

Spokane Teaching Health Center

ACADEMIC & PROFESSIONAL CONDUCT POLICY & PROCEDURE

Approved on January 28, 2014

Principles of GME Due Process

The Spokane Teaching Health Center is committed to providing high-quality graduate medical education (“GME”) through residency and fellowship programs. Residents and fellows (referred to collectively as “residents”) are first and foremost learners and are expected to pursue the acquisition of competencies that will qualify them for careers in their chosen specialties. In addition, residents must adhere to standards of professional conduct appropriate to their level of training. The policies and procedures described in this document are designed to ensure that actions which might adversely affect a resident’s status are fully reviewed and affirmed by neutral parties while at the same time ensuring patient safety, quality care, and the orderly conduct of training programs.

Program appointment, advancement, and completion are not assured or guaranteed to the resident, but are contingent upon the resident’s satisfactory demonstration of progressive advancement in scholarship and continued professional growth. Unsatisfactory resident evaluation can result in required remedial activities, temporary suspension from duties, non-promotion, non-renewal of appointment, or termination of appointment and residency education.

Due process refers to an individual's right to be adequately notified of charges or proceedings against that individual and the opportunity to respond. The procedure described in this document is the exclusive means of review of academic actions within the Spokane Teaching Health Center.

For good cause the Chair of the Graduate Medical Education Committee ("GMEC") may modify these procedures in a particular case so long as it does not prejudice the resident, Spokane Teaching Health Center or the residency programs.

GME Academic Corrective Actions

This section describes corrective actions that may be taken by a GME program in response to academically substandard or academically unacceptable performance or behavior on the part of a resident. Residents and their program directors and faculty are encouraged to resolve disagreements or disputes by discussing their concerns with one another. When appropriate, reasonable efforts should be made to take remedial action(s) that best address the academic deficiencies and needs of the resident and the training program.

Reviewable Academic Actions: The following academic actions are reviewable through the GME Academic Action Review Procedure described below.

1. Non-Reappointment: A decision to not reappoint a resident is made by the faculty of the residency program or by a group of faculty specifically charged with evaluating resident progress in the program. The resident will be notified of non-reappointment by February 15th, or at least four months prior to the normal termination date of the resident's existing appointment. The notification will be by letter to the resident and will contain the reasons for the non-reappointment. The program, in its sole discretion, may reconsider any non-reappointment decision and may rescind the non-reappointment notice and offer re-appointment. The program's decision to rescind or not rescind a non-reappointment decision is not subject to review.

2. Non-Promotion: A program may determine a resident has not performed to a level that allows the resident to progress to the next year of their training program. The program may in that case ask the resident to repeat the year at the same R-level. The resident will be notified of non-promotion by February 15th, or at least four months prior to the normal termination date of the resident's existing appointment. The notification will be in writing and will contain a summary of the resident's performance that resulted in the decision not to promote. In some cases, residents will be required to make up partial-year rotations or assignments due to performance problems or absences from the program. If the program delays the resident's commencement of the next training level but offers a new agreement at the R-level for which the resident would have otherwise been eligible, there is no right to review the non-promotion decision. Likewise, when a resident must make up less than a full year of rotations at the end of their training due to repeating rotations or because of absences from the program there is no right to review. An extension agreement will include stipends and benefits at the current level for the resident until all required assignments are completed.

3. Suspension: A program may suspend a resident from some or all program activities due to the resident's inability to provide safe patient care, or failure to meet other obligations of the educational program or the Residency Appointment Agreement ("RAA"). Reasons for suspension include, but are not limited to:

- Unprofessional behavior, which includes: (i) egregious violation of patient privacy rules, including but not limited to HIPAA regulations, (ii) unexcused absence beyond one day without reporting to the program director, (iii) illegal, unethical, or other conduct in conflict with the program's or training site's compliance program, and (iv) performing resident duties while in an impaired physical or mental state;
- Failure to comply with conditions of probation or other progressive corrective action; and
- Academic deficiencies warranting removal of the resident from patient care.

The duration of the suspension should be appropriate to address the reasons underlying the suspension. In the discretion of the program director suspension may be paid or unpaid.

4. Termination for Cause: A resident's appointment may be terminated for cause if the resident fails to meet standards of performance expected at the resident's level of training, fails to fulfill the

conditions of appointment to the program, or fails to meet the requirements of the hospital or clinic to which the resident is assigned. The overall academic performance and professional behavior of the resident shall be considered in decisions to terminate for cause.

GME Academic Actions Not Subject to Review: The following actions, which relate to academic achievement by residents, are not reviewable through the GME Academic Action Review Procedure described below. Some of these actions include mitigation steps that may be pursued by the resident.

