

**TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER AT EL PASO
GRADUATE MEDICAL EDUCATION
Standard Policy and/or Procedure**

TITLE: Adverse Action Appeals Policy

APPROVED: 1/18/1994

REVISED: 2/13/2009; 1/13/12; 8/1/16; 2/8/17; 4/6/18; 11/22/19

EFFECTIVE DATE: 1/18/94; 2/13/2009; 1/13/12; 8/1/16; 2/8/17; 4/6/18; 11/22/19

PURPOSE: To provide a process where trainees may request to appeal a **suspension, non-renewal, non-promotion** or **dismissal** (collectively referred to as Adverse Action) from training.

POLICY STATEMENT: The Sponsoring Institution, through the Graduate Medical Education Committee (GMEC), is committed to assuring that individual residency/fellowship programs have established criteria for an appeals process when an Adverse Action is taken against residents/fellows (hereinafter Trainee). The GMEC carries the responsibility to assure that this policy is aligned with current ACGME requirements.

PROCEDURE: Over the course of training in graduate medical education, a Trainee is expected to acquire progressive and increasing competence in the knowledge, skills and attitudes of the training specialty in which he/she is training. An Adverse Action may be taken as a consequence of a deficiency being identified.

Administrative actions involving **observation** and **probation** are not appealable. However, these non-appealable actions should be addressed at the program level. Programs should have an established internal process for these actions.

The following procedure outlines the appeals process for Trainees when an Adverse Action, as defined above, has been initiated. Only a **single appeal request** is allowed per each Adverse Action taken.

Important Note: Prior to initiating any Adverse Action, the Program Director will apprise the Designated Institutional Official (DIO) and General Counsel of the proposed action to be taken.

Appeals Process:

1. ***Within three business days*** after a formal decision is made to take an Adverse Action regarding a Trainee, the Program Director should meet with the Trainee **in person**, unless the Trainee is unavailable or fails to appear for the meeting, and provide:
 - a. written documentation (PDAR-1 and -2) of the Adverse Action and a remediation plan if applicable to the Adverse Action being taken,
 - b. a copy of this policy and inform the Trainee of their right to appeal. The documentation will provide for the handwritten signatures of both the Program Director and the Trainee. In the event the Trainee refuses to sign the referenced documentation, the Program Director will note such in the document.

2. ***Within three business days*** of formal notification to the Trainee, the Program Director should notify the Designated Institutional Official (DIO) in writing of the Adverse Action taken and submit the signed documentation (PDAR-1 and -2 and if applicable, a remediation plan) provided to the Trainee.

3. After the Trainee receives notification of an Adverse Action, the Trainee will have **five business days** to submit a written request for appeal to the DIO, with a copy to the Provost. The Trainee's appeal should state the facts on which the appeal is based, the reason(s) the Trainee believes the Adverse Action was in error, and the remedy requested.
4. In the event the Trainee elects ***not to appeal*** the Adverse Action or the Trainee fails to submit the request for appeal within the prescribed **five business days**, the Trainee will be deemed to have waived the option to appeal the Adverse Action.
5. **Within ten business days** from receiving the appeal notification from the Trainee, the DIO will review the appeal for purposes of compliance with the process set forth above.
6. Trainee will have no clinical duties during the appeal process; however, the Trainee may be allowed to perform other non-clinical duties at the discretion of the Program Director.
7. Upon receipt of the Trainee's written notice of appeal, the DIO shall appoint an ad hoc Appeals Review Committee (Appeals Committee), which shall be charged with conducting a hearing to review the recommendation for Adverse Action to be taken against the Trainee. The Appeals Committee will be comprised of three members with a minimum of two GMEC faculty and one resident representative. The resident representative should be the President or Officer of the House Staff Association. The Appeals Committee shall exclude faculty and house staff from the department of the Trainee who filed the appeal, as well as faculty and house staff who may have involvement with the circumstances involving the Adverse Action.
8. If an Appeals Committee is appointed, the DIO and GME Sr. Director shall serve as ex officio members.
9. **Within five business days** of appointment, the Appeals Committee shall set a date for the hearing and notify all parties concerned of any other procedural information that will be observed.
10. **At least 5 days** prior to the hearing, the Trainee and the Program Director shall provide to each other and the Appeals Committee all relevant documents that will be used in the appeal process to include, but not be limited to, the written request for appeal, all reports, evaluations and recommendations related to the action taken, and his/her file as maintained by the department and GME Office. The DIO may be utilized to disseminate the documents to the Appeal Committee and Program Director. All documents submitted to the Appeals Committee shall be deemed confidential and will be returned to the GME Office after making its recommendation.
11. **At least 5 days** prior to the hearing, the Trainee and Program Director shall provide to each other and the Appeals Committee the names of witnesses, if any, that each will utilize at the hearing. The Trainee and Program Director shall each be responsible for arranging the participation of their respective witnesses for and during the hearing. Only if a witness is not readily available to attend the hearing in person, the Appeal Committee may consider allowing the witness to participate by telephone. If applicable, the Trainee and Program Director, respectively, shall notify the Appeals Committee and each other at least 24 hours in advance of the hearing that a witness will not be available in person.
12. The Trainee shall have the right to appear in person before the Appeals Committee and may be accompanied by legal counsel retained by the Trainee. If legal counsel is to accompany him/her, the Trainee shall **notify the Appeals Committee in writing at least 5 days in advance** of the

