

## ***Resident Performance and Evaluation Policy***

The following Performance and Evaluation Policy (hereinafter “ Performance Policy”) shall apply to all trainees at Jackson Health System/Jackson Memorial Hospital. The Performance Policy provides assurance that residents proceed along a continuum of competence as required by their specialty and complete the requirements for certification by their specialty board.

### **Definitions:**

*Trainee:* Any resident or fellow participating in a postgraduate medical program.

*Graduate Medical Education (GME):* The office that oversees trainees in GME, directed by the Designated Institutional Official (DIO) and a Director of Graduate Medical Education Programs (or GME Manager).

*DIO:* The designated institutional official oversees the GME programs and reports to the leadership of the sponsoring institution. The DIO also chairs the Graduate Medical Education Committee (GMEC).

*Collective Bargaining agreement (CBA):* Agreement between the Public Health Trust (PHT) and the Committee of Interns and Residents (CIR).

*Deficiency:* Inadequate performance in any of the Accreditation Council for Graduate Medical Education (ACGME) areas of general competencies, including patient care, medical knowledge, practice-based learning and improvement, interpersonal and communication skills, professionalism, or systems based practice, as expected for the trainee’s level of experience and education. If a deficiency is not identified and corrected by the program director providing regular feedback to the trainee, a *period of remediation* may be imposed. Deficiencies are not reportable events.

*Misconduct:* A lapse in ethical or moral behavior, irrespective of the trainee’s level of experience and education. Acts of misconduct are addressed with *disciplinary action* pursuant to the CBA and may be reportable events.

*Adverse Action:* Suspension, non-renewal, non-promotion, or dismissal of a trainee from his or her program. Adverse actions are generally reportable events.

*Reportable Events:* Those actions the program or institution must disclose to others upon request, including, without limitation, future employers, privileging hospitals, and licensing, and specialty boards.

*Program Director:* Individual responsible for assuring maintenance of the GME training program to standards established by the ACGME.

## PROCEDURE

### 1. TRAINING PROGRAM ASSESSMENT STRUCTURE AND PLAN

The program director for each training program has primary responsibility of monitoring the competence of the program's trainees, for recommending promotion and board eligibility, and, when necessary, imposing any remedial, adverse or disciplinary actions, as specified by the CBA. Trainees shall be evaluated on both the clinical and non-clinical requirements of the ACGME, or the certifying specialty Board or both. All trainees are expected to be in compliance with policies of Jackson Health System/Jackson Memorial Hospital and participating institutions, including but not limited to, the Compliance Code of Conduct and other policies on federal health care program compliance, duty hour restrictions and reporting, sexual harassment, moonlighting, infection control, and completion of medical records. A faculty clinical competency committee appointed by the program director assists the program director in these functions and meets regularly. When circumstances warrant, the membership of a clinical competence committee may be altered to avoid a potential conflict of interest, or to protect the privacy of the trainee.

### 2. PERFORMANCE REVIEWS

Each program director must meet with trainee at regular intervals to provide written summary performance reviews and feedback. The ACGME Residency Review Committee for each specialty may specify the frequency of such reviews; however, at a minimum, *they must occur twice a year*. The resident must sign and date such performance review to acknowledge receipt of the performance review.

### 3. PROMOTION TO A SUBSEQUENT LEVEL

Trainees deemed by a program director to have completed satisfactorily the requirements for a specific level of training will be promoted to the next level of responsibility unless the trainee is specifically enrolled in a training track of limited duration that is not designed to achieve full certification (e.g., a one-year preliminary position). No trainee may remain at the same level of training for more than 24 months, excluding any time taken for approved leaves. A trainee whose performance is deemed to be satisfactory will advance until the completion of the program or certification requirements.