1. Resident Evaluations: The Accreditation Council for Graduate Medical Education (“ACGME”) requires programs to conduct formal performance reviews with residents at least once every six months. Evaluation of resident performance includes assessment of clinical competence, professional behavior, and humane qualities. In situations where residents exhibit sub-standard performance, the program director may provide notice to, or request assistance for, a remediation from the faculty, residency training committee, and/or an appropriate mental health specialist. Upon notification of a problem in a resident’s cognitive or interpersonal performance, the program director will decide whether the problem can be addressed through the normal evaluation processes or requires a formal intervention and remediation program. Residents may submit written responses to their evaluations within thirty (30) calendar days. These written responses will be retained in the resident’s program file.

2. Focus of Concern: A focus of concern is a serious issue of resident performance or behavior that requires remediation. A focus of concern may include recommended actions or remediation the resident should follow to resolve the issue(s) giving rise to the focus of concern. Failure to adequately address the focus of concern as evidenced by repeated behavior may lead to progressive discipline including, but not limited to probation, suspension, non-renewal of appointment, or termination. A letter setting forth the concern and recommended actions or remediation will be given to the resident. Such a letter is not normally part of the resident’s program file or reported by program directors as a negative evaluation if the recommended actions or remediation are completed within the required time frame. However, a focus of concern letter may be made part of the resident’s program file at the discretion of the program director if complete remediation is not achieved. A resident may request the focus of concern letter be removed from his/her program file, but it is within the discretion of the program director whether to remove it. The program director will advise the resident if it is removed or provide an explanation why it will not be removed.

3. Probation: Probation is a serious academic action taken in response to continued, documented substandard performance or behavioral issues, violations of educational standards or policy, or failure to remediate a focus of concern.

The program director will notify the resident in writing if the resident is placed on probation, including the reasons for probation, what the resident must do to be removed from probation, and the time limit for remediation. The probation notice will be placed in the resident’s program file and will be disclosed upon request to other agencies or persons when the individual seeks hospital privileges or licensure, or if the resident continues training in a different program. The program

director will notify the resident in writing when probation terminates. The termination letter will also be retained in the resident's program file. A resident's failure to successfully correct the behavior or deficit giving rise to probation may result in extension of probation, suspension, non-renewal of appointment, or termination.

4. Program Refusal to Certify Board Application: A program may allow a resident to complete training but may refuse to approve the resident's application for board certification. In such a case, the program will provide the resident with a written explanation for its action.

5. Training Site Actions: If a training site such as a hospital or clinic withdraws permission for a resident to train at their site, the resident may be re-assigned to another site or to administrative activities, or may be subject to disciplinary action such as suspension, non-reappointment or termination depending on the circumstances that led to the withdrawal of permission. If a training site withdraws permission to train at that site the resident is not entitled to the any review, hearing or appeal under the medical staff bylaws of the training site.

6. Clinical Supervision Requirements: As part of their training program, residents are given progressively greater responsibility according to their level of education, ability, and experience. Supervision requirements for clinical procedures are based on evaluation of the resident's clinical judgment, medical knowledge, technical skills, professional attitudes, behavior, and overall ability to manage the care of a patient. In all cases, the attending physician is ultimately responsible for the provision of care by residents. Programs, training sites, or attending physicians may require a supervisor's presence during a procedure when one would not normally be required for the resident's level of training.

7. Removal from Patient Care Activities: A resident may be removed from patient care activities for any of the following reasons: (i) lack of an unrestricted physician or physician-in-training license in the State of Washington, if required by the program; (ii) failure to obtain or maintain credentials required for the clinical practice, such as Drug Enforcement Administration license, if required by the program; (iii) failure to complete required orientation and/or annual training requirements; (iv) failure to comply with the Moonlighting Policy; or (v) failure to maintain compliance with the immunization or health policy requirements of the resident's employer. The resident will be notified in writing of the reason for removal. Removal will remain in effect until the deficiency is resolved to the satisfaction of the program. Residents may be assigned to non-clinical duties, vacation, or other status at the discretion of the program director. If assignment to another activity is not practical removal from patient care may be in an unpaid status.

8. Failure to Maintain Immigration Status: Residents who become ineligible for employment due to changes in their immigration status will be removed from the payroll and may not work in any capacity, including as a volunteer, in the residency program, or affiliated hospitals or clinics. The resident will be placed on inactive, unpaid status until their work eligibility status is established.

9. Precautionary Suspension Pending Investigation: In cases of egregious conduct, imminent danger to patients or program or training site employees, or when immediate removal of the resident from direct patient care is reasonable in light of the surrounding facts and circumstances, a resident may be placed on paid precautionary suspension pending investigation. A precautionary suspension is not reviewable. The resident will be notified in writing of the terms of the suspension. A suspension will last as long as needed to complete the investigation. The program may withdraw the suspension or take further corrective action. The resident will be notified in writing of the of the program's decision at the conclusion of the investigation.

