

## **Procedures for Disciplinary Action**

Trainees participate in a Graduate Medical Education (GME) program sponsored by the University of Arizona College of Medicine – Tucson or College of Medicine – Phoenix. While participating in the Training Program, Trainees are employed by Banner--University Medical Group (B-UMG) and are afforded the opportunity to practice medicine under specified conditions for a designated period of time.

While participating in a Training Program, Trainees are afforded the procedural rights described below. These procedural rights are limited to current Trainees and are not available to Trainees who: (1) cannot obtain/maintain eligibility to participate in a Training Program; (2) have completed their Program; (3) have completed their Program and are pending continued employment with Banner Health; or (4) resign from the Program.

### **Overview**

1. Trainees are not entitled to procedural rights outlined in the Banner--University Medical Staff Bylaws, the Human Resources policies of Banner – University Medical Center or B—UMG, the Human Resources policies of the University of Arizona, nor the student disciplinary processes of the University of Arizona.
2. Incident reports, evaluations, education support, remediation efforts, and other information gathered or exchanged during the Trainee's education do not constitute disciplinary action.
3. These guidelines do not outline the processes in place to address violations of Banner Health or University of Arizona policies (e.g. delinquent medical records, HIPAA violations, substance abuse, discriminatory/harassing behaviors.) However, disciplinary action may result from findings or determinations provided to a Training Program following an external process, review, or investigation.
4. Notice of actions and/or decisions under these procedures will be provided in writing and delivered to the Trainee's employee email address and/or other designated preferred email address. All deadlines are calculated beginning the calendar day after the date of the email. All notices are deemed to be received on the date of the email.
5. Nothing in these procedures restricts the authority of the Program Director to assign the job duties and responsibilities of the Trainee at all times, including the decision to assign the Trainee to clinical, non-clinical, research, or other duties at specified locations as deemed appropriate by the Program Director.
6. These procedures are intended to guide the sponsoring institution through a reasonable decision-making process that provides Trainees with notice of the action being considered, the opportunity to review and respond to the information in support of the action, and the opportunity for the Trainee to seek additional review of the Program Director's decision. Minor deviations from these procedures that do not deprive the Trainee of notice or the opportunity to respond will not render the decision invalid. All timelines may be reasonably extended for good cause.

## **I. Disciplinary Action**

### **1. Notice of Disciplinary Action and Opportunity to Respond**

- a. Disciplinary action falls within the sole discretion of the Program Director, subject to the Trainee's right to appeal as outlined below.
- b. Disciplinary action is warranted when a Trainee fails to meet the academic requirements of the Training Program. Academic requirements are guided by the Accreditation Council for Graduate Medical Education (ACGME) Core Competencies; the policies and procedures of Banner Health, B-UMG, and the University of Arizona; and the codes, rules, and regulations of licensing agencies, including the Arizona Medical Board and the Arizona Board of Osteopathic Examiners.
- c. Disciplinary action includes the following: 1) Retention at current post-graduate (PG) year with/without an extension of training; 2) Probation; or 3) Dismissal.
- d. If a Program Director, in consultation with the Clinical Competency Committee (CCC), concludes that a Trainee's performance warrants disciplinary action, the Program Director WILL FIRST consult with the GME Office to discuss disciplinary options and determine the appropriate next steps.
- e. The Program Director will notify the Trainee of the disciplinary action in writing using the approved Notice of Disciplinary Action template.
- f. The appropriate Notice of Disciplinary Action template must be requested from the GME Office.
- g. The Notice of Disciplinary Action will include:
  - i. The disciplinary action;
  - ii. A summary of the basis for the disciplinary action, with documentation or information in support of the decision included as attachments;
  - iii. The core competencies, rules, policies, or standards the Trainee is failing to meet;
  - iv. An individualized learning plan developed to support Trainee improvement;
  - v. The Trainee's opportunity to request a review of the disciplinary action by the Graduate Medical Education Committee (GMEC) Appeals Panel.
- h. All draft Notices of Disciplinary Action must be reviewed by the GME Office prior to presenting to the Trainee.
- i. Whenever possible, the Program Director will meet with the Trainee in person to present the Notice of Disciplinary Action.
- j. If the Trainee is subject to Dismissal, the Trainee will be placed on paid administrative leave and assigned to non-clinical duties until the due process concludes.

