

PROCEDURE GME10

Subject: GME 10 Academic Adverse Action

Effective Date: NOVEMBER 2004

Applies to:
THE METHODIST HOSPITAL

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Originating Area:
GRADUATE MEDICAL EDUCATION COMMITTEE

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I. GENERAL STATEMENT

Over the course of training in a Program of Graduate Medical Education (GME), a Resident is expected to acquire progressive and increasing competence in the knowledge, attitudes, and skills of the specialty in which he or she is training. The Program Director is responsible for maintaining a record for each Resident and for ensuring that the Program has an evaluation system that documents the success of each Resident in achieving the goals and objectives of the program. The evaluation system must also identify residents with deficiencies in knowledge, skills, and attitudes of each of the Accreditation Council for Graduate Medical Education (ACGME) general competencies or of specialty-specific competencies for non-ACGME accredited Programs.

This procedure outlines the processes for Residents who fail to make satisfactory progress in achieving the Program's standards (i.e., Probation, Nonrenewal or Nonreappointment, Suspension, and Termination). The Programs of GME, the Graduate Medical Education Committee (GMEC), and the Designated Institutional Official (DIO) to all Residents and Faculty in each Methodist-sponsored Program of GME must apply this procedure for Adverse Academic Actions uniformly and fairly. Residents must be kept fully informed of each step of their academic progression.

Some of the processes for Residents who fail to make satisfactory progress in achieving the Program's standards are known as Adverse Academic Actions and include Probation, Suspension, and Termination. Adverse Academic Actions are reviewed by the GMEC or the DIO. These actions may be Reportable to state licensing boards, including the Texas Medical Board (TMB), and hospital credential committees. This Adverse Academic Actions procedure describes a sequence of corrective actions that emphasizes due process through the documentation of all actions and the timeliness of the process.

Formative evaluations, including rotation evaluations (which may include "negative" comments), Counseling at the Program level, and formal Program-level efforts to improve performance (i.e., Program-level Remediation) are not considered Reportable Adverse Academic Actions. These actions are essential to the academic process of teaching residents but are not reviewed by the Adverse Academic Action Subcommittee (AAA Subcommittee). When asked by the Program, the DIO will review program level actions to remediate Residents. The Promotion and Reappointment Procedure GME06 describes these actions in greater detail.

II. DEFINITIONS

1. Adverse Academic Action: Probation, Extension in Training (for academic problems), Nonrenewal of Agreement of Appointment (Nonreappointment), Suspension, and Termination from training prior to completion of Program.
2. Adverse Academic Action Subcommittee (AAA Subcommittee): A subcommittee formed from the membership of the Graduate Medical Education Committee (GMEC). The Adverse Academic Action Subcommittee will include: the DIO, the GMEC Chair, one or more Residents appointed by the GMEC Chair, one program Director in a leadership position with the GMEC (such as chairs of Subcommittees, Vice-Chair of GMEC, Ombudsmen, and Medical Staff Liaison), and the administrative chair of the Adverse Academic Action Subcommittee.
3. Agreement of Appointment: A written document outlining the terms and conditions of a Resident's appointment to an ACGME-accredited Program at The Methodist Hospital; this Agreement must contain or refer to several items including, but not limited to, grievance procedures, due process, duty hours, moonlighting, counseling services, physician impairment, and sexual harassment (see Resident Eligibility, Selection, and Appointment Procedure GME02).
4. Counseling: A type of formative evaluation or Feedback to improve a resident's performance; counseling is not considered an Adverse Academic Action but should be documented in the Resident's permanent record.
5. Extension of Training: Increasing the length of the training period of a Resident due to deficiencies in performance or conduct; Extension of training for non-academic reasons (such as illness, leave of absence, etc.) is not considered an Adverse Academic Action.
6. Faculty: Physicians who possess the requisite specialty expertise, and documented educational and administrative abilities, and experience to teach Residents in a program of GME. The physicians must be certified in the specialty by the applicable American Board of Medical Specialties (ABMS) Board or possess qualifications judged by the Residency Review Committee to be acceptable. Nonphysician Faculty must be appropriately qualified in their field and possess appropriate appointments at The Methodist Hospital or teaching sites.
7. Feedback: Information about performance or behavior for the purpose of improving it.
8. Grievable: A judgment that may be grieved, appealed, or is subject to due process. Some matters are not Grievable, such as: Disagreements with general application of policies on grounds that the policy is unfair or inadvisable official decisions or actions by Methodist Hospital; any matter for which the remedy would contravene or interfere with any such official policy, regulation, procedure, or decision; and matters that are subject to another Institutional procedure or within the jurisdiction of another Institutional entity (such as a System Human Resources Policy overarching or complementing a GME Procedure); and violation of federal or State law.

