

**TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER AT EL PASO  
GRADUATE MEDICAL EDUCATION  
Standard Policy and/or Procedure**

**TITLE:** Adverse Action Appeal Policy

**APPROVED:** 1/18/1994

**REVISED:** 2/13/2009; 1/13/12; 8/1/16; 2/8/17; 4/6/18; 11/22/19; 05/23/23

**EFFECTIVE DATE:** 1/18/94; 2/13/2009; 1/13/12; 8/1/16; 2/8/17; 4/6/18; 11/22/19; 05/23/23

**PURPOSE:** To provide a process where trainees may request to appeal a **suspension, non-renewal, non-promotion** or **dismissal** (collectively referred to as **Adverse Action**) from training.

**POLICY STATEMENT:** The Sponsoring Institution, through the Graduate Medical Education Committee (GMEC), is committed to assuring that individual residency/fellowship programs have established criteria for an appeal process when an Adverse Action is taken against residents/fellows (hereinafter Trainee). The GMEC is responsible for assuring that this policy is aligned with current ACGME requirements.

**PROCEDURE:** Over the course of training in graduate medical education, a Trainee is expected to acquire progressive and increasing competence in the knowledge, skills and behaviors of the training specialty. An Adverse Action may be based on an identified deficiency/deficiencies.

Administrative actions involving **observation** or **probation** are not appealable. This policy outlines the appeal process for Trainees when an Adverse Action, as defined above, has been initiated. Only a **single appeal** is allowed per each Adverse Action taken.

**Important Note:** *Prior* to initiating any Adverse Action, the Program Director will apprise the Designated Institutional Official and General Counsel of the proposed action.

**Appeal Process:**

1. ***Recommended Adverse Action.*** ***Within three business days*** after a formal decision is made by the Program Director to recommend an Adverse Action regarding a Trainee, the Program Director should meet with the Trainee **in person**, unless the Trainee is unavailable or fails to appear for the meeting, and provide:
  - a. written documentation of the Adverse Action and, if applicable, a remediation plan;
  - b. a copy of this policy and inform the Trainee of their right to appeal;
  - c. the documentation will provide for the handwritten signatures of both the Program Director and the Trainee.
  - d. the Trainee will be asked to sign acknowledge receipt of, not agreement with, the documentation. In the event the Trainee refuses to sign, the Program Director will note such on the document.
2. ***Notification of Designated Institutional Official (DIO).*** ***Within three business days*** of formal notification to the Trainee, the Program Director must notify the DIO in writing of the Adverse Action taken and submit the signed documentation provided to the Trainee.

3. Appeal Deadline. After the Trainee receives notification of an Adverse Action, the Trainee has **five business days** to submit a written request for appeal to the DIO, with a copy to the Vice President for Academic Affairs. The Trainee's appeal should state the facts on which the appeal is based, the reason(s) the Trainee believes the Adverse Action was in error, and the remedy requested.
4. Lapse of Appeal Deadline with No Appeal. In the event the Trainee elects **not to appeal** the Adverse Action or the Trainee fails to submit the request for appeal within the prescribed **five business days**, the Trainee will be deemed to have waived the option to appeal the Adverse Action and the Adverse Action is final.
5. DIO's Review of Appeal. **Within ten business days** from receipt of the Trainee's appeal, the DIO will review the appeal for compliance with the above process. If the Trainee complied with the process as set forth above in paragraph 3, the DIO will appoint an ad hoc Appeal Review Committee (Appeal Committee) charged with conducting a hearing to review the recommended Adverse Action. The Appeal Committee will be comprised of three members: two GMEC faculty and one resident representative who should be either the President or Officer of the House Staff Association. The Appeal Committee will exclude faculty and house staff from the appealing Trainee's department, as well as faculty and house staff who may have involvement with the recommended Adverse Action. The DIO and GME Sr. Director will serve as ex officio members of the Appeal Committee.
6. No Clinical Duties During Appeal. Trainee will have no clinical duties during the appeal process; however, the Trainee may be allowed to perform other non-clinical duties at the Program Director's discretion.
7. Scheduling of Appeal Hearing. **Within 5 business days** of appointment, the Appeal Committee will meet with the DIO for a preliminary meeting to set a date for the hearing, review this policy, provide a copy of the written request for appeal, and determine who will chair the committee. Upon scheduling a hearing date, the Appeal Committee Chair will notify the Program Director and Trainee of any procedural information that will be observed at the hearing.
8. Exchange of Information. **At least 5 business days** prior to the hearing, the Trainee and the Program Director will provide to each other, the GME office and the Appeal Committee the following:
  - a. all relevant documents that each would like the Appeal Committee to consider as part of the appeal process to include, but not be limited to, the written request for appeal, all reports, evaluations and recommendations related to the action taken, and his/her file as maintained by the department and GME Office. For purposes of the GME file, the DIO's office will be responsible for disseminating the GME file to all parties. All documents submitted to the Appeal Committee will be deemed confidential and will be returned to the GME Office after the Committee issues its findings.
  - b. the names of witnesses, if any, that each will call at the hearing. The Trainee and Program Director will each be responsible for arranging the participation of their respective witnesses for and during the hearing. Only if a witness is not readily available to attend the hearing in person, the Appeal Committee may consider allowing the witness to participate by telephone or web transmission (e.g., Teams, Webex or Zoom). If

applicable, the Trainee and Program Director, respectively, will notify the Appeal Committee and each other at least 24 hours in advance of the hearing that a witness will not be available in person. Witnesses may only be present at the hearing while testifying, and must leave upon conclusion of their testimony after the other party has had an opportunity to question the witness.