- k. If the Trainee is subject to retention at a specific PGY level, they will not be promoted to the next PGY level within the program or advance to the corresponding PGY compensation level with Banner Health until the due process is complete or until the updated, designated promotion date.
- l. If a Trainee resigns at any time after the Program Director notifies the Trainee of the disciplinary action, the Trainee immediately waives all procedural and appeal rights set forth in this manual. The resignation may be noted as “pending disciplinary action” in the final evaluation at the discretion of the Program Director.
- m. The Trainee has seven (7) days from the date of delivery of the Notice of Disciplinary Action to submit a written request to the Designated Institutional Official (DIO) to request a review of the disciplinary action before the GMEC Review Panel.
  - i. Failure to timely request a review results in a waiver of the opportunity and a waiver of all remaining procedural and appeal rights set forth in this manual.
  - ii. If the Trainee waives the right to request review, the Program Director will confirm to the Trainee, in writing, that the Trainee waived all remaining due process rights and that the disciplinary action is effective immediately.
- n. If the Trainee requests a review by the GMEC Review Panel, the DIO will assemble a panel from the members of GMEC to include:
  - i. Two Program Directors or Associate Program Directors from programs outside of the Trainee’s home department; and
  - ii. One Trainee from a program outside of the requesting Trainee’s home department.
- o. The GMEC Review Panel will coordinate with the Trainee and the Trainee’s Program Director to set a meeting. The meeting will take place no more than fourteen (14) days from the date of the Trainee's request for review unless the Trainee agrees to an alternate timeframe.
- p. The Trainee and the Trainee’s Program Director will receive at least seven (7) days’ notice prior to the GMEC Review Panel meeting. GMEC Review Panel meetings are an internal, academic process. The GMEC Review Panel meeting is the Trainee's opportunity to respond to the disciplinary action.
- q. No less than three (3) days before the GMEC Review Panel meeting, the Program Director and the Trainee must submit any relevant information to the GMEC Review Panel for consideration at the meeting. Materials must be submitted to the GMEC Review Panel via email with copy to the other party. Materials submitted less than three (3) days prior to the meeting will not be considered by the GMEC Review Panel.
- r. At the meeting, the GMEC Review Panel will consider the basis for the disciplinary action and any timely submitted materials. The Trainee and the Program Director will each have an opportunity to present their position to the GMEC Review Panel.

- s. Only the GMEC Review Panel members, the Program Director, the Trainee, and a support person of the Trainee's choosing may attend the GMEC Review Panel discussion of the disciplinary action. No witnesses will be called.
  - i. If the Trainee chooses to bring a support person, that person may not speak on the Trainee's behalf or participate in the meeting in any manner.
  - ii. The Trainee must provide the name of the support person at the time of the request for a GMEC Review Panel and must indicate whether the support person is an attorney. The GMEC Review Panel may request the presence of University legal counsel at its discretion.
- t. The GMEC Review Panel will issue a written decision to the DIO within seven (7) days of the meeting. The GMEC Review Panel has the authority to confirm, reverse, or modify the disciplinary action.
- u. The Program Director and the Trainee will be copied on the decision. The written decision will include:
  - i. Confirmation that the Trainee appeared before the GMEC Review Panel and exercised the right to respond to the disciplinary action;
  - ii. A summary of the basis for the disciplinary action, incorporating by reference the supporting documentation or information relied on in making the decision;
  - iii. A statement as to whether opportunities for remediation were available, provided, or appropriate under the circumstances;
  - iv. The GMEC Review Panel's decision regarding the disciplinary action;
  - v. The Trainee's right to appeal the decision to the DIO within seven (7) days of the date of the GMEC Review Panel's decision, in accordance with these procedures.
- v. If the Trainee does not timely appeal the GMEC Review Panel's decision, the disciplinary action is immediately in effect and the Trainee waives all remaining procedural rights.

## **2. Appeal of the GMEC Review Panel decision to the DIO**

- a. A Trainee may request that the DIO review the GMEC Review Panel decision within seven (7) days of receiving the GMEC Review Panel's written decision. The request to the DIO must include a written statement outlining the basis for the DIO review.
- b. The basis for the appeal is limited to the following grounds.
  - i. A material deviation from written procedures;
  - ii. The discovery of new, material information that was unavailable to the Trainee and Program Director at the time of the Program Director's decision; or
  - iii. Evidence that the disciplinary action is overly severe or unwarranted under the circumstances.
- c. At their discretion, the DIO may meet with the members of the GMEC Review Panel to

review the decision and all previously submitted materials. The DIO may seek clarifying information from the GMEC Review Panel, the Trainee, and/or Program Director.

- d. The DIO may uphold, modify, or reverse the GMEC Review Panel's decision to impose disciplinary action.
  - e. If the disciplinary action is modified or reversed, the DIO will provide a basis for that decision and outline any additional or revised expectations. A Trainee may not seek review or appeal of the decision to modify a disciplinary action (e.g., a dismissal that is reduced to retention by the DIO is not subject to a GMEC Review Panel or DIO appeal).
  - f. A Trainee's refusal to accept or comply with modified disciplinary action may result in the DIO upholding the original disciplinary action.
  - g. The DIO will communicate the decision in writing to the Trainee, the Program Director, and Banner Human Resources.
  - h. The DIO's decision is final and not subject to further appeal within the College or University. The decision is immediately effective unless otherwise stated.
3. If disciplinary action is imposed, the GME Office will notify the appropriate medical board, the ACGME, the ECFMG, and/or Banner Human Resources if required.
  4. Dismissal from a Training Program will result in termination of employment from B-UMG.
  5. The University considers efforts to remediate or address performance deficiencies an essential component of the larger educational process. Such actions are considered educational support measures and should not be construed as disciplinary action or an indication of misconduct. The University reserves the discretion to not disclose educational support measures, regardless of the scope or definition(s) provided by an external requester.

