SECTION II

DUE PROCESS GUIDELINES and POLICIES
PROCEDURES FOR DISCIPLINARY and NON-DISCIPLINARY ACTION

These procedures outline the due process rights of interns, residents and fellows (collectively “residents”) for non-disciplinary and disciplinary actions.

Residents/fellows 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 academic program, residents/fellows are employed by Banner University Medical Group (BUMG) and are afforded privileges to practice medicine under specified conditions for a designated period of time. While participating in the residency/fellowship program, residents/fellows are afforded the procedural rights described below.

I. OVERVIEW

1. Residents/fellows are not entitled to procedural rights outlined in the Banner University Medical Staff Bylaws, the Human Resources policies of Banner University Medical Center or of BUMG, nor the Human Resources policies of the University of Arizona.

2. The sponsoring institution of the residency/fellowship program will make the final determination with regard to a resident/fellow’s participation or advancement in the program.

3. Incident reports, evaluations, and other information gathered or exchanged in the course of the resident/fellow’s education do not constitute non-disciplinary or disciplinary action.

4. 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 or harassing behaviors). However, non-disciplinary action or disciplinary action may result from findings or determinations provided to a GME Program following an external process, review, or investigation.

5. Notice of actions or decisions under these procedures are made in writing and delivered to the resident/fellow’s employee email address or other designated preferred email address. All deadlines are calculated beginning the calendar day after the date of the email.

6. Nothing in these procedures restricts the authority of the Program Director to assign the job duties and responsibilities of the resident/fellow at all times, including the decision to assign the resident/fellow to clinical, non-clinical, research, or other duties at specified locations as deemed appropriate by the Program Director.

7. These procedures are intended to guide the sponsoring institutions through a reasonable decision-making process that provides residents/fellows 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 Program Director and the resident/fellow to consider remediation when appropriate. Minor deviations from these procedures that do not deprive the resident/fellow of notice or the opportunity to respond will not render the decision invalid. All timelines may be reasonably extended for good cause.
II. Non-disciplinary Action

1. At any time, a Program Director may take non-disciplinary actions to address resident/fellow performance, including lack of medical knowledge, professionalism concerns, or failure to satisfy ACGME Core Competencies or licensure requirements.

2. The Program Director is encouraged to consult with the GME Office before taking non-disciplinary action.

3. Non-disciplinary action includes, but is not limited to: placing a resident/fellow on a paid administrative leave, issuing a letter of concern, requiring a resident/fellow to repeat a rotation, placing the resident/fellow on a performance improvement plan, assigning a mentor and requiring regular meetings, or referring the resident/fellow to occupational health or housestaff services.

4. The Program Director will give the resident/fellow written notice of the non-disciplinary action including the basis for the decision.

5. A resident/fellow has no right to appeal non-disciplinary action.

6. Non-disciplinary action is not required prior to disciplinary action.

7. Non-disciplinary actions will be reviewed and considered by the Program Director and the CCC when making a determination on recommended disciplinary action.

III. Disciplinary Action

1. Notice of Proposed Action and Opportunity to Respond

   a. Disciplinary action falls within the sole discretion of the Program Director. Disciplinary action is warranted when a resident/fellow fails to meet the academic requirements of the residency/fellowship program. Academic requirements are guided by the ACGME Core Competencies; the policies and procedures of Banner Health, Banner University Medical Group, and the University of Arizona; and the codes, rules, and regulation of licensing agencies, including the Arizona Medical Board and the Arizona Board of Osteopathic Examiners.

   b. If a Program Director concludes that a resident/fellow's performance warrants disciplinary action, the Program Director will consult with the GME Office to discuss disciplinary options and determine the appropriate next steps.

   c. Disciplinary action includes the following: 1) Probation; 2) Retention or repeat of post-graduate (PG) year; 3) Suspension; 4) Non-renewal of contract; or 5) Dismissal.