9. Negative Evaluation: An evaluation of a Resident that might result in an Adverse Academic Action, such as Probation, restriction of his/her clinical activities, non-advancement, or Termination.
10. Nonrenewal of Agreement of Appointment (Nonreappointment): Failure to be offered a successive contract for appointment at the end of the current appointment period (usually the end of the academic year); per ACGME requirements, Nonrenewal is subject to the Adverse Academic Action Procedure and a Resident must, when possible, be given four (4) months notice of intent not to renew.
11. Nonpromotion: Failure to be promoted to the next level of training at the end of the current appointment period. Nonpromotion is subject to the Adverse Academic Action Procedure and a Resident must, when possible, be given four (4) months notice of intent not to renew.
12. Probation: A trial period, not to exceed thirty (30) days, during which a Resident may redeem failing ratings of performance or bad conduct by meeting specified goals of performance or behavior. This is an Adverse Academic Action proposed for a Resident after a period of program-level remediation, after persistent uncorrected poor performance or attitude, or after a single incident considered significant by the Program Director and Faculty; must be approved by the AAA Subcommittee.
13. Program: The unit of specialty education, comprising a series of graduated learning experiences in GME, designed to conform to the requirements of a particular specialty or accrediting body.
14. Program Director: The person designated and accountable for the operation of a Program of GME.
15. Program-level Remediation: A specified plan of training conducted within the context of a Program and designed to remedy deficiencies identified in a Resident's performance or behavior; Program-level Remediation is not Reportable and is not an Adverse Academic Action.
16. Reportable: In Texas, the requirement from the TMB that the Program Director of an approved Program of GME report in writing to the executive director of the board the Program's "disciplinary and adverse actions (including, but not limited to, Probation, Suspension and Termination) within thirty (30) days of the Director's knowledge" (see Texas Medical Board, Postgraduate Training Permits, Chapter 171.6, Duties of Program Directors to Report, (see http://www.tmb.state.tx.us/rules/docs/Board_Rules_Effective_09.19.2011.pdf)). ;. The PIT holder may also have a duty to report, see Texas Medical Board, Postgraduate Training Permits, Chapter 171.6, Duties of PIT Holders to Report, Chapter 171.5. The Texas Medical Board Rules became effective September 19, 2011, and provide additional time for reporting. Other states and specialty licensure organizations have similar requirements for their boards.
17. Resignation: A formal notification of leaving a paid or unpaid position generally given to a supervisor or an employer. There are no laws governing employee resignations, although employers may set requirements for resignation including but not limited to the amount of time required for giving notice to resign.

18. Resident: A physician at any level of GME in an ACGME-accredited, Texas Medical Board (TMB)-accredited Program, including participants in subspecialty Programs, and nonACGME accredited program sponsored by The Methodist Hospital.
19. Suspension: Immediate termination of all clinical activities of a Resident within a program; usually invoked only when there are significant concerns that patient safety is jeopardized and that the Resident must be immediately removed from patient care.
20. Termination: The separation of a Resident from a Program of GME; considered an Adverse Academic Action when Termination occurs before a Resident completes the Program as a result of dismissal or Nonrenewal of Agreement of Appointment.
21. Working Days: Monday through Friday, excluding hospital holidays.

