

GME DUE PROCESS FOR ADVERSE ACTION

1. Residents and fellows (“trainees”) currently enrolled in a GME or dental education program sponsored by Nationwide Children’s Hospital (“NCH”) must use either the GME or NCH administrative process to appeal an adverse action. (See Adverse Action policy).
2. Trainees have a right to due process for an adverse action. The GME Resident and Fellow Performance Issues policy identifies circumstances (e.g., harassment, discrimination, legal and/or compliance violations) under which investigations of alleged of trainee misconduct use the NCH administrative process. In these cases, trainees’ due process rights are outlined in *HR Policy Corrective Action/Work Improvement (HR-ER-2)*.
3. This policy documents how NCH meets the following 3 key elements of GME due process specified by ACGME (August 2019 webinar):
 - a. Trainee notification of deficiency;
 - b. Opportunity for trainee to be heard and to identify how to correct/improve; and
 - c. Reasonable decision-making process.
4. If the Program Director (“PD”) determines that a trainee’s performance warrants an adverse action, the PD will notify the trainee in writing using the GME Performance Action Summary form. (See Resident and Fellow Performance Issue Policy). The written notification must include the reasons for the adverse action, expected improvements, and an Action Plan with expected results and timeline. The PD will also notify the Designated Institutional Official (“DIO”) and others as outlined in the Resident and Fellow Performance Issues Policy.
5. Trainees may request from the DIO written summaries of investigations that contributed to the adverse action. The trainee, Appeal Committee, or Appeal Review Committee are not given the detailed investigative report(s).
6. In order to complete the appeal process in a timely manner, trainees must be available for appeal-related communication and meetings with NCH staff conducting the investigation throughout the entire appeal process. Trainees must get prior approval from the DIO if they will be unavailable for a full day or longer.
 - a. **Appeal of Non-termination Adverse Action**
 - i. Trainees must notify their PD and DIO of the intent to appeal a non-termination adverse action in writing within 10 business days (Monday-Friday, excluding holidays) after the trainee received the written notice of the adverse action from the PD.

- ii. Trainees must submit their written appeal to the PD and DIO within 3 business days following written notification of intent to appeal.

b. Appeal of Termination Adverse Action

- i. Trainees are removed from all duties upon notification of termination.
- ii. Trainees' pay ceases effective the day of termination. If the Appeal Committee overturns termination, back pay will be negotiated with the DIO, in consultation with Legal Services and Human Resources, based upon the final disciplinary action.
- iii. Since trainees are not working or receiving pay, the termination appeals process are shortened to provide trainees with a speedy resolution.
- iv. Upon termination, trainees' NCH technology access is turned off. The DIO, PDs and trainees must agree on non-NCH methods of written and verbal communication. Trainees who need information from technology resources, e.g., EMR, for their appeal should contact the DIO to get needed information.
- v. Termination actions are not final until trainees have exhausted all their appeals rights. They are not reported to external agencies until final, unless otherwise mandated by law. External reporting is done by an approved Legal Services representative.
- vi. Trainees must notify their PD and DIO in writing of their intent to appeal within 2 business days after receiving their written termination notification.
- vii. Trainees must submit their written appeal to the PD and DIO within 3 business days following submission of their intent to appeal notification (maximum of 5 business days from PD notification of termination).

7. Appeal Committee

- a. An Appeal Committee ("AC"), chaired by the Vice Chair-Graduate Medical Education Committee ("GMEC"), or designee, shall chair the AC and hear the appeal.
 - i. The AC Chair shall appoint members to the AC.
 - ii. The AC Chair must notify the DIO of any real or potential conflicts of interest or other considerations that may impair their ability to fulfill this role within one business day. In the event of an actual or apparent conflict, the DIO shall appoint an alternate AC Chair.
- b. The Appeal Committee must include the following representation:
 - i. Chair: Vice Chair-GMEC or designee
 - ii. At least 3 NCH teaching faculty, at least 2 of whom are outside the Department/Section/Division of the appellant trainee.
 - iii. One trainee who is a member of Fellow Resident Advisory Committee ("FRAC") and not enrolled in the same program as the appellant trainee.

- iv. The AC Chair may identify an additional faculty member to serve as an alternative AC member in case an AC member is unable to serve on short notice.
 - v. The DIO, the PD, and the Associate/Assistant PD of the appellant trainee may not be a member of the AC.
 - vi. The AC Chair will assess conflicts of interest of potential AC members that may impair their ability to serve impartially. In the event of an actual or apparent conflict, the AC Chair shall appoint an alternate member.
8. Appeal Committee Timeline
- ◆ **Appeal of Non-termination Adverse Action**
 - The AC must meet within ten (10) business days of PD and DIO receipt of the written appeal from the trainee.
 - ◆ **Appeal of Termination Adverse Action**
 - The AC must meet within five (5) business days of PD and DIO receipt of the written appeal from the trainee.
9. Appeal Committee Hearing
- a. The AC Chair shall determine the agenda and timing of the hearing.
 - b. The PD and appellant trainee shall be invited to present information (written and/or verbal) pertaining to the adverse action at the appeal hearing.
 - c. The trainee may request up to 2 individuals to present information on their behalf at the AC hearing. Upon mutual agreement of the trainee and the AC Chair, the trainee may invite more individuals to present.
 - d. Other individuals may submit written information to the AC Chair. This information must be received at least one business day prior to the AC meeting.
 - e. The AC may request additional information or ask other individuals for input prior to and following the hearing to inform its decision-making.
 - f. In reaching its determination, the AC must consider, but is not limited to, information related to trainee's behaviors and impact of those behaviors on NCH, its staff, other trainees/students, and patients/ families/community.
 - g. An individual designated by the NCH Legal Services may take notes for the purpose of reference during AC deliberation. These notes are not an official transcript and the notes will not be provided to any participant in the hearing, other than the AC. They are destroyed once the appeal determination is made.
 - h. No electronic recording may be made of the hearing.
 - i. The hearing is not controlled by legal rules of evidence or procedure. Neither NCH nor the trainee may be represented by legal counsel at the hearing.
 - j. The AC may uphold the adverse action or return the adverse action to the DIO and PD for reconsideration with or without guidance on a different action.
 - k. The AC Chair shall communicate the AC's determination in writing to the trainee, PD, DIO, and Chief Medical Officer (CMO) within 3 business days of the hearing.