### **Impairment**

When a Trainee suspects they or another Trainee may be impaired, the Trainee must contact the Trainee's Program Director and provide the details of the behavior or information leading to this concern. In conjunction with the GME office, the Program Director will determine if further action is necessary.

If, in the judgment of the Program Director (in conjunction with the GME office), credible evidence exists to suggest impairment, the Program Director may take one or more of the following actions:

1. Referral to an appropriate health professional including a psychiatrist or other mental health professional;
2. Refer the Trainee for Reasonable Suspicion Drug and Alcohol Test in accordance with policy;
3. Periodic check-in sessions with the Trainee's faculty advisor, Program Director or both; and/or
4. Disciplinary action in accordance with the section on Procedures for Disciplinary Action previously described.

## **Drug and Alcohol Testing Policy**

Because chemical substance abuse (including alcohol, marijuana, illicit and licit drugs) may impair a Trainee's performance, drug and alcohol testing will be required at the time of the initial B—UMG employment physical. Refusal to submit to testing or receiving a positive test result for substance use outside a Trainee's valid prescription will result in the Trainee being deemed ineligible for employment with B—UMG. If a selected Trainee cannot satisfy all eligibility requirements as of the start date of the Training Program, the Trainee will be placed on administrative leave pending proof of eligibility. If the Trainee cannot timely satisfy eligibility requirements, the Training Program may rescind the Trainee's offer to participate in the Training Program with no opportunity for review or appeal. If the program participates in the NRMP match and the Trainee is deemed ineligible to start the Training Program within 45 days of the original program start date, they must obtain a match waiver from the NRMP. If Trainee tests positive for substance use aligned with a valid prescription or medical marijuana card, B—UMG will engage in the interactive process with Trainee to determine if an effective reasonable accommodation is available.

Throughout the Training Program, Trainees will be subject to testing where Reasonable Suspicion/Cause of impairment exists. The basis for Reasonable Suspicion/Cause testing may include, without limitation:

1. Difficulty standing, walking or maintaining balance;
2. Stumbling, trembling, exaggerated gestures or movements;
3. Loud or nonsensical speech, exaggerated enunciation, slurred or incoherent speech;
4. Lack of response when spoken to, appearance of confusion in response to the speech of others;
5. Sleepiness or lethargy;
6. Sweaty or flushed appearance, bloodshot eyes;
7. Marked deterioration in appearance, or disheveled clothing or hair;
8. Odor of alcohol or marijuana;
9. Hostile or aggressive behavior;
10. Report from a reliable source that Trainee is abusing drugs or alcohol, including verbal, written, or photographic admission of drug or alcohol use;
11. An unexplained workplace accident in which Trainee is involved that causes injury or property damage;
12. Circumstances concerning for drug diversion.

Trainees will be placed on administrative leave pending the results of the test. Any Trainee who refuses to submit to testing or otherwise delays a test will also be placed on administrative leave. The refusal or delay in testing will be considered the same as a positive test.

Any Trainee who has a positive drug test may be immediately dismissed from the Training Program without the opportunity to utilize any of the procedural or appeal rights set forth in this manual. If the Trainee is permitted to remain in the Training Program, the Trainee must be cleared by the following before returning to work:

- AMB/OBEX
- Banner Occupational Health
- Program Director
- DIO or designee

The Trainee will also be required to enter into a Re-entry Agreement that may include requirements/conditions in addition to those set forth above. Continuation in the Training Program is conditional upon compliance with the terms of the Re-entry Agreement. Refusal to sign a Re-entry Agreement will result in immediate termination from the Training Program, without the opportunity to utilize any of the procedural or appeal rights set forth in this manual.

Positive tests and test refusals will be reported to AMB/OBEX, when required by the AMB/OBEX. Actions taken by AMB/OBEX may be in addition to or concurrent with disciplinary action taken by the Program Director.

Trainees who are on stipulation with AMB/OBEX and/or subject to a Re-entry Agreement will be subject to random drug and alcohol testing.

### **Administrative Leave Procedure**

Administrative leaves can be initiated by either Banner Health, or by the Training Program/Sponsoring Institution.

Administrative leaves initiated by Banner Health will follow the Banner Health administrative leave process.

Administrative leaves initiated by the DIO or the Program Director (or designee) will follow the UACOM-T GME administrative leave process.

The DIO and the Program Director (or designee) have the discretion and authority to place a Trainee on administrative leave for any reason from the Training Program or summarily impose limitations on Training Program participation.

Administrative leave is effective immediately upon notification to the affected Trainee, whether verbal or written. Once placed on administrative leave, the Program Director will inform the Trainee in writing of the parameters of the leave. The administrative leave will remain in effect until lifted at the discretion of the DIO or Program Director.

The status of administrative leave only affects the Trainee's ability to participate in the Training Program and is unrelated to pay or benefits through B-UMG.

### **Revocation of Medical License**

Action by ABM/OBEX revoking a Trainee's license/permit to practice medicine will result in the Trainee's automatic dismissal from the Training Program without any of the procedural or appeal rights set forth in this manual.