

	<b>MOREHOUSE SCHOOL OF MEDICINE</b> GRADUATE MEDICAL EDUCATION POLICIES AND PROCEDURES	POLICY NUMBER	GME-01
		EFFECTIVE DATE	04/01/2011
		PAGE (S)	9
	<b>SUBJECT</b> ADVERSE ACADEMIC DECISIONS AND DUE PROCESS POLICY	SUPERSEDES	N/A

## Adverse Academic Decisions and Due Process Policy

### I. **PURPOSE:**

- 1.1. Morehouse School of Medicine (MSM) shall provide Residents with an educational environment that MSM believes is fair and balanced.
- 1.2. MSM's residency education programs have the highest responsibility to ensure that only those physicians demonstrating appropriate levels of clinical competence and professional behavior will be allowed to practice independently in the community at large.
- 1.3. Actions addressed within this policy shall be based on an evaluation and review system tailored to the specialty in which the Resident is matriculating.

### II. **SCOPE:**

- 2.1. All MSM administrators, faculty, staff, Residents, and administrators at participating affiliates shall understand and comply with this and all other policies and procedures that govern both Graduate Medical Education programs and Resident appointments at MSM.
- 2.2. Residents shall be given a copy of this Adverse Academic Decisions and Due Process policy at the beginning of their training.

### III. **DEFINITIONS:**

#### 3.1. **Academic Deficiency**

- 3.1.1. A Resident's academic performance is deemed deficient if performance is less than that outlined in program and specialty standards.
- 3.1.2. Evidence of academic deficiency for a Resident can include, but is not limited to:
  - Having an insufficient fund of medical knowledge
  - Inability to use medical knowledge effectively
  - Lack of technical skills based on the Resident's level of training
  - Lack of professionalism
  - Unsatisfactory written evaluation(s)
  - Failure to perform assigned duties
  - Unsatisfactory performance based on program faculty's observation
  - Any other deficiency that bears on the Resident's academic performance

- 3.2. Cure**—correcting an academic deficiency and sustaining the correction to the satisfaction of the Faculty, Program Director, department chair, and Residency Advisory Committee of the program in which the Resident is enrolled.
- 3.3. Day**—a calendar day, except where the last day of any time period falls on a Saturday, Sunday, or MSM-recognized holiday; the time period will run until 5:00 p.m. of the next business day that is not a Saturday, Sunday, or MSM-recognized holiday.
- 3.4. Disciplinary Action**
- 3.4.1.** The corrective action taken to immediately address a Resident’s academic, professional and behavioral deficiencies.
- 3.4.2.** Typically, “disciplinary action” means probation, suspension that results in disciplinary action, non-promotion, non-renewal of residency contract, or dismissal pursuant to the due process guidelines outlined in this policy or in other appropriate MSM policies.
- 3.4.3.** Disciplinary action does not include a written or verbal notice of academic deficiencies unless that notice constitutes the basis on which a program takes disciplinary action against a Resident.
- 3.5. Dismissal**—the immediate and permanent removal of the Resident from the educational program for failing to maintain academic and/or other professional standards required to progress in or complete the program.
- 3.6. Due Process**
- 3.6.1.** For matters involving a Resident’s deficient academic performance, due process involves:
- a) Providing notice to the Resident of the deficient performance issues;
  - b) Offering the Resident a reasonable opportunity to cure the academic deficiency; and
  - c) Ensuring that MSM engages in a reasonable decision-making process to determine the appropriate course of action to take regarding whether to impose disciplinary action.
- 3.6.2.** For matters involving a Resident’s misconduct, due process involves:
- a) Providing the Resident notice of the allegations against him or her;
  - b) Offering the Resident a reasonable opportunity to respond to those charges; and
  - c) Ensuring that MSM engages in a reasonable decision-making process to determine the appropriate course of action to take regarding whether to impose disciplinary action.
- 3.7. GME**—Graduate Medical Education
- 3.8. GME Office**—Graduate Medical Education office of Morehouse School of Medicine

**3.9. Mail**—to place a notice or other document in the United States Mail.

- 3.9.1.** Notices mailed via first class mail, postage prepaid, unless returned to sender by the United States Postal Service, are presumed to have been received three (3) days after mailing.
- 3.9.2.** Unless otherwise indicated, it is not necessary, in order to comply with the notice requirements in the policy, to hand-deliver the notice or use certified or registered mail. However, such methods of delivery, when documented, will verify actual notice.
- 3.9.3.** Mailing information to the Resident's last known mailing address is sufficient to meet MSM's obligations. It is the Resident's responsibility to ensure that his or her program possesses his or her most current mailing address.