10. Appeal of AC Determination

- a. If the trainee disagrees with the AC determination, the trainee must submit a written intent to appeal to the DIO, with a copy to the CMO, within 2 business days of receipt of the AC determination.
- b. The trainee must submit the written appeal to the DIO, with a copy to the CMO, within 7 business days of submission of intent to appeal.
- c. The trainee's appeal of an AC's decision must be based on new information not provided to the AC and/or on disagreement with the AC's interpretation of standards, guidelines, and/or policies that govern the training program.
- d. If the CMO determines that the written appeal presents new information and/or alleges that the AC incorrectly interpreted standards, guidelines, and/or policies, the CMO will convene an Appeal Review Committee (ARC).
- e. If the CMO determines that the written appeal failed to present new information and/or concurs with the AC's interpretation of standards, guidelines, and/or policies, the CMO will notify trainee, PD, and DIO within 5 business days that the appeal is denied and that the AC determination is final.

11. Appeal Review Committee

- a. An ARC shall be appointed and chaired by the CMO, or designee, to hear the second appeal.
- b. No one who served on the AC nor individuals who were substantively involved in the dispute resolution, information gathering, and/or decision processes of the appellant's case may serve on the ARC.
- c. ARC Membership includes:
 - i. Chair: CMO or designee
 - ii. NCH Physician-in-Chief or Surgeon-in-Chief, whomever is most applicable to the trainee's program
 - iii. PDs from at least 2 programs other than that of the appellant trainee
 - iv. One trainee who is a member of the FRAC and not enrolled in the same GME program as the appellant trainee. If no FRAC member is eligible to serve, the Chair shall appoint an NCH trainee member currently active in a training program other than that of the appellant.

12. Appeal Review Committee Timeline

- ◆ The ARC must meet within 10 business days of DIO's receipt of the trainee's written appeal of the AC decision.

13. Appeal Review Committee Hearing

- a. The ARC Chair shall determine the agenda and timing of the hearing.
- b. The trainee's PD, DIO, and AC Chair may present written or verbal information relative to the appealed action.
- c. The trainee may:

- i. present written or verbal information relevant to action and basis for appeal;
 - ii. be accompanied by a faculty member of their choice, as an advocate;
 - iii. invite up to 2 faculty, trainees, or other health care professionals to provide relevant information. Based on mutual agreement of the trainee and ARC Chair, the trainee may invite more individuals to present.
 - iv. Additional individuals may submit written information on behalf of the trainee for consideration by the ARC.
 - d. The ARC may request additional information or ask individuals for input prior to and following the hearing to aid in making its determination.
 - e. An individual designated by the NCH Legal Services may take notes for the purpose of reference during ARC deliberation. These notes are not an official transcript and the notes will not be provided to any participant in the hearing, other than the ARC. They are destroyed once the appeal determination is made.
 - f. No electronic recording may be made of the hearing.
 - g. The ARC hearing is not controlled by legal rules of evidence or procedure. Neither NCH nor the trainee may be represented by legal counsel at the hearing.
 - h. The ARC Chair shall prepare a written appeal review determination.
 - i. The ARC Chair must forward the ARC's determination in writing to the appellant trainee, PD, and DIO within 3 business days of the hearing.
 - j. The decision of the ARC is final.
14. If the trainee does not submit an AC or ARC appeal in writing within the timeline(s) specified above, or if the trainee resigns from or otherwise leaves the program at any point in the appeal process, the original decision of the PD is final.
15. Upon mutual agreement of both the trainee and the Committee Chairs, these timelines may be modified.
16. Trainees may use only one appeal process. If trainees have used the GME Due Process, they may not appeal through the NCH Medical Staff or NCH Administrative Grievance process.
17. After all appeals have been exhausted, the PD and DIO will review the final determination with the Chief Legal Officer to determine what, if any, additional notifications are required, e.g., State Medical Board or Educational Commission for Foreign Medical Graduates.

Approved by the GME Committee: 10/26/1994; 6/11/1997; 3/8/2000; 12/16/2004;
12/17/2007; 12/15/2010; 12/6/2013; 12/20/2017; 4/16/2019; 3/18/2020