9. Legal Counsel. The Trainee has the right to appear in person before the Appeal Committee and may be accompanied by legal counsel retained by the Trainee. If legal counsel is to accompany him/her, the Trainee will **notify the Appeal Committee in writing at least 5 business days in advance** of the hearing, at which time the Appeal Committee Chair will immediately notify the Program Director, the GME office and the Office of General Counsel (OGC). In the event the Trainee is to be accompanied by legal counsel, a representative from the OGC will attend on behalf of the university. Legal counsel may serve only in an advisory capacity to both parties and may not participate in the hearing.
10. Hearing. At the hearing, the Trainee will present to the Appeal Committee and the Program Director the basis of the appeal and may introduce evidence considered to be relevant and material to the case. The Program Director will also have the right to address the Appeal Committee and may introduce evidence considered to be relevant and material to the case. All evidence offered must be reasonably related to the facts and statements concerning the reasons for the adverse action and the Trainee's appeal. The Appeal Committee will determine whether information provided at the hearing is relevant and material to the case and whether it is reasonably related to the matter of the recommended Adverse Action.
  - a. Burden of Proof. The Trainee bears the burden of establishing that the Adverse Action is unjustified. The Trainee's failure to appear at the hearing will result in automatic dismissal of the Trainee's request for consideration and any and all other appeal rights.
  - b. Recording. The hearing will be audiotaped, and either of the parties may obtain a copy by submitting a written request to the DIO who will then have **3 business days** to supply the copy. No transcript will be provided.
  - c. Committee Deliberation. Following each party's presentation of evidence, the hearing will conclude, and the Appeal Committee will deliberate in closed session. **No later than 7 business days** from the conclusion of the hearing, the Appeal Committee Chair will provide the DIO, Trainee and Program Director with a written statement that includes the Committee's finding(s) and recommendation(s).
11. Procedural Due Process. If the Trainee believes procedural due process has not been followed up to and/or during the hearing, s/he may notify the DIO in writing **within 3 business days** after receipt of the Appeal Committee's findings. The campus DIO is responsible for determining whether the Trainee's procedural due process claims, if applicable, materially affected the outcome of the decision. Only if the campus DIO determines a procedural error materially affected the outcome of the case, will **a new Appeal Committee** be appointed **to re-hear** the Trainee's appeal of the Adverse Action.
  - a. The campus DIO must notify the Trainee and Program Director in writing **within 3 business days** that procedural error(s) materially affected the outcome of the Appeal Committee's findings and recommendations.

- b. If the DIO finds that a procedural error materially affected the outcome of the Appeal Committee's findings the DIO will appoint a new appeal committee and the Trainee and the Program Director will follow Steps 7 thru 10 listed above.
12. DIO's Review of Appeal Committee's Determination. Upon receipt, the DIO will review the Appeal Committee's findings and recommendations and forward them to the Vice President of Academic Affairs (VPAA).
  13. VPAA Review. The VPAA will then review the findings and recommendations and make a final written decision and deliver the decision to the Trainee, the Program Director, the campus DIO, the Chair of the Appeal Committee and the President. Notice of the VPAA's determination may be delivered to the Trainee by certified mail, Return Receipt Requested, at his/her last known address, or hand-delivered to the Trainee with written acknowledgement of delivery. In the event neither form of communication referenced above is successful, notice to the Trainee may be given by email attachment with read/receipt notation. The decision of the VPAA is final. A final determination by the VPAA to *suspend, non-renew, non-promote, or dismiss* a Trainee shall nullify or terminate any previous program agreement appointing the Trainee to a subsequent year of training.
  14. Exhaustion of Remedies. Remedies and procedures contained herein, if applicable, must be exhausted in their entirety prior to the Trainee resorting to any other forum.
  15. Calculation of Deadlines. Periods listed herein are guidelines and may be extended only by the VPAA where justified. For the purpose of determining any deadline herein, the first business day following any event shall count as the first day.
  16. Salary and Benefits. Trainee will receive salary and insurance during the appeal process. Any sick or vacation days during the appeal process must be approved in advance. In appeals of dismissal, salary and benefits will end on the date of the VPAA's final determination. Trainee will contact the Human Resources Office to arrange for continuation of health insurance under COBRA, if benefits end.
  17. Contract Expiration. If the Trainee's contract expires during the appeal process, an extension may be provided until the entire appeal process concludes.
  18. Reporting. Except for those instances required by the Texas Medical Board for reporting adverse action, no specialty or sub-specialty certifying board or national, state, or local medical organization, exclusive of a licensing agency, will be notified of a pending disciplinary action until a final determination has been made by the VPAA.
  19. Clearance. Clearance for non-returning Trainees will be the responsibility of the Program Director and Program Coordinator. All clearance requirements and the signed Check-Out List must be submitted to the Graduate Medical Education office **within 7 business days** from the final decision.