III. REQUIREMENTS FOR ADVERSE ACADEMIC ACTION

- A. Program Standards for Achievement and Professional Conduct: The Adverse Academic Action Subcommittee (AAA Subcommittee) must review and approve any Adverse Academic Action. All Adverse Academic Actions are reportable to outside agencies and licensing bodies unless otherwise specified.
- B. Initiating Adverse Academic or Disciplinary Action: An Adverse Academic Action may be taken for due cause including, but not limited to:
 1. Failure to satisfy the academic or clinical requirements of the training program
 2. Professional incompetence, misconduct, or conduct inconsistent with or harmful to patient care or safety
 3. Consistently substandard performance; conduct that calls into question the professional qualifications, ethics, or judgment of the Resident
 4. Inappropriate or unprofessional behavior toward other Residents, employees, medical staff, patients, patients' families, volunteers, or visitors of Methodist
 5. Violation of the bylaws, rules, policies, or procedures of the medical staff, Hospital, or applicable department, division, or programs, including any violation of the Hospital sexual harassment policy
 6. Scientific misconduct
 7. Alcohol or chemical substance abuse, dependency, or addiction and refusal of treatment for same
 8. Other circumstances deemed significant by the Program Director and Faculty
- C. Adverse Academic Action Initiated by Institution. In the event that a Resident's behavior violates Methodist System Policy HR01 "Managing for Performance," rules or requirements of a regulatory agency such as the Texas Medical Board or the Drug Enforcement Agency (DEA), and state or federal law(s), the Designated Institutional Official may request an Adverse Academic Action of Termination. By Methodist Systems HR01 policy, these actions may be cause for termination upon first offense, and as such they are not Grievable. However, an AAA Subcommittee will be convened to consider the Adverse Academic Action of

Termination. The DIO must immediately inform the respective Program Director when the Institution proposes an Adverse Academic Action on a Program Resident.

1. Examples of conduct that may warrant immediate termination for the first offense as provided in Methodist System Policy HR01 include, but are not limited to, the following:
 - Insubordination (willful refusal to perform an assigned duty or to comply with an instruction);
 - Verbal or physical abuse toward a supervisor, patient, visitor, or another employee;
 - Willful neglect;
 - Dishonesty;
 - Falsification of any Methodist record;
 - Theft;
 - Fighting, provoking or instigating a fight;
 - Threatening or committing physical violence against another person;
 - Bringing or being in the possession of a weapon or other dangerous device on Methodist property without authorization;
 - Possession or use of alcohol or illegal drugs during scheduled work hours;
 - Breach of Confidentiality and Information Security Agreement;
 - Recent conviction of a criminal offense related to health care or specific job duties;
 - Exclusion/debarment from participating in federal health care programs
2. Other conduct involving federal or state laws, regulations and rules of governing bodies may warrant immediate termination for the first offense. Examples include but are not limited to:
 - Violation of state or federal law
 - Violation of Texas Medical Board rules and other regulatory agencies
 - Improper use of the institutional DEA number
 - Forgery, alteration, or misuse of Hospital documents or records
 - Illegal use, possession, and/or illegal sale of drug, narcotic, or other controlled substances as defined in the Texas Controlled Substance Act

D. Progression of Adverse Academic Actions. Formal action may include Probation, Extension of Training, Nonrenewal, Nonpromotion, Suspension, and Termination.

1. A Program Director may propose Probation for a Resident when uncorrected deficiencies persist despite Feedback, Counseling, or a period of Program-level Remediation, or after a single incident that is considered significant by the Program Director and Faculty. The period of Probation must be at least 30 days but not exceed 90 days and may be repeated once.
2. A Program Director should generally recommend an Extension of Training, Nonrenewal or Nonreappointment, or Termination for a Resident who fails to demonstrate adequate improvement after two consecutive periods of Probation.
3. If the Resident's Agreement of Appointment is not going to be renewed or when a Resident will not be promoted to the next level of training, the Resident must be provided with a written notice of intent no later than four months prior to the end of the Resident's Agreement per ACGME

requirements. If the primary reason(s) for the Nonrenewal occurs within the four (4) months prior to the end of the Agreement, the Program must provide the Resident with as much notice of intent not to renew or not to promote as the circumstances will reasonably allow. The Resident who has received a written notice of intent not to renew the Resident's Agreement or to renew the Resident's Agreement but not to promote the Resident to the next level of training must be allowed to implement the procedures described in Procedure GME10.