### 4. DEFICIENCY or MISCONDUCT

#### A. Deficiency

1. Letter of Deficiency: If, after documenting written routine feedback, it is determined that a trainee is not performing at an adequate level of competence in any of the general competencies, or otherwise fails to fulfill the responsibilities of the program in which he or she is enrolled, the program director will issue a Letter of Deficiency to the trainee. The trainee must be informed in person and must be provided with a written copy of the decision that includes the following:
  - a. A statement identifying the deficiencies in any of the general competencies.
  - b. A plan for remedial action and criteria by which successful remediation will be determined.
  - c. The duration of the remedial period in which deficits are expected to be corrected. Ordinarily, this period will be at least three months (initial period).
  - d. Written notice that failure to meet the conditions of remedial action could result in additional remediation or further training time and/or suspension or dismissal from the program during any time.
  - e. Written and dated acknowledgement of receipt by the trainee of the Letter of Deficiency.
2. The GME office must receive a copy of the written document.
3. *If remedial action is extended beyond the initial period*, the competency of the trainee should be evaluated monthly, but no less frequently than every three months. If, at the end of the remedial action period the trainee's performance remains unsatisfactory, the trainee may be suspended or other adverse action may be initiated (see Sections 5C and 5D).
4. If the trainee successfully completes the remedial action, written documentation describing the satisfactory completion of all remedial action plans and requirements for continuation of training program must be included in the trainee's file. These episodes of deficiency are not reportable adverse actions and thus are not subject to GME due process requirements.

## B. Misconduct

1. When a trainee engages in behavior that is unethical, immoral, or criminal in nature, such as harassment, theft, fighting, dishonesty, breach of contract, the program director may choose to impose disciplinary action pursuant to the CBA rather than a period of remedial action. If misconduct is alleged or suspected, the program director should:
  - a. Meet with the individual(s) complaining of misconduct.
  - b. Meet with the trainee to advise the trainee of the existence of the complaint, to give the trainee an opportunity to respond to the

allegations, and to identify any potential witnesses to the alleged misconduct.

- c. Consult with the GME office to determine whether the hospital leadership, legal affairs or human resources or both should be contacted as appropriate based on the issues and the people involved. All allegations of sexual harassment will be reported immediately to human resources in accordance with the Jackson Health System/Jackson Memorial Hospital's policy against harassment.
- d. Upon consensus of the Program Director, GME and Human Resources, the trainee may be suspended from clinical or program activities (see below) with or without pay, pending the outcome of a full inquiry.
- e. Upon request of the trainee, or if the Program Director, GME, hospital leadership, or human resources decide the incident warrants more investigation, then a "Full Investigation" must be completed.

**Full Investigation:** A full investigation is an internal investigation of the allegation/incident by appropriate individuals, which may include GME, the Program Director, the hospital leadership, human resources, or others must be completed within 30 days. The Director of GME Programs oversees the investigation process. Factual results of the investigation will be prepared by the human resources and reported to the program director and the trainee for appropriate action.

1) If the full investigation results in a finding that no misconduct occurred, no action will be taken against the trainee. If trainee was suspended pending the inquiry, the trainee will be reinstated as per CBA and JHS policies. A letter documenting the findings of the full investigation will be placed in the trainee's file and the matter will be closed.

2) If the full investigation results in a finding that the trainee committed misconduct, the Program Director shall determine, in conjunction with the hospital leadership, GME, human resources, or other appropriate individuals, what action is appropriate under the circumstances, to remedy the situation. The Program Director may take actions including the following: a verbal or written warning; promote to the next PGY level; extension of training; suspension or dismissal from the program.

3) If after completion of the full inquiry new information about the specific incident becomes available, the Program Director or the trainee may request the investigation be reopened.

## 5. SUSPENSION AND DISMISSAL

*The GME office must be notified prior to enactment of any or all of the following:*

### A. Suspension of Clinical Activities

A trainee may be suspended from clinical activities by their program director, in consultation with HR and GME office, Chief of Service, the director of the clinical area to which the trainee is assigned, the Chief Medical Officer, or designee. This action may be taken in any situation in which continuation of clinical activities by the trainee is deemed potentially detrimental or threatening to health care operations, including but not limited to patient safety or quality of patient care, suspension or loss of licensure, or debarment from participation as a provider of services to Medicare and other federal programs' patients. Unless otherwise directed, a trainee suspended from *clinical activities* may participate in non-clinical program activities. A decision involving suspension of a trainee's clinical activities must be reviewed within three (3) working days by the program director and the appropriate chief of service to determine whether the trainee may return to clinical activities and if whether further action is warranted (including, but not limited to, counseling, remedial action, fitness for duty evaluation, or summary dismissal). The trainee may be suspended with or without pay, pursuant to the CBA and JHS policies.

