

**Marshall University  
Joan C. Edwards School of Medicine  
Graduate Medical Education**

**POLICY ON DISCIPLINARY ACTION**

**Effective Date: July 1, 2022**  
**GMEC Policy Subcommittee Review: November 2, 2022 Review**  
**Date: July 1, 2024**

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**SECTION 1. STATEMENT AND SCOPE OF POLICY**

The Accreditation Council for Graduate Medical Education (ACGME) requires that sponsoring institutions provide fair and reasonable written institutional policies and procedures for any disciplinary action and procedures for all accredited Graduate Medical Education (GME) training programs to follow if a resident fails to meet academic expectations and/or engages in misconduct.

This policy applies to all Accreditation Council for Graduate Medical Education (ACGME)-accredited residency and fellowship programs at Marshall University Joan C. Edwards School of Medicine (MUSOM).

**SECTION 2. DEFINITIONS**

- 2.1. For the purposes of this policy, the following definitions shall apply:
- 21.1. Resident: Any physician in an accredited graduate medical education program, including residents and fellows.
  - 21.2. Designated Institutional Official: the individual in a sponsoring institution with authority and responsibility for all the ACGME-accredited GME programs.
  - 21.3. Academic Deficiency: The Resident is not meeting one or more of the ACGME Core Competencies, as revised from time to time, which may include: patient care and procedural skills, medical knowledge, practice-based learning and improvement, interpersonal and communication skills, professionalism, and system-based practice. Examples of academic deficiencies include, but are not limited to:
    - 2.1.3. a. Issues involving knowledge, skills, job performance, or scholarship;
    - 2.1.3. b. Failure to achieve acceptable exam scores within the time limits identified by the training program;
    - 2.1.3. c. Unprofessional conduct;
    - 2.1.3. d. Professional incompetence, including conduct that could prove detrimental to MUSOM's or any of its training sites' patients, employees, staff, volunteers, visitors, or operations.

- 2.1.4. Misconduct: Conduct by a Resident that violates workplace rules or policies, applicable law, or widely accepted societal norms. Examples of misconduct include, but are not limited to:
  - 2.1.4. a. Unethical conduct, such as falsification of records or inappropriately accessing or disclosing health records;
  - 2.1.4. b. Illegal conduct (regardless of filing of criminal charges or criminal conviction);
  - 2.1.4. c. Workplace violence;
  - 2.1.4. d. Unauthorized use or disclosure of patient information;
  - 2.1.4. e. Violation of MUSOM or other applicable policies or procedures, including without limitation the Code of Ethical Conduct;
  - 2.1.4. f. Scientific misconduct.
  - 2.1.4. g. Failure to promote a professional, equitable, respectful, and civil environment that is free from discrimination, sexual and other forms of harassment or misconduct, mistreatment, abuse, or coercion of students, residents, faculty, staff, members of the healthcare team, etc.
- 2.1.5. Disciplinary Action: Any action taken in response to a Resident's Misconduct or Academic Deficiency, including dismissal from a program; non-promotion to the next PGY level; non-renewal of a Resident's agreement; and suspension. Non-disciplinary, remedial action is not a prerequisite to recommending or taking Disciplinary Action.
- 2.2. For disciplinary actions related to the failure of the Resident to Pass the United States Medical Licensing Examination ("USMLE") Step 3 or Equivalent Examination, the requirements and timeframe are outlined in the MUSOM GME USMLE Step 3 or Equivalent Examination Policy.

### SECTION 3. ADMINISTRATIVE ACTIONS

- 3.1. Administrative actions, as set forth below in Section 3, are non-disciplinary in nature. As such, Residents do not have the right to request a review of administrative actions pursuant to the Appeal of Disciplinary Action Policy.
- 3.2. Non-disciplinary measures for academic improvement are set forth in the GME Academic Improvement Policy. While non-disciplinary, remedial action is not a prerequisite to recommending or taking Disciplinary Action, formal disciplinary action may be undertaken pursuant to this policy and process in circumstances where non-disciplinary measures are unsuccessful.
- 3.3. Administrative Leave Pending Investigation may be issued by the Program Director upon consultation with the Designated Institutional Official(DIO):
  - 3.3.1 The Program Director and the Designated Institutional Official (DIO) (or their designees) may determine that immediate action is required prior to completion of a review or investigation of possible Misconduct or

- Academic Deficiency to protect the health and safety of patients, staff, or other persons, or the interests of MUSOM or its affiliated training sites.
- 3.3.2. The Resident may be placed on immediate administrative leave, with or without pay, depending on the circumstances. Placement on Administrative Leave will result in the leave notification to the Marshall University Office of General Counsel and, if applicable, the Marshall Health Human Resources.
  - 3.3.3. Should the resident be placed on immediate administrative leave, the action is not disciplinary in nature and, therefore cannot be appealed pursuant to the Appeal of Disciplinary Action Policy.
34. Administrative leave is intended to be a short-term measure to allow for a review of the underlying concern and determination as to whether Disciplinary Action is warranted.