4. Under circumstances requiring immediate emergency action to preserve acceptable standards of care, safety, integrity, or ethics at Methodist, a Program Director or his/her designee or the Designated Institutional Official may place a resident on Suspension, which removes the Resident from Clinical or Program activities or both for the duration of the process described below (III.C.).

E. Grievance Procedure and Due Process for Adverse Academic Actions:

1. The Program Director must notify the Resident that a proposal to take an Adverse Academic Action against the Resident is being considered. The Program Director must meet with the Resident to discuss the proposal and to advise the resident of his or her rights under this Adverse Academic Actions Procedure. After the meeting, the Resident will have a maximum of five (5) Working Days to prepare written comments for the Program Director and Faculty. However, the Program Director may restrict the Resident's Program or clinical activities or both by Suspension of the Resident if necessary to preserve acceptable standards of care, safety, integrity, or ethics. The Program Director should suggest that the Resident meet with the DIO to ensure that the Resident has full knowledge of the consequences of an Adverse Academic Action and of the grievance procedure and due process.
2. If, after review of the Resident's written response, the Program Director with advice from the Faculty decides to recommend an Adverse Academic Action, the Program Director will meet with the Resident and inform the Resident that the request for an Adverse Academic Action will be submitted to the GMEEC. This notification and a signed acknowledgment that the Resident has been informed of the plan must be maintained in the Resident's record.
3. The Program Director's proposal for Adverse Academic Action should include:
 - a. A description of deficiencies in competence or conduct
 - b. The proposed Adverse Academic Action
 - c. The duration of the Adverse Academic Action if other than Termination or the effective date for Termination
 - d. Documentation that the resident has been informed of the Adverse Academic Action and has the right to give input to the AAA Subcommittee
 - e. The resident's written response, if any, to the Adverse Academic Action proposal
 - f. If Probation, the description of methods and conditions for monitoring the Resident's clinical or academic activities to include:
 - The methods and resources to be used to improve the deficiencies
 - A list of objective criteria that must be achieved for the resident to be removed from Probation
 - Any restrictions or conditions placed on the resident during the Probation period

- The time frame for documentation of improvement, not to exceed 90 days
 - Consequences of unsuccessful resolution of identified deficiencies
4. Resignation by the Resident will only be accepted before the Adverse Academic Action Subcommittee meeting convenes. Once the meeting has commenced, the Resident will not have the right to resign.
 5. The Resident may attend the AAA Subcommittee meeting or submit a written statement; however, no witness or legal representation will be allowed. To conduct business related to an Adverse Academic Action, a quorum for the AAA Subcommittee is defined as: the DIO, the GMEC Chair, one Resident member, one Program Director who is in a leadership position with the GMEC, and one GMEC Subcommittee chair. An AAA Subcommittee decision will be determined by a simple majority vote of the members present. The DIO will replace any Program Director or Resident member from the Resident's Program with representative(s) from other program(s).
 6. The meeting of the AAA Subcommittee to consider the recommended Adverse Academic Action is intended to be as informal, non-adversarial, and collegial as possible, while still assuring a full consideration of the basis of the Program Director's recommendation and the Resident's response to it. To this end, the following rules apply to this meeting:
 - a. The GMEC Chair will chair the meeting.
 - b. The order of the meeting will be:
 - i. The Program Director's presentation of the proposal for Adverse Academic Action.
 - ii. The Resident's presentation of response, either by previously submitted written statement or by oral presentation.
 - iii. Discussion among the committee members, the Program Director, and the Resident.
 - iv. Private deliberation of the committee members.
 - c. The Administrative Chair of the AAA Subcommittee has the authority and responsibility to insist on collegial decorum and brevity at all times.
 - d. The Program Director and the Resident are permitted to attend the meeting during steps c. i-iii, but not during step c. iv.
 - e. No recordings or minutes of the meeting will be made or created.
 - f. No legal representatives for any party may attend.
 - g. The decision of the committee will be the sole record of the meeting.
 - h. No other person is allowed to accompany, assist, or represent either the Program Director or the Resident during the meeting.
 - i. A simple majority of the committee will determine the decision of the committee.
 6. If the AAA Subcommittee votes to deny the recommendation for an Adverse Action against the Resident, the Program Director will notify the Resident verbally. The Resident will meet with the Program Director and the DIO to receive the AAA Subcommittee decision in writing with specific comments concerning the plan of action for the Resident. The DIO will document this meeting, and an acknowledgment of the meeting, signed and dated by the Resident, will be maintained in the Resident's record.
 7. If the AAA Subcommittee votes to accept the recommendation for an Adverse Academic Action against the Resident, the Program Director will notify the Resident. If the Resident disagrees with the decision, the Resident will notify the Program Director and the DIO immediately. If the Adverse Academic