### B. Program Suspension

A trainee may be suspended from all program activities and duties by their program director, Chief of Service, or any other person listed in Section 5A. Program suspension may be imposed for program-related conduct that is deemed to be grossly unprofessional; incompetent; erratic; potentially criminal; noncompliant with the Compliance Code of Conduct, federal health care program requirements, Corporate Compliance Agreement, or Public Health Trust /Jackson Health System policies and procedures ("noncompliance"); or is threatening to the well-being of patients, other trainees, faculty, or staff. A decision involving program suspension of a trainee must be reviewed within three (3) working days by the program director and GME office in consultation with human resources, Chief of Service, or program director to determine whether the trainee may return to some or all program activities and duties or if whether further action is warranted (including, but not limited to, career or academic advising, remedial action, fitness for duty evaluation, or summary dismissal). Suspension may be with or without pay per the CBA and JHS policies at the discretion of institution officials.

### C. Dismissal During or at the Conclusion of Remedial Action

A Letter of Deficiency in a training program constitutes notification to the trainee that dismissal from the program can occur at any time during or at the conclusion of remedial action pursuant to the CBA. Dismissal prior to the conclusion of a remedial action period may occur if the conduct that gave rise to the Letter of Deficiency is repeated or if grounds for program suspension or summary dismissal exist. Dismissal at the end of a remedial action period may occur if the trainee's performance remains unsatisfactory or for any of the foregoing reasons.

D. Summary Dismissal

For serious acts, including, but not limited to, acts of incompetence, impairment, unprofessional behavior, falsifying information, noncompliance, or lying, or if a trainee is listed as excluded on the Department of Health and Human Services' Office of Inspector General's "List of Excluded Individuals/Entities" or on the General Services Administration's "List of Parties Excluded from Federal Procurement and Non-Procurement Programs" or is discovered to have been convicted of a crime related to the provision of health care items or services for which one may be excluded under 42 USC 1320a-7(a) (an "excludable crime," i.e., criminal offenses related to governmentally financed health care programs, including health care fraud; criminal abuse or neglect of patients; and or felony controlled substance convictions related to the provision of health care), or for any other acts listed in the CBA and JHS policies, a program director or Chief of Service, or any person listed in Section 5A, may immediately suspend in consultation with the GME office and human resources, a trainee from all program activities and duties for a minimum of three (3) days and, concurrently, issue a notice of dismissal effective at the end of the suspension period. Summary dismissal may be issued without the trainee having received prior Letter of Deficiency, or having had a remedial action.

E. Notification of Suspension and Dismissal

The trainee must be notified in writing of the reason for and terms of suspension and dismissal, have an opportunity to respond to the action before the dismissal is effective, and receive a copy of the GME Appeals Process.

6. GME APPEALS PROCESS FOR ADVERSE (REPORTABLE) ACTIONS

In the event that a trainee (i) is not promoted, (ii) is suspended, (iii) is dismissed from a program, (iv) does not have his/her appointment/contract renewed, or (v) is the subject of any adverse action that is reported to the State Boards of Medicine, Dentistry, or a relevant specialty board, the trainee may appeal such non-promotion, suspension, dismissal, non-renewal of appointment/contract, or adverse action as follows:

## A. Committee Appeal

A trainee may initiate an appeal by submitting a written notice of appeal to the GME office, with a copy to the program director and Graduate Medical Education, within 14 working days of the date of the appealable action (hereinafter "adverse action"). A faculty committee, consisting of at least three experienced program directors will hear the appeal within fourteen calendar days after receipt of the notice of appeal and appointment of the review committee. *A member of the GME Office must be present during this hearing and record the findings of the committee.* The trainee may have a faculty advocate or CIR representative present and participate on the trainee's behalf at the hearing. It is the responsibility of the trainee to secure the voluntary participation of a faculty advocate or CIR representative. Prior to the hearing, the trainee must notify the DIO if a faculty advocate will accompany the trainee.

