

PROCEDURES FOR DISCIPLINARY and NON-DISCIPLINARY ACTION

I. Purpose/Expected Outcome:

- A. The procedures described below govern the non-disciplinary and disciplinary actions that can be taken against residents and fellows (collectively referred to as “residents”). Residents are physicians under contract in an accredited/non-accredited graduate medical education program who have privileges to practice medicine under specified conditions for a designated, limited period of time. While performing their duties as a resident during the time specified in the contract, they are afforded procedural rights as described below. Residents are not entitled to procedural rights afforded under the Banner University Medical Staff Bylaws, the Human Resources policies of Banner University Medical Center or of Banner University Medical Group, nor the Human Resources policies of the University of Arizona.
- B. Disciplinary action is any action imposed on a resident because he or she fails to meet established standards. It is categorized into three major areas: Below Standard Performance, Professional Misconduct, and Impairment.
1. Below Standard Performance is when a resident does not demonstrate the requisite breadth or depth of skills, attendant knowledge, or judgment needed to address clinical matters expected for a resident at that level of education in that specialty.
 2. Physician Misconduct is when a resident fails to fulfill the requirements or standards set forth by applicable professional organizations, the ACGME, or the law or when a resident violates the policies and procedures of Banner Health, Banner-University Medical Group and/or the University of Arizona. Residents must be familiar with and abide by the codes, rules and regulations of the American Medical Association, American Osteopathic Association, applicable specialty boards, Arizona Medical Board (AMB), the Osteopathic Board of Examiners (OBEX) and other licensing agencies, including those pertaining to professional conduct.
 3. Impairment is when a resident has a physical or mental illness, including substance abuse, which may affect the resident’s performance.
- C. Incident reports, regular evaluations, and other routine information gathered in the course of the evaluation of a resident do not constitute a request for non-disciplinary or disciplinary action, but these findings may result in the initiation of investigations.
- D. This policy does not deal with delinquent medical records, which is covered under a separate policy. However, disciplinary action may be taken if records are repeatedly delinquent.
- E. Notice of any action or decision under these due process procedures shall be made in writing and delivered to the affected resident via his or her employee email address or the resident’s designated preferred email. All deadlines will be calculated beginning the calendar day after the date of the email.
- F. Nothing in these procedures is intended to impede the authority of the Program Director to assign the job duties and responsibilities of a resident or fellow at all times, including the decision to assign a resident to clinical, non-clinical, research, or other duties at specified locations as deemed appropriate by the Program Director.
- G. The University of Arizona College of Medicine-Phoenix and College of Medicine-Tucson, as the sponsoring institutions, will make the final determination with regard to a resident’s participation or advancement in a residency program.
- H. These procedures are intended to guide the sponsoring institutions through a reasonable decision-making process that provides residents and fellows with notice and an

opportunity to be heard. Minor deviations from these procedures that do not deprive the resident or fellow of notice or opportunity to be heard will not render a decision invalid.

II. Non-disciplinary Action

- A. Whenever the performance or conduct of a resident suggests the need for intervention or improvement short of disciplinary action, the residency Program Director or designated faculty member (referred to herein as "Program Director") shall investigate the matter, discuss it with the involved resident and determine the next steps.
- B. If, in the judgment of the Program Director, the matter warrants non-disciplinary action, he/she will take such action and subsequently advise the program's Clinical Competency Committee (CCC).
- C. The Program Director may take any non-disciplinary action deemed appropriate, including placing the resident on Administrative Leave pending an investigation into allegations of Below Standard Performance, Physician Misconduct, or Impairment.
- D. Non-disciplinary actions are not considered disciplinary in nature. The resident has no right of appeal of a non-disciplinary action. However, if the resident believes the action was not warranted, he/she may submit documentation of such belief to the CCC. The CCC may, in its sole discretion, review the submission and decide whether to take action. The CCC will inform the resident in writing of its decision.
- E. The Program Director may take any non-disciplinary action deemed appropriate, including but not limited to:
 - 1. Issue a letter of concern;
 - 2. Allow a leave of absence for personal reasons;
 - 3. Require that a resident obtain an assessment to determine possible substance impairment;
 - 4. Refer the resident to Occupational Health where impairment relates to job performance;
 - 5. Require the resident to repeat one or more rotations if such rotation(s) do not extend the program;
 - 6. Require the resident to complete training in the Banner Simulation Center;
 - 7. Require the resident to submit a formal action plan, which may include a variety of actions such as required readings and tests;
 - 8. Require the resident to establish mentor relationships with identified members of the faculty or senior residents;
 - 9. Require the resident to meet on a scheduled basis with identified members of the faculty or senior residents;
 - 10. Assign or reassign the resident to clinical, non-clinical, research, or other duties at specified locations as deemed appropriate by the Program Director.
- F. **The Program Director may begin Disciplinary Action (below) without having first utilized a Non-Disciplinary Action.**