   d. Whenever possible, the Program Director will meet with the resident/fellow to discuss the proposed disciplinary action. The Program Director will notify the resident/fellow of the proposed disciplinary action in writing. The notice of proposed disciplinary action will include:

      i. The disciplinary action being considered;
ii. A summary of the basis for the disciplinary action, with all documentation or information in support of the decision included as attachments;

iii. The core competencies, rules, policies, or standards the resident/fellow is failing to meet;

iv. The resident/fellow’s opportunity to respond to the proposed disciplinary action at the next Clinical Competency Committee (CCC) meeting.

e. The resident/fellow has seven (7) days from the date of the notice of proposed disciplinary action to request, in writing, an opportunity to respond to the proposed disciplinary action.

i. Failure to timely request an opportunity to respond results in a waiver of the opportunity and remaining due process rights.

ii. If the opportunity to respond is waived, the Program Director will confirm the disciplinary action in writing to the resident/fellow. The Program Director will note that all remaining due process rights were waived by the resident/fellow and that the disciplinary action is effective immediately.

f. If the resident/fellow requests an opportunity to respond at a CCC meeting, the meeting will take place no more than fourteen (14) days from the date of the resident/fellow’s request to respond.

g. The resident/fellow will receive at least seven (7) days’ notice prior to the CCC meeting. CCC meetings are an internal, academic process. The CCC meeting is the resident/fellow’s opportunity to substantively respond to the proposed disciplinary action.

h. Only the CCC members (or alternate faculty members when needed), the Program Director, the resident/fellow, and a support person of the resident/fellow’s choosing may attend the CCC’s discussion of the proposed discipline.

i. If the resident/fellow chooses to bring a support person, that person may not speak on the resident/fellow’s behalf or participate in the meeting in any manner.

ii. The resident/fellow must provide the name of the support person at the time of the request for a CCC meeting. If the support person is an attorney, the CCC may request the presence of University legal counsel.

i. No less than three (3) days before the scheduled meeting:

i. The Program Director will provide the CCC with a copy of the notice of proposed disciplinary action and all supporting documents previously provided to the resident/fellow.

ii. The resident/fellow will provide the Program Director and the CCC a copy of all documents and information the resident/fellow will rely on to support the resident/fellow’s position at the CCC meeting.
j. At the CCC meeting, the resident/fellow may make a statement, offer documentation, ask questions of the Program Director, and provide written statements from others that are relevant to the proposed disciplinary action.

   i. If the CCC decides additional information is necessary, the meeting will be postponed and reconvened at a later date.
   ii. All information considered in the decision will be provided to the resident/fellow no less than three (3) days in advance to allow for adequate time to review and respond.

k. After presenting and responding to any questions, the resident/fellow will be excused from the CCC meeting. The Program Director and CCC members will consider the information presented at the meeting and discuss the proposed action. With the guidance of the CCC, the Program Director will make a final decision.

l. The Program Director will inform the resident/fellow of the final decision in writing. If the Program Director decides to impose disciplinary action, the notice of disciplinary action letter will include:

   i. The disciplinary action;
   ii. A summary of the basis for the disciplinary action, with all documentation or information in support of the decision included as attachments;
   iii. When recommending dismissal or non-renewal, whether an opportunity for remediation was available, provided, or appropriate under the circumstances;
   iv. Confirmation that the resident/fellow appeared before the CCC and responded to the proposed disciplinary action;
   v. A summary of the CCC meeting.
   vi. The resident/fellow’s right to appeal the decision to the DIO within seven (7) days of the date of the notice of disciplinary action.

m. A copy of notice of disciplinary action, including all attachments, will be sent to the DIO or designee.

n. If the resident/fellow does not timely appeal the notice of disciplinary action the disciplinary action is immediately in effect and all remaining due process rights are waived.