**Conflict of Interest:** No Committee member: (1) shall be in direct economic competition with the grievant; (2) shall have personal knowledge of the events resulting in the adverse action; or (3) have participated in the investigation or issuance of the recommended adverse action.

**Presentation of case:** At the appeals hearing, the trainee will present evidence in support of the appeal. The program director (or designee) will present a statement in support of the adverse action. At a minimum, the committee must review any relevant records, or other evidence supporting the adverse action. Any relevant matter upon which responsible persons customarily rely in the conduct of serious affairs shall be considered, regardless of admissibility of such evidence in a court of law.

**Discovery and Access to Documents:** The Rules of Civil Procedure defined by Florida law regarding discovery shall not apply to a hearing conducted under these Bylaws. The grievant shall be entitled to have access to all documents that were the basis of the adverse action; however, the trainee, his/her representative or any expert or witness must sign a confidentiality agreement in order to have access to these documents. If any of the documents contain protected health information, the trainee, his/her representative or any experts or witnesses must enter into a business associate agreement in order to have access to these documents. The trainee shall not be entitled to any documents or information that pertains to any practitioner other than him or herself. If the trainee divulges any confidential information he/she automatically forfeits his/her right to an appeal. This forfeiture is not appealable.

### **Witnesses and Others:**

1. The appeals Committee does not have subpoena powers and cannot compel the testimony of any witness on behalf of the grievant.

2. Any PHT employee, member of the medical staff or other person affiliated with the Public Health Trust/Jackson Health System may appear as a witness on behalf of the trainee on a voluntary basis. The Public Health Trust shall provide any necessary reassurances that the potential witness will not suffer any adverse action or consequences as a result of providing such testimony.
3. The witnesses shall be sequestered, except for a representative of the Medical Executive Committee/ Board Committee who is serving as the PHT's representative and any expert witness serving as a consultant to the trainee or program personnel??.
4. All other persons not essential to the conduct of the hearing, the prosecution of the case or defense of the case shall be excluded from the hearing.

**Record of proceeding:** The member of the GME Office present for the hearing will keep a record of the hearing proceedings.

**Report and Recommendation:** After presentation of evidence, the appeals committee will meet in closed session to consider the adverse action. The committee may uphold or reject the adverse action, or may impose alternative actions, which may be more or less severe than the initial action. The committee will submit its recommendation, in writing, to the DIO within 14 working days of the request for appeal, with a copy to the GME Office.

#### B. The DIO or Associate DIO

The DIO will review the committee's efforts and recommendations and make the following determinations:

1. Whether the trainee was provided due process according to this policy
2. Whether applicable Jackson Health System/Jackson Memorial Hospital and/ or program policies were fairly and appropriately applied, and
3. Whether sufficient evidence supports the adverse action or other action recommended by the appeals committee.

The DIO may uphold or reject the adverse action, may uphold or reject other actions recommended by the appeals committee, or may recommend alternative actions. The DIO will submit HIS decision to the trainee and the program director within thirty (30) calendar days of the notice of appeal. This decision will be considered final.

#### 7. OTHER CONSIDERATIONS

External rules, regulations, or law governs mandatory reporting of problematic behavior or performance to licensing agencies or professional boards. The fact that such a report is made is not a matter which may give rise to the appeal process; only the adverse action as specified by this section is appealable. When mandatory reporting of problematic behavior or performance occurs, external agencies will be notified of the status of any internal appeal regarding the matter reported and its outcome. Trainees should be aware that participation in the GME appeals process does not preclude investigation or action on the part of external entities.