10. Violations of the Residency Appointment Agreement (RAA): For alleged violations by the program of any provisions of the RAA that are not related to academic corrective actions described in this policy, residents may request relief through the Providence Sacred Heart Medical Center Resident Grievance Policy and Procedure.

GME Academic Action Review Procedure

The process contained here is the exclusive means of review and appeal of academic corrective actions described in **Reviewable Academic Actions**, above. The purpose of this procedure is to provide review of the program's actions based on the assessment of the resident's academic and professional performance. The review procedure is not an adversarial legal proceeding but is the exercise of academic and professional judgment by GME faculty and officials on whether the resident has the necessary ability to uphold the academic and professional standards of the program and to perform adequately as a physician or surgeon.

1. Request for Review: The program director¹ shall discuss the matter with the resident in a face-to-face meeting if the program is considering; (i) not renewing, (ii) not promoting, (iii) suspending or (iv) terminating the resident for cause. A written summary of this meeting shall be prepared by the program director and provided to the resident. The matter may be concluded by mutual consent at this point. If termination for cause is under consideration, the resident will be allowed to resign in lieu of termination for cause.

If it appears to the program director that resolution of the concern is not possible under the previous section, and the program director decides that non-renewal of appointment, non-promotion, suspension, or termination for cause is appropriate, the program director shall submit a letter of recommendation to the Chair of GMEC.

The recommendation shall include a statement of the grounds for the recommendation. The program director shall notify the resident in writing of the recommendation via first class mail or by personal service. This notice shall contain: (i) a copy of the recommendation; (ii) a statement informing the resident that in order for the recommendation to be reviewed by an Academic Action Review Committee the resident must submit a written request for review to the Chair of GMEC

¹ References to the program director include the program director's designee if the program director has delegated such duties to another member of the program faculty.

within fourteen (14) calendar days of the date of the mailing of the notice or receipt of the notice if personally delivered; and (iii) a copy of the current RAA, plus a copy of this policy.

If the resident does not submit a written request for review to the Chair of GMEC within the fourteen (14) days the program director's recommendation shall become final and no further review will be available.

If the resident submits a timely request for review, within seven (7) days of receipt of the request the Chair of GMEC shall provide the program director a copy of the resident's request for review. The GMEC Chair shall also acknowledge in writing to the resident the timely receipt of the request for review.

2. Composition of Academic Action Review Committee: If a request for review is timely the Chair of GMEC will convene an ad-hoc panel (the "Academic Action Review Committee" or simply "Review Committee") consisting of four members of the GMEC selected by the GMEC Chair as follows: (i) two GMEC members who hold faculty status and who are not members of the same program as the resident requesting review and (ii) a resident member of the GMEC who is not a resident in the same program as the resident requesting review. The Chair of GMEC, or designee, shall be the fourth member of the Review Committee and shall serve as Chair of the Committee. The Committee Chair is responsible for all rulings as to procedure and conduct of the review, but may not vote on the Review Committee's Recommended Outcome.

If the Chair of GMEC is unable to identify GMEC members able to serve on the Review Committee, the Chair may appoint other faculty and/or residents, provided one Committee member must be a current resident and none may be members of the same program as the resident requesting review.

3. Responsibility of Academic Action Review Committee: The Review Committee is charged with reviewing the decision of the program director and issuing a Recommended Outcome. The question before the Review Committee is whether the program director's recommendation was arbitrary or capricious. The burden of proof is on the resident to show that the program director's recommendation was arbitrary or capricious. A decision is arbitrary and capricious if it is willful and unreasoned without consideration of and in disregard of facts or circumstances. Where there is room for two opinions a decision is not arbitrary or capricious when exercised honestly and upon due consideration even though some may believe an erroneous conclusion was reached. Only members of the Review Committee may participate in the deliberations of the Committee. The Recommended Outcome by the Review Committee requires an affirmative vote of a majority of voting members of the Review Committee.

If no Recommended Outcome receives a majority vote, the Recommended Outcome(s) of the Committee should reflect the views of each voting member of the Committee.

4. Hearings:

Setting Hearing Date: The Chair of the Review Committee will set a date for the hearing no sooner than thirty (30) days following the forwarding of the notice of request for review to the program director. For good cause, the program or the resident may request an extension not to exceed an additional thirty (30) days. The decision to grant an extension is in the discretion of the Chair of the Review Committee.

Submittals by Program Director: The program director shall provide the following to the Review Committee and the resident not less than fourteen (14) days before the hearing date:

- A statement of the matters asserted by the program director;
- A list of witnesses who may be called to testify at the hearing by the program director; and
- A list of documents to be presented by the program director to the Review Committee.

