

**SUNY Downstate Medical Center
Graduate Medical Education**

GME MISCONDUCT 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 allegations of misconduct made against a house staff officer. To provide fair, reasonable and readily available policies and procedures regarding charges of misconduct.

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 any actions taken as a result of allegations of misconduct or serious departure from standards of professionalism or professional expectations. This policy describes minimum expectations providing residents with an opportunity to be notified of allegations and an opportunity to be heard and respond to such allegations and any proposed action taken as a result.

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 at SUNY Downstate or as a visiting rotator to SUNY Downstate.

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

Misconduct: refers to 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 as appendix 1). Misconduct may also constitute unprofessional behavior, which may also trigger action under the GME Academic Deficiencies Policy, not to the exclusion of any action resulting from this GME Misconduct Policy. These actions may proceed simultaneously.

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.

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 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 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:

A house officer, employee of the hospital, attending physician, patient, or any other person who believes that a house officer has engaged in misconduct of any kind should immediately report his/her concern to his/her supervisor, or any other supervisor in the institution, who in turn should communicate the allegations to the house officer's Program Director. Upon receipt of a complaint regarding the conduct of a house officer, the Program Director should conduct an initial inquiry, as follows:

- a) Review documentation of and in support of the complaint
- b) If possible, meet with the person complaining of misconduct
- c) Meet with the house officer to advise the house officer of the existence of the complaint, to notify him or her and provide an opportunity to respond to the allegations, and to identify any potential witnesses or other information relevant to the alleged misconduct
- d) Consult with GME Office to determine whether the Dean, Associate Dean for GME, Department Chairperson, Legal Affairs and/or Human Resources and/or Labor Relations should be contacted as appropriate based on the issues and the people involved
- e) Upon the request of the house officer, or if the Program Director, Associate Dean for GME/DIO, Department Chairperson or Human Resources decide the incident warrants more investigation, then a "Full Inquiry" must be done
- f) All allegations of sexual harassment, disruptive behavior or violence must be reported to Human Resources/Labor Relations in accordance with the Institution's policies.
- g) Upon consensus of the Program Director and the Associate Dean for GME/DIO or designee, the accused house staff officer can be removed from duty (with or without pay) pending the outcome of a full inquiry

Full Inquiry:

A full inquiry is an internal investigation of the allegations/incident by a committee of appropriate individuals appointed by the Department Chairperson from within the

Department/Institution. This may include GME staff or leadership, Program Director, Department Chairperson, key faculty, Human Resources, Legal Affairs, Labor Relations, Hospital Administration, or others. The inquiry process is administered by the Department Chairperson in consultation with the GME Office. Factual results of the inquiry along with recommendations for action will be prepared by the Chairperson and/or other responsible faculty or staff participating in the full inquiry and reported back to the Program Director and the house officer for appropriate action. A copy of this report will be submitted to the GME Office and Associate Dean for GME/DIO. If the full inquiry results in a finding that no misconduct occurred, no action will be taken against the house officer. If the house officer was suspended pending the inquiry, the house officer will be reinstated with full benefits and pay without prejudice. If the full inquiry results in a finding that the house officer engaged in misconduct, the Program Director shall determine, in consultation with the Department Chair, Human Resources, Legal Affairs, Labor Relations or other appropriate individuals, what action is appropriate under the circumstances, to remedy the situation. At all times, quality of patient care, safety of patients, staff, faculty and house officers, and integrity and security of the work and education environment must be assured. The Program may take actions including, without limitation, the following:

- a) Verbal or written warning or reprimand.
- b) Election to not promote to the next training level.
- c) Non-renewal of contract.
- d) Suspension.
- e) Probation.
- f) Immediate termination or dismissal from residency or fellowship program.

Reportable Actions: The decision not to promote a house officer to the next PGY level, to extend training, to deny credit for a previously completed 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.

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. Note that 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. Verbal or written warnings and/or reprimands are also not considered adverse actions, are not reportable 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 GMEC 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 be heard, 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 5/18/11. Effective immediately upon approval.

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;
- 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.