**3.10. Meeting**

- 3.10.1.** The appeals process outlined in this policy where a Resident is provided an opportunity to present evidence and arguments related to why he or she believes the decision by the Program Director, department chairperson, or Resident Advisory Committee to take disciplinary action is unwarranted.
- 3.10.2.** It is also the opportunity for the Program Director, department chairperson, or Resident Advisory Committee to provide information justifying its decision(s) regarding the Resident.

**3.11. Misconduct**

- 3.11.1.** Misconduct involves violations of standards, policies, laws, and regulations that affect professional and ethical standards of a physician in training.
- 3.11.2.** These violations constitute a breach of the MSM Resident Agreement.

**3.12. Non-Renewal of Appointment**—if the residency program determines that a Resident's performance is not meeting the academic or professional standards of MSM, the program, the Residency Review Committee program requirements, the GME requirements, or the specialty board requirements, the Resident will not be reappointed for the next academic year.

**3.13. Non-Promotion**

- 3.13.1.** Resident appointments are for a maximum of 12 months, year-to-year.
- 3.13.2.** A delay in being promoted to the next level is an academic action used in limited situations. These limited situations include, but are not limited to instances where a Resident has an overall unsatisfactory performance during the academic year or fails a specific rotation required for promotion.

**3.14. Notice of Deficiency**—the residency Program Director may issue a written or oral warning to the Resident to give notice that academic or professional deficiencies exist that are not yet severe enough to require remediation, disciplinary action, or other adverse actions but that do require the Resident to take immediate action to cure the academic or professional deficiency.

**3.15. RAC**—Residency Advisory Committee (or equivalent name for the Program Advisory Committee)

### **3.16. Remediation**

- 3.16.1.** Remediation is an academic tool used to strengthen Resident performance when the normal course of faculty feedback and advisement is not resulting in a Resident's improved performance.
- 3.16.2.** This allows the Resident to correct an academic deficiency(s) that, in MSM's sole judgment, would adversely affect the Resident's progress in the program.

### **3.17. Suspension**

- 3.17.1.** Suspension is the act of temporarily removing a Resident from all program activities for a period of time because the Resident's performance or conduct does not appear to be in the best interest of the patients or other medical staff.
- 3.17.2.** While a faculty member, Program Director, faculty chairperson, clinical coordinator, or administrative director of an affiliate may remove a Resident from clinical responsibility or program activities, only the Program Director makes the determination to suspend the Resident and the length (e.g. days) of the Resident's suspension.
- 3.17.3.** Depending on circumstances, a Resident may not be paid while on suspension.

## **IV. POLICY:**

- 4.1.** When a Resident fails to achieve the standards set forth by the program, decisions must be made with regard to notice of deficiency, suspension, remediation, non-promotion, non-renewal of appointment, and in some cases, dismissal. MSM is not required to progressively discipline Residents, but may determine the appropriate course of action to take regarding its Residents depending on the unique circumstances of a given issue.
- 4.2.** Residents engaging in conduct violating the policies, rules, bylaws, or regulations of MSM or its educational affiliates, or local, state, and federal laws regarding the practice of medicine and the standards for a physician in training may, depending on the nature of the offense, be dismissed.
  - 4.2.1.** Such misconduct will be considered a breach of the Resident Appointment Agreement or Reappointment Agreement.
  - 4.2.2.** In such instances, the Graduate Medical Education Office and Human Resources Department may be involved in the process of evaluating the violation.
- 4.3.** A Resident exhibiting unethical or other serious behaviors that do not conform to achieving the skills required for the practice of medicine may be summarily dismissed.
- 4.4.** Residents who have grievances that do not relate to a Resident's academic progression or misconduct shall submit these grievances according to the MSM Discrimination, Harassment, and Retaliation Policy.

