Section II: Disciplinary Action

Procedures for Disciplinary and Non-Disciplinary Action

These procedures outline the due process rights of interns, residents for non-disciplinary and disciplinary actions.

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

Overview

1. Residents are not entitled to procedural rights outlined in the Banne--University Medical Staff Bylaws, the Human Resources policies of Banner--University Medical Center or Banner -- University Medical Group, nor the Human Resources policies of the University of Arizona.
2. The University of Arizona, as the sponsoring institution of the residency program, will make the final determination with regard to a resident’s participation or advancement in the program.
3. Incident reports, evaluations, and other information gathered or exchanged in the course of the resident'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/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 proposed actions and/or decisions under these procedures are made in writing and delivered to the resident's employee email address 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 day of the email, except where the resident has previously advised the Program Director of extenuating circumstances that will prevent receipt as determined in the sole discretion of the Program Director.
6. Nothing in these procedures restricts the authority of the Program Director to assign the job duties and responsibilities of the resident at all times, including the decision to assign the resident 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 institution through a reasonable decision-making process that provides residents 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 to consider remediation when appropriate. Minor deviations from these procedures that do not deprive the resident of notice or the opportunity to respond will not render the decision invalid. All timelines may be reasonably extended for good cause.
Non-disciplinary Action
1. At any time, a Program Director may take non-disciplinary actions to address a resident’s performance, including but not limited to 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 on a paid administrative leave, issuing a letter of concern, requiring a resident to repeat a rotation, placing the resident on a performance improvement plan, assigning a mentor and requiring regular meetings, or referring the resident to occupational health or house staff services.
4. The Program Director will give the resident written notice of the non-disciplinary action including the basis for the decision.
5. A resident 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.

Disciplinary Action
Notice of Proposed Action and Opportunity to Respond
a. Disciplinary action falls within the sole discretion of the Program Director, subject to the resident’s right to appeal as outlined below.

b. Disciplinary action is warranted when a resident fails to meet the academic requirements of the residency 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.

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

b. 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.

e. If a resident resigns at any time after disciplinary action is proposed, the resident waives all due process rights. The resignation will be noted as “pending disciplinary action” at the sole discretion of the Program Director.

a. Whenever possible, the Program Director will meet with the resident to discuss the proposed disciplinary action. The Program Director will notify the resident 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 documentation or information in support of the decision included as attachments;

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

iv. The resident's opportunity to respond to the proposed disciplinary action at the next Clinical Competency Committee (CCC) meeting if a request for review is submitted timely and appropriately.
e. The resident has seven (7) days from the date of the notice of proposed disciplinary action to submit a request, in writing, to the Program Director for 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. The Program Director will note that all remaining due process rights were waived by the resident and that the disciplinary action is effective immediately.

f. If the resident 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's request to respond.

g. The resident 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'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, and a support person of the resident's choosing may attend the CCC's discussion of the proposed discipline.

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

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

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

   i. The Program Director will provide the CCC and the resident with a copy of the notice of proposed disciplinary action and supporting documents. The resident will not be provided supporting documents that were previously provided.

   ii. The resident will provide the Program Director a copy of all documents and information the resident will rely on to support the resident's position at the CCC meeting. The Program Director will provide the CCC with a copy of the documents provided by the resident.

j. At the CCC meeting, the resident may make a statement and ask questions.

   i. If the CCC decides additional information is necessary, the meeting will be postponed and reconvened at a later date.

   ii. All relevant, additional information will be exchanged no less than three (3) days in advance of the reconvened meeting to allow for adequate time to review.

k. After presenting and responding to any questions, the resident 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 decision regarding the proposed disciplinary action.

l. The Program Director will inform the resident of the decision in writing. If the Program Director decides to impose disciplinary action, the notice of disciplinary action letter will include:
i. Confirmation that the resident appeared before the CCC and exercised the right to respond to the proposed disciplinary action;

ii. The disciplinary action imposed;

iii. A summary of the basis for the disciplinary action, incorporating by reference the supporting documentation or information relied on in making the decision;

iv. A summary of the CCC’s conclusions and recommendations;

v. When imposing dismissal or non-renewal, a statement as to whether opportunities for remediation were available, provided, or appropriate under the circumstances;

vi. The resident's right to appeal the decision to the DIO within seven (7) days of the date of the notice of disciplinary action, in accordance with these procedures.

m. A copy of notice of disciplinary action, including all documents considered by the CCC, will be sent to the DIO or designee (“DIO”).