scheduled hearing, at which time the Chair of the Appeals Committee shall immediately notify the Program Director and the Office of General Counsel (OGC). In the event the Trainee is to be accompanied by legal counsel, a representative from the OGC shall attend on behalf of the university. Legal counsel may serve only in an advisory capacity to the resident and TTUHSC may not participate in the hearing.

13. At the hearing, the Trainee shall present to the Appeals Committee and the Program Director the basis of his/her appeal and may introduce evidence considered to be relevant and material to the case. However, all evidence offered must be reasonably related to the facts and statements concerning the reasons for the adverse action and the Trainee's appeal. The Trainee bears the burden of establishing that the Adverse Action is unjustified. Both the Trainee and the Program Director will have the right to address the Appeals Committee and may introduce evidence considered to be relevant and material to the case. The Appeals Committee shall determine whether information provided at the hearing is relevant and material to the case and whether it is reasonably related to the matter of the Adverse Action taken.
14. The hearing will be audiotaped, and either of the parties may obtain a copy upon written request at the completion of the entire process. No transcript will be provided.
15. Following each party's presentation of evidence, the hearing will conclude, and the Appeals Committee will deliberate in closed session. The Appeals Committee shall submit in writing a report and provide recommendations to the campus DIO ***no later than seven business days*** from the conclusion of the hearing. The Appeals Committee shall provide a copy of its findings and recommendations to the Trainee, Program Director, and to the campus DIO.
16. If the Trainee believes procedural due process has not been followed up to and/or during the hearing, s/he may notify the DIO in writing ***within three business days*** after receipt of the Appeals Committee's recommendations. It shall be the responsibility of the campus DIO to determine whether the procedural due process claims of the Trainee, if applicable, materially affected the outcome of the decision. Only if the campus DIO determines a procedural error materially affected the outcome of the case, will ***a new Appeals Committee*** be appointed ***to re-hear*** the Trainee's request for consideration of the Adverse Action taken.
17. The campus DIO must notify the chair of the ***new*** Appeals Committee, Trainee and Program Director in writing ***within 3 business days*** whether an alleged procedural error, if any, materially affected the outcome of the ***initial*** Appeals Committee's findings and recommendations.
18. Upon receipt of the findings of the ***new*** Appeals Committee, or after time has expired to raise any procedural due process claims, the campus DIO shall review the findings and recommendations of the ***new*** Appeals Committee. The campus DIO will forward its report and recommendations to the Provost of the School of Medicine.
19. The Provost of the School of Medicine shall then review the findings and recommendations and make a determination, which shall be communicated in writing to the Trainee, the Program Director, the campus DIO, the Chair of the ***new*** Appeals Committee, and the President. The decision of the Provost shall be final. Notice of the Provost's determination may be delivered to the Trainee by certified mail, Return Receipt Requested, at his/her last known address, or hand-delivered to the Trainee with written acknowledgement of delivery. In the event neither form of communication referenced above is successful, notice to the Trainee may be given via email attachment with read/receipt notation. The decision of the Provost shall be final.

20. A final determination by the Provost to *suspend, non-renew, non-promote, or dismiss* a Trainee shall nullify or terminate any previous program agreement appointing the Trainee to a subsequent year of training.
21. Remedies and procedures contained herein, if applicable, must be exhausted in their entirety prior to the Trainee resorting to any other forum.
22. Periods listed herein are guidelines and may be extended only by the Provost where justified. For the purpose of determining any deadline herein, the first business day following any event shall count as the first day.
23. Except for those instances required by the Texas Medical Board for reporting adverse action, no specialty or sub-specialty certifying board or national, state, or local medical organization, exclusive of a licensing agency, shall be notified of a pending disciplinary action until a final determination has been made by the Provost.
24. Clearance for non-returning Trainees will be the responsibility of the Program Director and Program Coordinator. All clearance requirements and the signed Check-Out List must be submitted to the Graduate Medical Education office *within seven business days* from the final decision.
25. Salary and Benefits. Trainee will receive salary and insurance during the appeals process not to exceed forty-five calendar days from the date of receipt of the request for appeal. If for any reason during the appeals process the Trainee is sick or takes any vacation days, which must be approved in advance, the maximum of forty-five calendar days will not be increased. In the event the appeals process concludes prior to forty-five calendar days, and the decision is for dismissal, salary and benefits will end on the date of dismissal. Trainee will contact the Human Resources Office to make arrangements for continuation of health insurance under COBRA, if benefits end.
26. If the Trainee's contract expires during the appeals process, an extension may be provided until the entire appeals process concludes.