**V. PROCEDURES:**

- 5.1. If any clinical supervisor deems a Resident's academic or professional performance to be less than satisfactory, the residency Program Director will advise the Resident to take actions to cure the deficiencies.
- 5.2. **Notice of Deficiency**
  - 5.2.1. The residency Program Director may issue a Notice of Deficiency to a Resident to give notice that academic or professional deficiencies exist that are not yet severe enough to require remediation, disciplinary action, or other adverse actions but that do require the Resident to take immediate action to cure the academic or professional deficiency.
  - 5.2.2. This notice may be concerning both progress in the program and the quality of performance.
  - 5.2.3. It is the responsibility of the Resident, with the express approval of the Program Director, to develop and implement a mechanism of corrective action.
- 5.3. **Remediation** will be used as an academic tool, if warranted.
  - 5.3.1. Residents will be provided with a notice of academic deficiencies and a reasonable opportunity to cure them with the expectation that the Resident's academic performance will be improved and consistently sustained.
  - 5.3.2. Developing a viable remediation plan could consist of the following actions:
    - 5.3.2.1. The resident must understand that the remediation is not a punishment, but a positive step and an opportunity to improve performance by resolving the deficiency. Remediation decisions shall not be subject to the formal appeals process.
    - 5.3.2.2. The Resident must prepare a written remediation plan, with the express approval of the Program Director as to form and implementation
      - 5.3.2.2.1. The plan shall clearly identify deficiencies and expectations for reversing the deficiencies, by competency.
      - 5.3.2.2.2. The remediation period must have a beginning and end date and may require the Resident to make up the time if the remediation cannot be incorporated into normal activities and completed during the current residency year.
      - 5.3.2.2.3. It is the responsibility of the Resident to take actions to meet all standards, and to take the initiative to make improvements as necessary.
    - 5.3.2.3. The length of remediation is variable, based on the individual situation; however, the Program Director should set a timed expectation of when improvement should be attained. The duration will allow the Resident reasonable time to correct the deficiency.

**5.3.2.4.** If remediation does not correct the deficiency, the residency Program Director may request further action including: continuation of remediation with non-promotion, non-renewal of appointment, or dismissal.

If the reasons for non-promotion, non-renewal of appointment, or dismissal occur within the last four (4) months of the Resident's appointment year, the program will provide the Resident reasonable notice of the reasons for the decision as circumstances reasonably allow.

**5.3.2.5.** The decision of the Program Director will be communicated to the Resident and to the Office of Graduate Medical Education.

**5.3.2.5.1.** The residency program will attempt to notify the GME Office in writing of all decisions affecting a Resident's continued progression in the program within three (3) days (72 hours) of the Program Director's decision.

**5.3.2.5.2.** The residency program will notify the Resident in writing of its non-promotion, non-renewal of appointment, or dismissal decisions within seven (7) days after the department chairperson notifies the Program Director of the department's final decision.

**5.4. Suspension** shall be used as an immediate disciplinary action because of a Resident's academic performance or misconduct. Suspension is typically mandated when it is in the best interest of the patients or medical staff that the Resident be removed from the workplace.

**5.4.1.** A Resident may be placed on unpaid suspension at any time for certain violations in the workplace.

**5.4.2.** Residents will be provided with a notice of academic deficiencies and a reasonable opportunity to cure them with the expectation that the Resident's academic performance will be improved and consistently sustained.

**5.4.3.** A Resident may be removed from clinical responsibility or program activities by a faculty member, Program Director, faculty chairperson, clinical coordinator, or administrative director of an affiliate. At his or her sole discretion, that individual can remove the Resident if he or she determines that one of the following types of circumstances may exist:

- a) The Resident poses a direct detriment to patient welfare.
- b) Concerns arise that the presence of the Resident is causing dysfunction to the residency program, its affiliates, or other staff members.
- c) Other extraordinary circumstances arise that would warrant immediate removal from the educational environment.

**5.4.4.** All acts of removal from clinical responsibility or program activities shall be documented by the initiating supervisor or administrator and submitted to the Program Director in writing within five (5) working days (Monday-Friday) after the date of the offense, explaining the reason for the Resident's removal and the potential for harm. Only the Program Director may place a Resident on suspension and decide the length of time of the suspension.

**5.4.5.** After a period of suspension is served, further action is required.

**5.4.5.1.** The Program Director and initiating supervisor (or administrator) shall review the situation to determine if the circumstances leading to the suspension require further disciplinary action.

**5.4.5.2.** Possible actions to be taken by the Program Director regarding a suspended Resident may be to:

- a) Return the Resident to normal duty with a Notice of Deficiency;
- b) Place the Resident on probation; or
- c) Request the Resident's dismissal from the program.

