

**TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER 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; 4/6/2018

EFFECTIVE DATE: 1/18/94; 2/13/2009; 1/13/12; 8/1/16; 2/8/17; 4/6/2018

PURPOSE: To provide formal means by which trainees may request an appeal for adverse actions of **suspension, non-promotion, non-reappointment/non-renewal, or dismissal** 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 trainees (residents/fellows). The Sponsoring Institution is required to monitor compliance. The GMEC carries the responsibility to assure that this policy is in alignment 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 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.

The following procedure outlines the appeals process for trainees when an adverse action, as qualified in the purpose statement, takes place. There will only be a **single appeals request** allowed per each adverse action 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 affected resident/fellow **in person**. The trainee should be provided written documentation (PDAR-1 and 2) of the adverse action and a remediation plan if applicable to the adverse action being taken. The written document will require the handwritten signatures of both the Program Director and the trainee. The Program Director should provide the trainee a copy of this policy and inform him/her of the right to appeal within the time frame specified in #3 below.
2. ***Within two 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) provided to the trainee.
3. After the resident/fellow receives notification of an adverse action, he/she will have ***five business days*** to request a review of the adverse action by submitting a written request for appeal to the DIO.

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 three business days** from receiving the appeal notification from the trainee, the DIO will ask for volunteers from members of the GMEC to serve in the *ad hoc* Appeals Review Committee (ARC or Committee).
6. **Within five business days** from receiving the appeal notification from the trainee, the DIO will make every effort to appoint the Committee, request from the Program Director any relevant or supporting documentation from the trainee's program file, and announce the names of the ARC members to the Program Director, the trainee and to the respective ARC members.
7. The Committee will be comprised of two GMEC faculty members and the President or designated House Staff Association representative. These members shall not be from the same department as the trainee. The DIO and Sr. Director of GME will serve as ex-officio members.
8. **Within Three business days** after appointing the ARC, the DIO will hold a **preliminary meeting** with the ARC. During the preliminary meeting, the Committee will review this policy and appoint the ARC Chair for purposes of facilitating the hearing process, and for preparing and submitting the written ARC Summary Report upon the conclusion of the hearing. The ARC Chair is also responsible for:
 - a) scheduling the hearing
 - b) sending formal notification to the trainee and the Program Director with cc to legal counsel. The notification must include:
 - i. date, time and location of the hearing
 - ii. hearing agenda and time schedule allotted for the hearing
 - iii. deadline for the trainee to notify the Committee Chair if legal counsel and witness(es) will be attending the hearing.
9. The ARC will make every effort to schedule the **hearing** within **seven business days** after the preliminary meeting takes place, taking into consideration any scheduling conflicts involving the members of the ARC, the Program Director, the trainee, or any other witnesses participating in the hearing.
10. **At least five business days prior to the hearing**, the Program Director must submit a written summary of the trainee's case to be presented **and** the trainee must submit a written summary of the basis for the trainee's appeal. In addition to the summaries, both the trainee and the Program Director are responsible for providing any relevant materials to the Committee and to the other party that each intends to utilize during the hearing.
11. **At least five business days prior to the hearing**, the trainee is responsible for submitting the names of legal counsel and witnesses (if any) to the ARC Chair. The Program Director is similarly responsible for submitting the names of witnesses (if any) to the Chair of the Committee. Every effort will be made to limit the number of witnesses to **two** witnesses per each party. Upon receipt of this information, the ARC Chair will notify both parties with the names of witnesses that each party intends to present and if legal counsel will be attending the hearing. Both the trainee and the Program Director shall each be responsible for securing their witness and arranging for their participation during the hearing. If trainee has notified the ARC of his/her intent to retain legal counsel, a representative from the TTUHSC El Paso Office of General Counsel (OGC) shall attend on behalf of the university. Attorneys involvement in the hearing will be

limited to an advisory capacity only and will not be permitted to actively participate during the hearing itself. Failure of the trainee to appear at the ARC hearing will result in automatic dismissal of the trainee's request for consideration and any and all other appeal rights.

12. Both the trainee and the Program Director shall have the right to address the ARC and may introduce evidence considered to be relevant and material to the case. All evidence offered must be reasonably related to the facts and statements concerning the reasons for the adverse action. The ARC Chair will abide by the time limitations as scheduled in the hearing agenda.
13. The ARC 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. The trainee bears the burden of establishing that the adverse action is unjustified.
14. The hearing will be audiotaped, and either of the parties may obtain a copy upon written request. No transcript will be provided.
15. Following each party's presentation of evidence, the hearing will conclude, and the Committee will deliberate in closed session. The Committee's responsibility is to uphold, modify, or overturn the decision made by the Program Director.
16. ***Within seven business days*** from conclusion of the hearing, the ARC Chair will prepare and submit the written ARC Summary Report with recommendations and/or a specific action plan, as appropriate, to the DIO.
17. The DIO will forward the Summary Report to the President, the Provost, the Program Director, and the trainee ***within 24 hours***
18. If the ARC recommends upholding the decision of the Program Director, then the Program Director has the ultimate decision-making authority with regards to the adverse action to be taken, subject to the trainee's right to appeal the decision as set forth in #23 below.
19. If the ARC recommends to **overturn** the decision of the Program Director, the ARC will provide a specific action plan to be followed by the Program Director. Progress of the action plan must be reported by the Program Director to the GMEC on a monthly basis until the matter is resolved.
20. If the trainee or the Program Director is dissatisfied with the ARC's decision, the trainee or Program Director may appeal the decision to the Dean of the School of Medicine (Dean).
21. ***Within seven business days*** from receiving written notification of the Committee's decision, the trainee or Program Director may submit a written appeal to the Dean. This appeal must contain the factual basis by which the trainee or the Program Director disagrees with the decision.
22. The Dean shall consider the information and any documentation presented at the hearing and considered by the Committee, as well as the Committee's decision, and any other information that the Dean deems relevant. The Dean may, in his or her discretion, interview the trainee, the Program Director, and the chair of the Committee, as well as any faculty members responsible for the supervision of the trainee or any other individuals with knowledge regarding the trainee's performance.
23. **The Dean is the final and ultimate decision-making authority for all appeals under this section.**

24. The Dean may accept, reject, or modify the ARC's decision. The Dean shall review the appeal and, within ten (10) **business days, make a final decision that will be transmitted to the trainee, the Program Director, the Chair of the ARC, and the DIO.** . The decision of the Dean is final. The effective date of the adverse action will be the date the Dean issues his/her decision.
25. 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.
26. Clinical and General Duties. Trainee shall have no clinical duties during the appeal process; however, the trainee may be allowed to perform duties at the discretion of the Program Director.
27. Salary and Benefits. Trainee will receive salary and insurance benefits (unless contract has ended or trainee is suspended without pay) 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 Dean issues a final decision for dismissal, , salary and benefits will end on the date of dismissal. In the event of a dismissal, salary and benefits will not extend beyond the forty-fifth calendar day after submission and receipt of the appeal. Trainee shall contact the Human Resources Office to make arrangements for continuation of health insurance under COBRA, if benefits end.