#### **SECTION 4. FORMAL DISCIPLINARY MEASURES**

- 4.1. In circumstances under which non-disciplinary measures are unsuccessful, formal disciplinary action may be undertaken pursuant to this policy and process. Non-disciplinary measures for academic improvement are set forth in the GME Academic Improvement Policy.
- 4.2. Serious Academic Deficiencies and/or Misconduct may warrant Disciplinary Action, up to and including dismissal, regardless of whether a Resident ever received or was subject to any prior remedial action. Therefore, the following types of Disciplinary Actions are established:
  - 4.2.1. Dismissal: A permanent separation of the Resident from the program.
  - 4.2.2. Non-Promotion to the Next PGY Level: A lack of promotion of the Resident to the next level of training unless, or until, Resident's performance improves to the required level.
  - 4.2.3. Non-Renewal: Non-renewal of a Resident Notice of Appointment for the next academic year.
  - 4.2.4. Suspension: A period in which the resident is not allowed to take part in all or some of the activities of the program. Time spent on suspension may not be counted towards the completion of program requirements. During the suspension, the Resident will be placed on administrative leave (with or without, or with pro-rated pay as appropriate) depending on the circumstances.

#### **SECTION 5. RECOMMENDING DISCIPLINARY ACTION**

- 5.1. When a Program Director has determined that disciplinary action is warranted, the Program Director must consult with the Clinical Competence Committee, Department Chair, and the DIO of intended actions. In deciding what disciplinary action to recommend, the Program Director should consider the totality of circumstances as then known, including but not limited to the severity of the

Resident's behavior, the potential for patient harm, prior attempts at behavior modification, and the results of these attempts, and the Program Director's experience and judgment on Resident knowledge, skill, and professionalism progression.

- 5.2 The Program Director will prepare a written notice of recommendation for Disciplinary Action utilizing the Graduate Medical Education Committee's (GMEC) standard notice template. The written notice of recommendation will be reviewed by the DIO and Office of General Counsel prior to being provided to the Resident. This notice must include the following:
  - 5.2.1. A recommendation of the specific Disciplinary Action to be taken.
  - 5.2.2. A description of the Academic Deficiency (ies) and/or incident(s) of misconduct that are the basis for the Disciplinary Action.
  - 5.2.3. The specific remedial action or improvement required, unless the Corrective Action is dismissal or non-renewal.
  - 5.2.4. A defined time period with a start and end date for improvement (if applicable)
  - 5.2.5. Notice of the right to appeal, along with a copy of the Appeal of Disciplinary Action Policy.
- 5.3. The Disciplinary Action notice of recommendation must be signed and dated by the Program Director and delivered by the Program Director to the Resident in person, if possible. The Resident must co-sign and date the notice to acknowledge receipt. If hand delivery is not possible, the notice of recommendation will be delivered to the Resident's residence by certified mail/return receipt requested or by national overnight courier service.
- 5.4. A copy of the signed Disciplinary Action notice of recommendation must be placed in the Resident's file and forwarded to the GME Office. The Marshall Health Human Resources Office will be notified of actions affecting employment status.

## **SECTION 6. PENDING FINAL DECISION**

- 6.1. The Program Director may remove the Resident from participation in the program pending expiration of the time frame to request an appeal and final resolution of the appeal.
- 6.2. In deciding whether to remove the Resident from the program pending final resolution, the Program Director should consider whether the Resident's continued participation could endanger the health or wellbeing of patients, staff, or others.
- 6.3. The Program Director should also consider the nature of the underlying concern giving rise to the Disciplinary Action (i.e., an allegation of serious misconduct tends to weigh in favor of removal from participation pending resolution).

- 6.4. Unless otherwise indicated by the Notice of Administrative Leave, the Resident shall continue to be paid their stipend until there is a final decision on the Disciplinary Action and the appeal if invoked by the Resident) is final.
- 6.5. The Resident may appeal a Disciplinary Action pursuant to the Appeal of Disciplinary Action Policy. No report of Disciplinary Action to any outside entity, including but not limited to any certifying body, professional association, or other training program, may be made until the appeal process has concluded or any appeal rights have expired (unless any such disclosure is authorized in writing by the Resident or disclosed pursuant to compulsory legal process, in which case the Office of General Counsel should be consulted prior to such disclosure). However, the foregoing shall not prevent the Program or GME Office from notifying necessary persons or entities that the Resident is on leave for purposes of ensuring appropriate patient coverage.

