

## **Due Process Guidelines for Residents and Fellows**

### **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.

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.

### **Overview**

1. Incident reports, evaluations, education support, remediation efforts, and other information gathered or exchanged during the Trainee's education do not constitute disciplinary action.
2. 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.
3. Notices of action 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.
4. 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.
5. 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.

6. 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.

## **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 Designated Institutional Official (DIO) and/or designee 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. A copy of the Notice of Disciplinary Action will be provided to the GME Office and Banner Human Resources.
- k. 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.
- l. 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.
- m. 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.
- n. 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 a GMEC Review Panel. GMEC Review Panel meetings are an internal, academic process, and is the Trainee's opportunity to respond to the disciplinary action.
  - 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.
- o. If the Trainee requests a review by the GMEC Review Panel, the DIO or their designee will assemble a panel and identify the Chair of the panel from the members of GMEC to include:
  - i. Two GMEC members from programs outside of the Trainee’s home department; and
  - ii. One Trainee from a program outside of the requesting Trainee’s home department.
- p. The DIO or their designee will coordinate with the GMEC Review Panel, the Trainee

and the Trainee's Program Director to set a meeting. The meeting will take place no more than twenty-one (21) days from the date of the Trainee's request for review unless the Trainee agrees to an alternate timeframe.

- q. The Trainee and the Trainee's Program Director will receive at least seven (7) days' notice prior to the GMEC Review Panel meeting.
- r. 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.
  - i. The Program Director must submit the Notice of Action, all documentation relied on to support the Notice of Action, and any documentation needed to respond to the basis for the appeal provided by the Trainee.
  - ii. Materials submitted less than three (3) days prior to the meeting will not be considered by the GMEC Review Panel.
- s. During the meeting, the GMEC Review Panel will consider the basis for the disciplinary action and any timely submitted materials.
  - i. The Trainee and the Program Director will each have an opportunity to present their position to the GMEC Review Panel.
  - ii. An audio recording of the meeting will be created by the GMEC Review Panel.
- t. The Trainee may choose to have a support person attend the GMEC Review Panel Meeting.
  - 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.
  - iii. The GMEC Review Panel may request the presence of the sponsoring institution's legal counsel at its discretion.
- u. Only the GMEC Review Panel members, the Program Director, the Trainee, and the Trainee's designated support person may attend the GMEC Review Panel meeting. No witnesses will be called.
- v. The GMEC Review Panel has the authority to confirm, reverse, or modify the disciplinary action.

- w. The GMEC Review Panel will issue a written decision to the DIO within seven (7) days of the meeting.
- x. 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.
- y. If the Trainee does not appeal the GMEC Review Panel's decision within seven (7) days, 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 the Program Director.
- d. The DIO may uphold, modify, or reverse the GMEC Review Panel's decision.

- 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.
    - i. A Trainee may not seek further review or appeal of the DIO's decision.
  - f. A Trainee's refusal to accept or comply with a 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 may notify appropriate entities as required.
  - 4. Dismissal from a Training Program will result in termination of employment from B-UMG.

## **II. Non-Disciplinary Educational Support**

- 1. As a normal and expected part of the educational process, Trainees frequently require additional support to be successful in their Training Program. At any time, a Program Director may issue a non-disciplinary Letter of Concern to support Trainees in meeting expectations in the ACGME Core Competencies.
- 2. All draft Letters of Concern which include a learning plan must be reviewed by the GME Office prior to presenting to the Trainee.
- 3. Letters of Concern may result from findings or determinations provided to a Training Program following an external process, review, or investigation (e.g. delinquent medical records or HIPAA violations.)
- 4. A Trainee has no right to appeal a Letters of Concern.
- 5. Non-disciplinary Letters of Concern are not required prior to disciplinary action. Letters of Concern will be reviewed and considered by the Program Director and the Clinical Competency Committee when making a determination on recommended disciplinary action.

### **Administrative Leave Procedure**

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

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.