III. Disciplinary Action

- A. Whenever the performance or conduct of a resident suggests the need for disciplinary action, the residency Program Director shall consult with the Graduate Medical Education (GME) Office to determine the appropriate next steps. The Program Director may also discuss the performance or conduct with involved individuals.
- B. If, in the judgment of the Program Director, the matter warrants disciplinary action, the Program Director may bring the issue, along with recommendations, before the program's Clinical Competency Committee (CCC) for deliberation and recommendation.

1. If consulted, the CCC may recommend any actions deemed appropriate to address the matter, including, but not limited to, one or more of the following actions:
 - (a) Require that the resident successfully complete additional training as specified by the CCC;
 - (b) Place the affected resident on probation, specifying the behaviors/performance issues that must be remedied;
 - (c) Recommend that the disciplinary action be mentioned on the resident's summative letter;
 - (d) Recommend that the resident be suspended for a specified period of time;
 - (e) Recommend that the resident's contract not be renewed for the subsequent year;
 - (f) Withhold a recommendation that the resident be allowed to sit for the designated board examination in his/her specialty;
 - (g) Withhold a recommendation that a certificate of satisfactory completion be awarded the resident;
 - (h) Recommend that the resident be dismissed from the training program.
- C. The Program Director will make a recommendation for disciplinary action, which recommendation may be made before or after consulting with the CCC. The Program Director will notify the resident of that recommendation in writing to the resident's employee email address or designated preferred email address and, whenever practicable, meet with the resident to discuss the decision.
- D. The resident shall have seven (7) calendar days to submit a written request for reconsideration to the Program Director.
- E. If reconsideration is requested timely, the resident (and a non-speaking advisor if requested) will have the right to appear before the CCC and present evidence and a statement of his or her behalf. The Program Director will also appear and may request the presence of a non-speaking advisor. The right to appear does not include the right to be represented by counsel, or to call witnesses.
- F. The CCC will consider the evidence and statements presented by the resident and the Program Director and will provide the resident and Program Director with written notice of its decision on the recommended disciplinary action(s) within seven (7) calendar days of the appearance before the CCC. The CCC may uphold, modify, or reject the Program Director's decision. The CCC is entitled to the presence of a non-speaking advisor during the resident's appearance and the CCC's subsequent deliberation.
- G. Failure to timely request reconsideration constitutes a waiver of the right to request reconsideration by the CCC and the right to appeal to the Graduate Medical Education Committee (GMEC). The Program Director's decision will then become final, immediately, with no further review available.
- H. In the event the CCC upholds the Program Director's decision to impose discipline, the recommendation may be immediately implemented, pending appeal to the GMEC. If the Program Director's decision to dismiss the resident from the Program is upheld, the resident will be assigned to (or remain on) non-clinical duties and will continue to receive pay while the matter is resolved on appeal, if requested.
- I. In the event the CCC upholds or modifies the Program Director's imposed disciplinary action(s), the resident shall have the right to appeal to the GMEC.

1. The resident shall have seven (7) calendar days after receiving the CCC's decision on the imposed disciplinary action to deliver a written request for appeal to the Designated Institutional Official (DIO). The DIO will inform the Chair of the GMEC of the request for an appeal.

J. Failure to request an appeal in the time and manner specified shall constitute a waiver of the right to appeal, and the Program Director's recommended disciplinary action shall become final, immediately, with no further review process available.