## **5.5. Probation**

**5.5.1.** A residency program may use this disciplinary action when a Resident's violations are associated with:

- a) Providing inappropriate patient care
- b) Lacking professionalism in the education and work environment that could bring harm to patients
- c) Negatively impacting healthcare team functioning
- d) Causing residency program dysfunction

**5.5.2.** A probationary period must have a definite beginning and ending date and be designed to specifically require a Resident to correct identified deficiencies.

**5.5.3.** The length of the probationary period will depend on the nature of the particular infraction and be determined by the Program Director.

**5.5.4.** Probation is not available as a remedy when a Resident violates local, state, or federal laws or otherwise engages in unethical professional practices.

**5.5.5.** Probation also shall not be used to replace the requirements of a remediation plan or other remediation standards.

**5.6. Failure to Cure Academic Deficiency**—if a resident fails to cure academic deficiencies through his or her own corrective action, remediation, probation, or other forms of provided academic support, the Program Director may recommend the following actions:

- a) Continued remediation—total remediation within an academic year shall not last more than six (6) consecutive months
- b) Non-promotion to next the PGY level
- c) Repeat of a rotation or other education block module
- d) Non-renewal of residency appointment
- e) Dismissal from the residency program

**5.7. Resident Appeal within Residency Program or Department**—the Resident may appeal the decision of the Program Director according to this policy.

**5.7.1.** All notices of dismissal from the residency program or a non-renewal of the Resident's appointment shall be delivered to the Resident's home address by USPS certified mail. A copy may also be given to the Resident on site, as convenient.

**5.7.2.** If the Resident wants to appeal the decision, he or she should communicate intent to do so in writing to the Program Director within seven (7) days upon receipt of the letter that identifies the decision.

**5.7.3.** The Program Director will notify the RAC of the appeal and the RAC will convene a meeting where the Resident and the Program Director can present information relating to the decision.

**5.7.3.1.** The Resident may bring an advocate, such as a faculty member, staff member, or other Resident.

**5.7.3.2.** Legal counsel is not permitted to attend the appeal because the process is an academic one and not a legal one.

**5.7.4.** The RAC will present its recommendation to the Program Director, who will then forward all the information concerning the appeal to the chairperson.

**5.7.5.** The chairperson will review all the materials and make the final departmental decision within seven (7) days of receipt of materials.

**5.7.6.** The department chair will communicate the final departmental decision to the Program Director.

**5.7.7.** The Program Director will then communicate the decision by certified letter to the Resident. This should occur within ten (10) days of the final decision.

**5.8. Appeal to the Dean and Executive Vice President**—the Resident may appeal the decision of the Program Director according to this policy.

**5.8.1.** The Resident shall have the right to appeal only the following adverse decisions:

a) Dismissal from the residency program

b) Non-Renewal of the Resident's appointment

**5.8.2.** If the Resident is unsuccessful in his or her hearing with the Department, he or she may submit a written request to the dean and executive vice president for a review of due process involved in the program's decision of dismissal or non-renewal of appointment. A request for appeal must be submitted in writing within five (5) working days of the notification by the residency Program Director to the Resident of the decision.

- 5.8.3.** The dean and executive vice president shall instruct the GME Office to form an ad-hoc panel to review the case and provide an advisory opinion as to whether the residency program afforded the Resident due process in its decision to dismiss or to not renew the Resident's appointment. This review is that of program protocol and documentation in the case. MSM's Designated Institutional Officer shall chair the ad hoc committee.
- 5.8.4.** The residency Program Director shall present the training documents and record of the proceedings to the ad hoc committee.
  - 5.8.4.1.** The ad hoc committee shall give the Resident an opportunity to present written or verbal evidence in his or her behalf to rebut the allegations that led to the adverse decision.
  - 5.8.4.2.** The Resident may bring an advocate, such as a faculty member, staff member, or other Resident.
  - 5.8.4.3.** Legal counsel is not permitted to attend the appeal because the process is an academic one and not a legal one.
- 5.8.5.** The ad hoc committee chair will submit a written report of the findings of the ad-hoc panel to the dean and executive vice president who will make the final determination regarding the status of the Resident.
- 5.8.6.** The final written determination by the dean and executive vice president may be that either:
  - a) The Resident is returned to the residency program without penalty or
  - b) The recommendation for dismissal or a non-renewal of appointment stands
- 5.8.7.** In the event that a recommendation for dismissal is confirmed, the Resident is removed from the payroll effective the day of the dean and executive vice president's decision.