

## **Section II: Addressing Conduct and Performance Concerns**

### **Procedures for Disciplinary and Non-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 and are pending continued employment with Banner Health; or (3) resign from the Program.

#### **Overview**

1. The University of Arizona, as the sponsoring institution of the Training Program, will make the final determination with regard to a Trainee's participation or advancement in the program.
2. 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 Banner – University Medical Group, nor the Human Resources policies of the University of Arizona.
3. Incident reports, evaluations, and other information gathered or exchanged in the course of the Trainee'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 Training 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 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 day of the email.
6. 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.
7. 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 Program Director to consider remediation when appropriate. 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. Non-disciplinary Action**

1. At any time, a Program Director may take non-disciplinary actions to address issues with a Trainee's performance, such as 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 Trainee on an administrative leave; issuing a letter of concern; requiring a Trainee to repeat a rotation; limiting/changing a Trainee's job duties, responsibilities, or work location; placing the Trainee on a performance improvement plan; assigning a mentor and requiring regular meetings; or referring the Trainee to occupational health or house staff services.
4. A Trainee has no right to appeal a non-disciplinary action.
5. Non-disciplinary action is not required prior to disciplinary action.
6. Non-disciplinary actions will be reviewed and considered by the Program Director and the CCC when making a determination on recommended disciplinary action.

## **II. Disciplinary Action**

1. Notice of Proposed 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 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 Trainee's performance warrants disciplinary action, the Program Director will consult with the GME Office to discuss disciplinary options and determine the appropriate next steps. All disciplinary action letter templates must be requested from the GME Office. All draft letters of concern and disciplinary action letters must be reviewed by the GME Office prior to presenting to the Trainee.
  - d. Disciplinary action includes the following: 1) Probation; 2) Retention or repeat of post-graduate (PG) year; or 3) Dismissal.

- e. If a Trainee resigns at any time after the Program Director proposes 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” at the discretion of the Program Director.
- Whenever possible, the Program Director will meet with the Trainee to discuss the proposed disciplinary action. The Program Director will notify the Trainee 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 Trainee is failing to meet;
  - iv. The Trainee's opportunity to respond to the proposed disciplinary action at the next Clinical Competency Committee (CCC) meeting.
- f. The Trainee has seven (7) days from the date of the Notice of Proposed Disciplinary Action to submit a written request 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 a waiver of all remaining procedural and appeal rights set forth in this manual.
  - ii. If the Trainee waives the opportunity to respond, the Program Director will confirm the disciplinary action in writing to the Trainee. The Program Director will note that the Trainee waived all remaining due process rights and that the disciplinary action is effective immediately.
- g. If the Trainee 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 Trainee's request to respond unless the Trainee agrees to an alternate timeframe.
- h. The Trainee 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 Trainee's opportunity to respond to the proposed disciplinary action.
- i. Only the CCC members (or alternate faculty members when needed), the Program Director, the Trainee, and a support person of the Trainee's choosing may attend the CCC's discussion of the proposed discipline.
- 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 CCC meeting and must indicate whether the support person is an attorney.
  - iii. The CCC may request the presence of University legal counsel at its discretion.

- j. No less than three (3) days before the scheduled CCC meeting:
  - i. The Trainee will provide the Program Director a copy of all documents and information the Trainee will rely on to support the Trainee's position at the CCC meeting.
  - ii. The Program Director will provide the CCC with a copy of any documents provided by the Trainee, the Notice of Proposed Disciplinary Action, and supporting documents.
  - iii. The Trainee must be provided with a copy of any document provided to the CCC not previously included with the Notice of Proposed Disciplinary Action.
  
- k. At the CCC meeting, the Trainee 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.
  
- l. After presenting and responding to any questions, the Trainee 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.
  - i. The Program Director will inform the Trainee of the decision in writing. If the Program Director decides to impose disciplinary action, the Notice of Disciplinary Action letter will include:
    - Confirmation that the Trainee 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, a statement as to whether opportunities for remediation were available, provided, or appropriate under the circumstances;
  - vi. The Trainee'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. The DIO (or designee) will receive a copy of the Notice of Disciplinary Action, including all documents considered by the CCC.
  