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

o. The disciplinary action may be immediately implemented pending appeal to the DIO. If the decision is to dismiss the resident, the resident will be assigned to non-clinical duties and will continue to receive pay while the matter is pending on appeal.

2. Appeal of Disciplinary Action to the DIO

a. A resident 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 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 must submit a written statement to the DIO outlining the basis for the appeal and attaching all documentation the resident believes supports the appeal.

c. The DIO will review the Notice of Disciplinary Action letter and supporting documents as well as the resident's request for appeal and supporting documents.

d. 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 to review the appeal. No member of the panel may have prior involvement with the disciplinary action.

   i. The panel will review the Notice of Disciplinary Action, the supporting documents, and all information submitted by the resident.

   ii. 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 substantial evidence.

   iii. The DIO will review the GMEC’s advisory opinion before making a final decision.

e. The DIO may uphold, modify, or reverse the Program Director's decision to impose disciplinary action. The DIO can reduce the disciplinary action but cannot increase the sanction.
f. If the disciplinary action is modified or reversed, the DIO will provide a basis for that decision and outline any additional or revised expectations.
g. The DIO’s decision will be communicated in writing to the resident, the Program Director, the 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, but not the action and grounds therefor, is confidential except to the extent authorized in writing by the resident 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, 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 will result in termination of employment from Banner – University Medical Group.

Impairment

When a resident suspects they or another resident may be impaired, the resident should contact the resident’s Program Director and provide the details of the behavior or information leading to this concern. When 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.

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 resident’s performance, tests for alcohol and chemical substances will be required at the time of the initial employment physical. Refusal to submit to testing will result in the resident being deemed ineligible for employment and a withdrawal of the offer to participate in the GME program.

Testing is 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 Banner Health Stipulated Conditions of Re-entry Agreement (“Re-entry Agreement”) will also be subject to random testing.
The Program Director or designee may require a resident to undergo “for cause” testing for drugs and/or alcohol. The basis for “for cause” testing includes 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 Program Director and CCC.

Residents will be immediately placed on administrative leave pending the results of the drug test. Any resident who refuses to submit to testing or who reschedules a test more than once will be placed on administrative leave. The refusal or repeated delay in testing will be deemed the same as a positive test.

Any resident who has a positive test for a chemical substance may be immediately terminated from the residency program without appeal rights. If, in the sole discretion of the Program Director, the resident is not immediately terminated, the resident will remain on administrative leave pending disciplinary action.

All positive tests will be reported to AMB/OBEX. Actions taken by AMB/OBEX may be in addition to or concurrent with disciplinary action taken by the Program Director.

A resident with a positive drug test will not be permitted to return to work until: (1) the resident is cleared to return by AMB/OBEX; (2) the resident is cleared to return by Occupational Health; (3) the resident signs a Re-entry Agreement; and (4) the Program Director and the DIO agree that the resident may return to the program. The Re-entry Agreement will include the conditions imposed by AMB/OBEX as well as additional conditions set by Occupation Health and the GME program.

Continuation in the residency program is conditional upon compliance with the terms of the Re-entry Agreement. Refusal to sign a Re-entry Agreement may result in immediate termination from the residency program, without appeal rights.

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 on administrative leave from the residency program or summarily impose limitations whenever such action must be taken in the best interest of patient care, in response to a positive drug test, or to
investigate a disciplinary matter. Administrative leave will be reported to the Program Director and the DIO and will 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 until lifted at the discretion of the DIO or Program Director.

Banner Health may suspend a resident when such action must be taken in the best interest of patient care. A suspended resident is automatically deemed to be on administrative leave from the residency program.

**Automatic Revocation or Suspension**

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 the resident’s training permit is reinstated, the affected resident has the right to request that the Program Director reinstate the resident into the residency program. If the Program Director denies the request, the resident may appeal that decision as set forth in the Procedures for Disciplinary Action.