Action requested was Probation, the educational portion of the Probation Plan will begin immediately. However, any adverse administrative components of the Probation (e.g., restriction of clinical activities) will not be implemented until the DIO has reviewed these with the Chief Academic Officer at Methodist. The Program Director will establish a time with the DIO to present the Resident with the written AAA Subcommittee decision.

8. If the Adverse Academic Action taken against the Resident is Probation, the Program Director will assign a Faculty advisor to assist the Resident in the Probation plan. If appropriate, medical, mental health, or learning disability evaluations conducted by Methodist will be offered to the Resident at no cost during the Probation Period. The Resident will be responsible for all costs associated with outside evaluations.
 - a. The Program Director will report on the Resident's progress to the AAA Subcommittee during the Probation. These reports must be submitted no later than five (5) Working Days before the AAA Subcommittee meeting. The Program must also provide documentation that the Resident has received a copy of each report. The resident will be free to make written comments on his or her behalf for presentation to the AAA Subcommittee.
 - b. The Probation period may be extended for up to an additional ninety (90) days following the same process as outlined above for the initial Probation period.
 - c. Probation will end in: a return to training without Probation (removal from Probation requires a simple majority vote of the AAA Subcommittee), Extension of Training, Termination, or Resignation. Extension of Training and Termination are Adverse Academic Actions that must be proposed and initiated according to the procedure outlined above (III.C.).
- F. When the Adverse Academic Action of Termination has been requested by the Institution (i.e., the DIO) for violation(s) of Methodist Hospital System Human Resources Policies or requirement(s) of a regulatory agency(ies) such as the TMB or DEA, the resulting Adverse Academic Action is considered not Grievable. However, an Adverse Academic Action Subcommittee will be formed at the earliest possible date. The Resident will have an opportunity to present a response. The Program Director will be allowed to sit with the Resident during the meeting. The other aspects of the process continue as outlined above. If the Subcommittee determines that the Resident will receive a lesser Adverse Academic Action, such as Probation, the Subcommittee will work with the Program to construct a suitable Probation plan and to determine appropriate Probation Advisors. The Resident's failure to perform according to the requirements of the Probation plan may result in the Resident's immediate Termination.
- G. Unused Paid Time Off. If a Resident is terminated and has participated in the Program of GME for 6 months, the Resident will be paid for the Resident's prorated unused paid time off.

IV. COMMITTEE REVIEWING OR APPROVING PROCEDURE

1. Graduate Medical Education Committee [11 November 2004] [10 January 2008] [8 December 2011] [9 February 2012]

AUTHORITATIVE REFERENCES:

Accreditation Council for Graduate Medical Education Institutional Requirements II.D.d-e.

Texas Medical Board Rules, Texas Administrative Code, Title 22, Part 9, Chapter 171.