K. If the affected resident requests an appeal to the GMEC, the appeal will be reviewed on the following terms:

1. The resident and Program Director will receive fourteen (14) calendar days advance notice of the date, time and location of the appeal, unless the resident and Program Director agree to a shorter notice period. This notice will also include the names of the GMEC members who are appointed to hear the appeal.
 - a. Appeals will be heard by a Review Panel of no less than five (5) members of the GMEC, selected by the GMEC Chair, one of which must be a resident or fellow. The GMEC Chair will name a Review Panel Chair. The Review Panel members must be impartial and have no involvement with any underlying investigation or the decision to impose disciplinary action.
 - b. In the event five (5) GMEC members are unavailable, the GMEC Chair may select a Review Panel member from the faculty.
 - c. The DIO may appoint an attorney to advise the Hearing Panel.
2. The resident and the Program Director have the right to appear before the selected GMEC Review Panel, to bring witnesses to speak on their behalf, and to question any witness.
 - a. At least seven (7) calendar days prior to the review, the resident and the Program Director shall notify the Review Panel Chair of the name of each witness he/she intends to bring to the hearing along with a brief description of the witness' anticipated statements.
 - b. The Review Panel Chair may exclude any witness deemed immaterial to the recommended disciplinary action or whose statements will be redundant to other witnesses.
3. The resident and the Program Director may submit documents for the Review Panel to consider. The resident's documents may include a written statement in support of the resident's position.
 - a. All documents must be submitted to the Review Panel Chair at least seven (7) calendar days prior to the review.
 - b. The Review Panel Chair will distribute the documents to the Review Panel members, the Program Director and the affected resident at least five (5) calendar days prior to the review.
4. The resident may be accompanied by an advisor, who may or may not be an attorney. While the advisor may consult with and advise the resident during the review, the advisor shall not participate in any way in the proceedings.
 - a. If the resident chooses to be accompanied by an advisor who is an attorney, the resident must notify the DIO and the GMEC Chair within seven (7) calendar days of the request for an appeal.
5. An attorney may be appointed to consult and advise the Program Director during the review but shall not participate in the proceedings.
6. Legal fees and other costs, if any, shall be borne by each side on its own behalf.
7. The Review Panel may directly question the affected resident, the Program Director, and any witness at any time during the review.

8. The proceeding will be recorded only if a request for recording is submitted to the Review Panel Chair by the resident or the Program Director at least five (5) calendar days prior to the review. The method of recording may be an audio recording or any other method selected by the Review Panel Chair.
- L. The burden of persuasion is upon the resident to demonstrate that the recommendation of the Program Director and decision of the CCC were not justified based on the evidence.
- M. The Review Panel shall conduct its deliberations privately. The Program Director, the resident, and their respective advisors will not participate in deliberations. The Review Panel shall make its decision within fourteen (14) calendar days following the review and shall prepare a written statement setting forth its determination and the reasons therefor. The determination of the Review Panel shall be final and binding and no further review or appeal is available.
 1. The determination of the Review Panel will be sent to the DIO, who will distribute the decision to the resident, the Program Director, the GMEC Chair, the Dean of the College of Medicine, and the GME Office.
 2. In the event the resident is placed on probation or dismissed, the GME Office will notify the AMB, the OBEX, and/or the ACGME as required.
- N. The record of the hearing is confidential except (a) to the extent authorized in writing by the affected resident and agreed to by the DIO or (b) as may otherwise be appropriate in response to a governmental or legal process. The action of the Review Panel shall be disclosed in the same manner as all other recommendations and actions of the CCC and GMEC.

- **Resident/Fellow Impairment**

- O. Whenever a resident suspects that he, she, or another resident may be impaired, the resident should contact his or her Program Director and provide the details of the behavior or information leading to this concern. Whenever information suggests that a resident may be impaired, the Program Director will take necessary steps to determine whether credible evidence of impairment exists. If, in the judgment of the Program Director, no such evidence exists, the matter is dropped.
- P. If, in the judgment of the Program Director, credible evidence exists to suggest impairment, the Program Director will institute the Drug Testing Policy protocol (below) and one or several of the following:
 1. Testing of bodily fluids for misuse of chemical substances according to the section on Drug Testing described below;
 2. Referral to an appropriate health professional including a psychiatrist or other mental health professional;
 3. Periodic sessions with the resident's faculty advisor, Program Director or both; and/or
 4. Disciplinary action in accordance with the section on Procedures for Disciplinary Action previously described.