2. Appeal of Disciplinary Action to the Designated Institutional Officer

   a. A resident/fellow may appeal a notice of disciplinary action to the DIO, in writing, within seven (7) days of receiving the written notice imposing disciplinary action. 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 resident/fellow 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.
b. To appeal, the resident/fellow must submit a written statement to the DIO outlining the basis for the appeal and attaching all documentation the resident/fellow believes supports the appeal.

c. The DIO will review the Notice of Disciplinary Action letter and supporting documents as well as the resident/fellow’s written appeal and supporting documents.

d. If the resident/fellow’s appeal presents new material information the DIO may request that the CCC reconvene and repeat the process of Section III, above.

e. The DIO may uphold, modify, or reverse the Program Director’s decision to impose disciplinary action.

f. If the disciplinary action is modified, the DIO will provide additional details as needed. The DIO can reduce the disciplinary action but cannot increase the sanction.
   i. When the recommended disciplinary action is dismissal or non-renewal the DIO will inform the GMEC Chair of the appeal and ask the GMEC Chair to appoint a three-member panel. No member of the panel should have prior involvement with the disciplinary action.
   ii. The panel will review the Notice of Disciplinary Action, supporting documents, and all information submitted by the resident/fellow.
   iii. Within seven (7) days of appointment, the panel will meet, discuss, and provide a written advisory opinion to the DIO addressing whether the decision is supported by the provided information or is otherwise arbitrary, overly harsh, or failed to follow process, including addressing whether the resident/fellow was given an opportunity to remediate when available and appropriate.

g. The DIO’s decision will be communicated in writing to the resident/fellow, Program Director, Dean of the College of Medicine, and Banner Human Resources.

h. The DIO’s decision is final and not subject to further appeal. The decision is immediately effective unless otherwise stated.

3. The record of the appeal process is confidential except to the extent authorized in writing by the resident/fellow and agreed to by the DIO or as otherwise required in response to a governmental or legal process.

4. In the event the resident is placed on probation or dismissed, the GME Office will notify the appropriate medical board, the ACGME, the ECFMG, and/or Banner Human Resources as required.

5. Dismissal from a residency program may result in termination of employment from Banner University Medical Group.

**IMPAIRMENT**

When a resident/fellow suspects that he, she, or another resident/fellow may be impaired, the resident/fellow should contact his or her Program Director and provide the details of the behavior or information leading to this
concern. When information suggests that a resident/fellow 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.

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/fellow’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 TESTING POLICY**

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/fellow may be currently impaired or may have been impaired at any time during the performance of residency/fellowship duties (“for cause testing”). Residents/fellows who are on stipulation with AMB/OBEX or have signed a Stipulated Conditions of Employment Agreement will also be subject to random testing.

The Program Director or designee may require a resident/fellow 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

All cases in which drug testing is required will be reviewed by the appropriate CCC.

Residents/fellows will be immediately placed on administrative leave pending the results of the drug test.

Any resident/fellow found to have tested positive will remain on administrative leave pending disciplinary action. All positive tests will be reported to AMB/OBEX. The resident/fellow 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/fellow 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.

Continuation in the residency/fellowship 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.

Any resident/fellow who subsequently has a positive test for the misuse of drugs may be immediately terminated from the residency/fellowship program without appeal rights.

Any resident/fellow who refuses to take a urine test will be placed on administrative leave pending disciplinary action. All reports mandated by law will be made.

Performance and/or conduct issues suggesting evidence of impairment will be investigated and disciplinary action may be initiated as set forth above.

**ADMINISTRATIVE LEAVE PROCEDURE**

The DIO and the Program Director or their designee have the authority to place a resident/fellow on administrative leave from the residency/fellowship 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. Administrative will be reported to the Program Director and the DIO and will become effective immediately upon notification to the affected resident/fellow. A resident/fellow 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 until lifted at the discretion of the DIO or Program Director.

Banner may suspend a resident when such action must be taken in the best interest of patient care.

**AUTOMATIC REVOCATION or SUSPENSION**

Action by AMB/OBEX revoking a resident/fellow’s training permit to practice medicine will automatically terminate the resident/fellow’s contract. Residents/fellows 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/fellow’s training permit to practice medicine will automatically result in suspension of the resident/fellow 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/fellow shall not be entitled to any of the procedural or appeal rights set forth in this manual. If within one year the resident/fellow’s suspension is lifted and his/her training permit is reinstated, the affected resident/fellow has the right to appear before the CCC and request reinstatement into the residency/fellowship program and to appeal an adverse decision as set forth in the Procedures for Disciplinary Action.