- n. If the Trainee does not timely appeal the Notice of Disciplinary Action, the disciplinary action is immediately in effect and the Trainee waives all remaining due process rights.
  
- o. The disciplinary action may be immediately implemented pending appeal to the DIO. If the decision is to dismiss the Trainee, the Trainee 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

- i. A Trainee may appeal a Notice of Disciplinary Action to the DIO within seven (7) days of receiving the notice imposing disciplinary action. The basis for the appeal is limited to the following grounds:  
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.
- b. To appeal, the Trainee must submit a written statement to the DIO outlining the basis for the appeal and attaching all documentation the Trainee believes supports the appeal.
- c. The DIO will review the Notice of Disciplinary Action letter and supporting documents as well as the Trainee's request for appeal and supporting documents. If the DIO determines that the Trainee's written statement does not identify one of the required grounds for appeal, the DIO may deny the appeal without undertaking a substantive review.
- d. If the DIO agrees that the basis for the appeal accurately identifies: (i) a material deviation from written procedures, or (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, the DIO may return the matter to the Program Director or the CCC to correct that circumstance without undertaking a substantive review of the disciplinary action.
- i. The DIO's decision will set forth the basis for returning the matter and the specific stage of due process the matter will return to in order to address the circumstances identified in the Trainee's appeal statement.
  - ii. After addressing the error or reviewing the new material, the Program Director must reissue a new or revised Notice of Disciplinary Action.
  - iii. If the Trainee still wishes to appeal the decision, the Trainee must submit a new appeal to the DIO.
- e. When the recommended disciplinary action is dismissal, the DIO may request an advisory opinion from the GMEC. The GMEC Chair will 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 Trainee.
  - ii. Within seven (7) days of appointment, the panel will meet, discuss, and provide an advisory opinion to the DIO addressing whether the substantial evidence supports the decision.
  - iii. The DIO will consider the GMEC's advisory opinion before making a final decision.

- f. 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.
  - g. If the disciplinary action is modified or reversed, the DIO will provide a basis for that decision and outline any additional or revised expectations.
  - h. The DIO will communicate the decision in writing to the Trainee, the Program Director, and Banner Human Resources.
  - i. The DIO's decision is final and not subject to further appeal. The decision is immediately effective unless otherwise stated.
3. If disciplinary action is imposed, the GME Office may notify the appropriate medical board, the ACGME, the ECFMG, and/or Banner Human Resources if required.
  4. If the disciplinary action is retention or probation, the Program Director will provide the Trainee with written confirmation when that period is complete.
    - a. The written confirmation will detail any continued areas of concern. Any documented areas of concern are considered non-disciplinary action.
  5. Dismissal from a Training Program will result in termination of employment from Banner – University Medical Group.

### **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 will institute the Drug and Alcohol Testing Policy protocol (as described below) and one or several of the following:

1. Referral to an appropriate health professional including a psychiatrist or other mental health professional;
2. Periodic check-in sessions with the Trainee's faculty advisor, Program Director or both; and/or
3. 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 or medical marijuana card 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 to 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 the Trainee employer, Banner Health, or by the program/Sponsoring Institution.

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.

### **Suspension**

Trainees may be immediately suspended from their Training Program if a Trainee is unable to meet program requirements or is otherwise deemed ineligible to participate in the program, including, but not limited to: (a) loss or disruption of eligibility to work in the United States; (b) loss of fingerprint clearance; (c) suspension of medical license; (d) suspension by B-UMG in the best interest of patient care; (e) suspension or exclusion from any clinical facility; or (f) inability to meet the essential qualifications of the Trainee position. Suspension is automatic with no opportunity to utilize any of the procedural or appeal rights set forth in this manual.

Suspension from program participation automatically results in suspension without pay from B-UMG.

The suspension will remain in effect for no more than three months to allow the Trainee to regain eligibility. The Program Director may, at their discretion and in consultation with GME, extend this period of time for good cause shown. Extensions must be documented in writing with a specific end date, not to exceed an additional three months.

If, at the end of three months or the granted extension, the Trainee is unable to regain eligibility, the Trainee may be dismissed from the Training Program.



## **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.