- V. **Drug Testing Policy**

- A. Because chemical substance (including alcohol, illicit and licit drugs) abuse may impair a physician's performance, tests for alcohol and chemical substances will be required at the time of the initial employment physical. In addition, testing will be required whenever evidence suggests that a resident may be currently impaired or may have been impaired at any time during the performance of residency duties ("for cause testing"). Residents who are on stipulation with AMB/OBEX or have signed a Stipulated Conditions of Employment Agreement will also be subject to random testing.

- B. The Program Director or designee may require a resident to undergo for cause testing for drugs and/or alcohol. Cause for such testing shall include without limitation:
 - 1. Evidence of misuse of prescribed or non-prescribed drugs
 - 2. Evidence of use of alcohol or drugs while on duty
 - 3. Evidence of impairment while on duty
 - 4. Failure to meet duties and responsibilities that other residents regularly fulfill
 - 5. Repeated absences which are inadequately explained
 - 6. Repeated tardiness for scheduled responsibilities
 - 7. Bizarre or disruptive behavior
 - 8. Any performance which is overtly negligent
 - 9. Physical or verbal abuse toward any colleague, hospital staff member, office staff member or patient
 - 10. Any other circumstance which provides possible cause to believe that chemical substance abuse is present
- C. All cases in which drug testing is required will be reviewed by the appropriate CCC.
- D. Residents will be immediately placed on administrative leave pending the results of the drug test.
- E. Any resident found to have tested positive will remain on Administrative Leave pending disciplinary action. All positive tests will be reported to AMB/OBEX. The resident will not be permitted to return to work until cleared by AMB/OBEX and Occupational Health and authorized by the Program Director and the DIO. Prior to such authorization, the resident must agree to comply with the conditions imposed by AMB/OBEX, Occupational Health, and the Program Director, including entering into and complying with the terms of the Banner Health Stipulated Conditions of Employment Agreement, which will include the conditions imposed by AMB and/or OBEX. Actions taken by AMB/OBEX may be in addition to or concurrent with disciplinary action taken by the Program Director.
- F. Continuation in the residency program after a positive test is conditional upon compliance with the terms of reinstatement and at the discretion of the Program Director and the CCC.
- G. Any resident who subsequently has a positive test for the misuse of drugs may be immediately terminated from the residency program without appeal rights.
- H. Any resident who refuses to take a urine test will be placed on Administrative Leave pending disciplinary action. All reports mandated by law will be made.
- I. Performance and/or conduct issues suggesting evidence of impairment will be investigated and disciplinary action may be initiated as set forth above.

VI. Administrative Leave Procedure

- A. The DIO and the Program Director or their designee shall have the authority to place a resident on Administrative Leave from his/her program or summarily impose limitations whenever such action must be taken in the best interest of patient care, in response to a positive drug screen, or to investigate a disciplinary matter. Such Administrative Leave shall be reported to the Program Director and the DIO and shall become effective immediately upon notification to the affected resident. A resident who is on Administrative Leave will be promptly informed of the parameters of the leave in writing by the Program Director. The Administrative Leave will remain in effect pending the Disciplinary Action procedures, unless lifted by the DIO at his/her discretion. Banner may suspend a resident when such action must be taken in the best interest of patient care.

VII. Automatic Suspension

- A. Action by ABM/OBEX revoking a resident's training permit to practice medicine will automatically terminate the resident's contract. Residents subject to automatic revocation will not be entitled to any of the procedural or appeal rights set forth in this manual. Action by AMB/OBEX suspending a resident's training permit to practice medicine will

automatically result in suspension of the resident without pay and without appeal rights under these guidelines. The suspension will remain in effect for no more than one year. If the AMB/OBEX suspension remains in effect after one year, the contract will automatically terminate and the resident shall not be entitled to any of the procedural or appeal rights set forth in this manual. If within one year the resident's suspension is lifted and his/her training permit is reinstated, the affected resident has the right to appear before the CCC and request reinstatement into the residency program and to appeal an adverse decision as set forth in the Procedures for Disciplinary Action.