Submittals by Resident: The resident shall provide the following to the Review Committee and the program director not less than seven (7) days before the hearing date:

- A statement of the matters asserted by the resident;
- A list of witnesses who may be called to testify at the hearing by the resident; and
- A list of documents to be presented by the resident to the Review Committee.

Written Presentation in lieu of Hearing: The resident may choose to submit a written statement to the Chair of the Review Committee rather than make a presentation at the hearing. If the resident elects this option it will result in waiver of the right to present at the hearing. The Chair of the Review Committee will submit the resident's statement to the full Committee, and the Review Committee will make its decision based on material furnished by the program director, review of the resident's program file, and the resident's written statement.

Procedures: The Chair of the Committee shall ensure substantial compliance with the following procedures:

- All materials, documentation and exhibits the resident and program director wish to be considered by the Review Committee must also be provided to the other party.
- Legal discovery, such as but not limited to interviewing parties and witnesses, requests for records, interrogatories, and depositions, is not allowed.
- The resident may be accompanied by an advisor or an attorney at the resident's expense. The residency program director may also have legal counsel, as may the Review Committee. However, legal counsel for the resident or the program director will not be allowed to speak at the hearing or actively participate in the proceedings unless permission is granted by the Chair of the Review Committee.
- The resident and program director are entitled to hear all presentations and examine all documents presented to the Review Committee. The resident and program director may ask questions of any witnesses.
- The Chair of the Review Committee shall give all parties full opportunity to submit and respond to statements and positions.
- The hearing will be closed to the public. Only the parties and those permitted by the Chair of the Committee may attend.

- All components of the review and all associated documents created, collected, or maintained for the review are part of Spokane Teaching Health Center's peer review. The confidentiality and privilege associated with quality improvement and peer review activities applies to the review.
- All testimony given at the hearing shall be made under oath or affirmation.
- Neither the resident nor the program director, or their respective representatives, may communicate with the Review Committee members outside the hearing regarding any issue in the proceeding other than as necessary to an orderly process. All communications regarding the review are to be directed to the Chair of the Review Committee.
- Neither the resident nor the program director may be present during the deliberations of the Review Committee.
- All proceedings of the Review Committee will be conducted with reasonable dispatch and be completed as soon as possible, consistent with fairness to all parties. The Chair of the Review Committee has the discretion to continue the review hearing, for good cause.
- An adequate summary of the proceedings will be kept. The summary shall include all documents that were considered by the Review Committee and may include a tape recording of the hearing. A party, at the party's expense, may cause a court reporter approved by the Chair of the Review Committee to attend and prepare a transcript of the hearing.

5. Ruling by the DIO for Spokane Teaching Health Center: The Review Committee shall submit its Recommended Outcome to the DIO for the Spokane Teaching Health Center, the residency program director, and the resident within ten (10) calendar days of the conclusion of the review hearing record. The Committee shall also provide a copy of the record to the DIO for the Spokane Teaching Health Center. The Chair of the Review Committee shall determine when the record is closed. The Recommended Outcome shall include a statement of findings and conclusions regarding the program director's decision. Findings of fact shall be based exclusively on the record before the Review Committee and matters officially noted by the Review Committee in the proceeding.

Within thirty (30) calendar days of receipt of the Recommended Outcome, the DIO for the Spokane Teaching Health Center will decide whether to accept or reject the Recommended Outcome. The Spokane Teaching Health Center DIO's decision will be sent by first class mail to the resident and the program director.

The DIO for the Spokane Teaching Health Center shall include a statement of findings and conclusions with his/her decision. If the decision is to terminate the resident for cause, the termination shall be effective thirty (30) calendar days after the date of the DIO for the Spokane Teaching Health Center's decision.

Within ten (10) calendar days of the resident's receipt of the DIO for the Spokane Teaching Health Center's decision, the resident may file a written request for reconsideration with the DIO for the Spokane Teaching Health Center stating the specific grounds upon which relief is requested. Requests submitted later than ten (10) calendar days from receipt of the decision will not be considered. The request for reconsideration will be deemed to be denied unless the DIO for the Spokane Teaching Health Center notifies the resident of a different outcome within twenty (20) calendar days of receipt of the request for reconsideration. A denied petition for reconsideration does not delay the effective date of a termination for cause.

Remedy

The stipend and fringe benefits of the resident shall be continued during the period necessary to assure due process, provided payment of the stipend and provision of benefits ceases at the expiration of the resident's appointment or the effective date of termination, whichever occurs first.

If the DIO for the Spokane Teaching Health Center rules in favor of the resident, the remedy is limited to reinstatement to the program and payment of any stipend and benefits lost during the disciplinary proceeding