternatively, for Departments with multiple programs, residencies and fellowships, there may be separate and independent committees for each program. However, there must be no more than one committee with responsibility for assessing progress of all residents in a program and perspective on how all the program's residents 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 expected that he/she will receive routine structured feedback in order to identify and correct the issue. When the Program Director and/or CCC deems that routine feedback is not effecting necessary improvements, or if the Program Director and/or CCC determines that the deficiency is significant enough to warrant more than routine feedback, the Program Director and/or CCC 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 CCC 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 CCC 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 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 training program
- h) Suspension from training pending further review or determination of other definitive action.
- i) Dismissal from the residency or fellowship program.

For all such actions, the resident 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 resident (resident signed acknowledgement or witnessed or other receipt verification) must be included in the resident's record and copied to the GME Office. Notice of adverse action or any action which can interfere with the resident's intended career development must inform the house officer of his/her right to review and appeal of such adverse action. The house officer should be

provided with or referred to applicable policies and procedures regarding due process, review and appeal. 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 residency or fellowship program are each considered "reportable actions." Such actions must be disclosed to others upon request, including without limitation, future employers, privileging hospitals, and licensing and specialty 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 Program's decision to take a Reportable Action or any action interfering with the resident'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 of the GME Committee. This subcommittee will be composed of neutral reviewers from Departments other than the one in which the requesting house officer is appointed. The 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 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 Counsel may serve in an advisory capacity.

The ad hoc Review and Appeal subcommittee will:

- a) Conduct confidential meeting(s) open only to committee members, GME Office and GMCC staff, and any participants invited by and approved by the Committee.
- b) Identify one faculty member who will serve as Chairperson of the subcommittee. The 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) Committee 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 resident/fellow complaint and request for review/appeal.
- g) Provide the house officer requesting the review or appeal the opportunity to appear before the committee to make a statement and/or present evidence of relevance for rescinding the action under review. The committee may also require the house officer to respond to questions posed by the committee. As an academic review panel and not a legal hearing, when appearing before the committee, 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

committee without just cause could result in a summary determination against the house officer.

- 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 committee may meet with the Program Director or other program representative(s) and request presentation of evidence for upholding the proposed action.
- k) The committee 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 committee 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 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 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 resident of the 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: Initial and full inquiries will be conducted with due regard for confidentiality to the extent practicable. Under no circumstances may anyone retaliate against, interfere with or discourage anyone from participating in good faith in an initial inquiry or full inquiry conducted 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.

Original policy completed on 5/13/2011. This Policy supersedes all prior, similar and/or related versions and revisions. Reviewed and approved by GMEC May 18, 2011. Effective immediately upon approval.