## **SECTION 7. FINALIZATION OF DISCIPLINARY ACTION**

- 7.1. The recommended Disciplinary Action will become final at such time as:
  - 7.1.1. The time frame for requesting an appeal expires, and the Resident has not submitted a request for an appeal;
  - 7.1.2 The Resident withdraws an appeal; or,
  - 7.1.3. The appeal process concludes, and the hearing panel upholds or modifies the recommended Disciplinary Action, pursuant to the Appeal of the Disciplinary Action Policy.
- 7.2. Upon finalization of the Disciplinary Action, the Program Director shall submit a copy of such action to the Office of Graduate Medical Education and the Office of Legal Counsel. The Marshall Health Human Resources Office shall also be notified due to a change in employment status.

## **SECTION 8. AUTOMATIC RESIGNATION**

- 8.1 The Resident may be considered to have automatically resigned under the following circumstances, which include but are not limited to:
  - 8.1.1. Failure to provide Visa or License Verification: Failure of the Resident to verify eligibility to work legally in the United States or verification of current compliance with state licensing requirements of the West Virginia Board of Medicine or West Virginia Board of Osteopathic Medicine may result in the Resident's automatic resignation from the GME training program.
  - 8.1.2. Residents must communicate directly with the Program Director in the event they are unable to participate in the training program for any time period in excess of twenty-four (24) hours. Based on the Resident's communication, the Program Director may grant a leave (compensated or

uncompensated) in times of exceptional circumstances and/or pursuant to MUSOM Policy on Compensated and Uncompensated Leave.

- 8.1.3. Should a Resident be absent without approved leave for forty-eight (48) hours or more, they may be considered to have resigned voluntarily from the program unless they submit an acceptable written explanation of any absence taken without leave.
  - 8.1.3.a. The Program Director must receive this written explanation Director within ten (10) days of the first day of absence without leave.
  - 8.1.3.b. The Program Director or their designee will review the explanation and any materials submitted by the Resident regarding the absence without leave in question.
  - 8.1.3.c. The Program Director or designee will notify the Resident in writing of their decision to approve or not the explanation within ten (10) days of submission of the Resident's written explanation.
  - 8.1.3.d. Failure of the Resident to submit a written explanation or to adequately explain or to document the unexcused absence to the satisfaction of the Program Director or their designee may result in the Resident's automatic resignation from the GME training program.
- 8.2. The Program Director will consult with the DIO prior to deeming the Resident to have automatically resigned based on the circumstances outlined in this section. The Program Director will provide written notice to the Resident of the Resident's automatic resignation.
- 8.3. The notice of deemed resignation should be delivered by the Program Director to the Resident in person, if possible. If hand delivery is impossible, the notice should be delivered to the Resident's residence by certified mail/return receipt requested or by national overnight courier service.
- 8.4. Upon finalization of the resignation, the Program Director shall submit a copy of such action to the Office of Graduate Medical Education and the Office of Legal Counsel. The Marshall Health Human Resources Office shall also be notified due to a change in employment status.
- 8.5. Automatic resignation does not entitle the Resident to the appeal procedures outlined in the Appeal of Disciplinary Action policy.

## **SECTION 9. REPORTING TO THE WEST VIRGINIA BOARDS OF MEDICINE AND OSTEOPATHIC MEDICINE**

Under West Virginia law, certain actions involving physician discipline or adverse action must be reported to either the Board of Medicine or the Board of Osteopathic Medicine. The DIO shall consult with the Office of General Counsel for guidance in making required reports.

**Ad Hoc Appeal Review Panel  
Consensus Decision Template**

**Resident Name**

Pursuant to your request and in accordance with the Marshall University School of Medicine Graduate Medical Education Committee Policy on Due Process, an Ad Hoc Appeal Review Panel met on to consider and issue consensus opinion on your appeal request.

**SUMMARY STATEMENT OF PROPOSED DISCIPLINARY ACTION:**

**AD HOC APPEAL REVIEW PANEL CONSENSUS DECISION:**

After consideration of the material and presentations provided to the Ad Hoc Appeal Review Panel at the hearing, members deliberated and render the following consensus decision to Uphold your appeal.

**CONSENSUS REASONING TO UPHOLD, MODIFY OR REVERSE THE PROPOSED DISCIPLINARY ACTION:**

After consideration of the material and presentations provided to the Ad Hoc Appeal Review Panel at the Hearing, members' consensus reasoning to uphold, modify or reverse your appeal is based upon the following:

**FINAL DECISION:**

The deliberation and consensus decision of the Ad Hoc Appeal Review Panel is final. There is no appeal.

A copy of this official opinion is being provided to you via the preferred method of notification with electronic copy to the Vice Dean for Graduate Medical Education, Residency Program Director, Department Chair and documented in your file.

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Chair, Ad Hoc Appeal Review Panel Signature  
Official Date of Notification: