

Departmental Policy & Procedure Title	Disciplinary Action and Due Process Policy and Procedure - GME	Policy ID	11324
Keywords	Disciplinary, Action, Misconduct, GME, Suspension, Probation, Dismissal, Due Process, Appeal, Notice		
Department	Graduate Medical Education		

I. Purpose of Policy

The purpose of this policy and procedure is to establish disciplinary action and due process policy and procedures for Dartmouth-Hitchcock (Mary Hitchcock Memorial Hospital-sponsored) Graduate Medical Education (“GME”) training programs accredited by the Accreditation Council for Graduate Medical Education (“ACGME”) to follow when a resident or fellow (collectively referred to herein as “Resident”) in such a program engages in Misconduct, as defined below.

This policy does not apply to academic remediation of a Resident nor to general grievances. Refer to Academic Remediation and Due Process Policy and Procedure – GME (Policy ID 11321) and General Grievances Policy – GME (Policy ID 11307).

II. Policy Scope

This policy applies to all ACGME-accredited residency and fellowship programs at Dartmouth-Hitchcock.

III. Definitions

Administrative Leave: A period of time in which a Resident is placed on leave, with or without pay. This action is not disciplinary in nature and therefore cannot be grieved or appealed. A Resident on Administrative Leave may not perform any work-related duties, including but not limited to, engaging in patient care and may not attend work-related events or activities. While on Administrative Leave Residents may not use Educational Allowance funds and will not be reimbursed for any expenses incurred while on leave without prior written approval from the GME Office.

Designated Institutional Official (DIO): The individual in a sponsoring institution who has the authority and responsibility for all the ACGME-accredited GME programs.

Disciplinary Action: Any of the following actions taken in response to a Resident’s Misconduct: Probation, Suspension, Dismissal from a program.

Disciplinary Action Notice: A written notice of recommendation for Disciplinary Action using the GME Office’s Disciplinary Action Notice template prepared by the Program Director in consultation with the DIO or their designee and the Office of General Counsel.

Dismissal: A permanent separation of the Resident from the program resulting in termination of the Resident's employment with Dartmouth-Hitchcock.

Misconduct: Conduct by a Resident that violates workplace rules or policies, applicable law, or widely accepted societal norms. Examples of misconduct include, but are not limited to: a) Unethical conduct, such as falsification of records; b) Illegal conduct (regardless of filing of criminal charges or criminal conviction); c) Sexual misconduct, sexual harassment, discrimination or harassment that violates

Dartmouth-Hitchcock policy, or serious disruptive conduct that violates Dartmouth-Hitchcock policy; d) Workplace violence; e) Unauthorized use or disclosure of patient information; f) Violation of Dartmouth-Hitchcock or other applicable policies or procedures, including without limitation the Code of Ethical Conduct and the Substance Abuse and Drug-Free Workplace Policy; g) research misconduct.

Notice of Concern: Documentation of a Resident's engagement in Misconduct that does not rise to the level of requiring Disciplinary Action; the Notice of Concern states the type of Misconduct, requirements to rectify the Misconduct, and possible outcomes if the Misconduct continues or is repeated. A Notice of Concern does not need to precede Disciplinary Action. A Notice of Concern is not considered Disciplinary Action and a Resident cannot grieve or appeal a Notice of Concern.

Suspension: A time period in which a Resident is not allowed to participate in their training program. Time spent on Suspension does not count towards the completion of the program requirements. During a Suspension, the Resident is placed on administrative leave, with or without pay, as deemed appropriate by the program depending on the circumstances.

Probation: A temporary modification of a Resident's participation in or responsibilities within the training program. Generally, a Resident continues to fulfill training program requirements while on probation, subject to the specific terms of the probation. The Program Director has wide discretion based on their professional judgment to determine the terms of Probation. Probation may include, but is not limited to, special requirements or alterations in scheduling a Resident's responsibilities, a reduction or limitation in clinical responsibilities, or enhanced supervision of a Resident's activities.

Program Director: The individual designated with authority and accountability for the operation of a GME residency/fellowship program in compliance with all applicable ACGME program requirements.

Resident: Any resident or fellow physician in an accredited graduate medical education program at Dartmouth-Hitchcock.

IV. Policy Statement

Disciplinary Action

Program Directors undertakes Disciplinary Action in response to a Resident's Misconduct in accordance with this policy and procedure.

A Resident who receives a notice of recommendation of Disciplinary Action is permitted to appeal the recommended action in accordance with the procedure outlined herein.

Dartmouth-Hitchcock prohibits retaliation against an individual who, in good faith, appeals a Disciplinary Action or participates in the review or resolution of a Disciplinary Action under this policy and procedure.

A. Administrative Leave Pending Investigation

A Resident may be placed on immediate administrative leave when a Program Director and DIO or their designee determine that immediate action is required prior to completion of a review or investigation of possible Misconduct, in order to protect the health and safety of patients, staff or other persons, or the interests of Dartmouth-Hitchcock. In this event, the Office of General Counsel and Employee Relations should be alerted. This action is not disciplinary in nature and therefore cannot be appealed. This type of leave is intended to be a short-term measure to allow for a review of the underlying concern and determination as to whether Disciplinary Action is warranted. The Resident continues to be paid their stipend and maintain elected medical/dental benefits while on administrative leave under these circumstances.

B. Disciplinary Action

Disciplinary Action is issued to a Resident as the result of Misconduct. Disciplinary Actions may be appealed pursuant to the procedure set forth below.

Misconduct may warrant Disciplinary Action, up to and including Dismissal, regardless of whether a Resident ever received or was subject to any prior form of Disciplinary Action.

C. Issuance of Disciplinary Action Notice

1. When a Program Director determines that Disciplinary Action is warranted, the Program Director should consult with the DIO. In making a determination of what Disciplinary Action to recommend, the Program Director should consider the totality of circumstances as then known, including but not limited to, the severity of the Resident's behavior, potential for patient harm, prior attempts at behavior modification and the results of these attempts, and the Program Director's experience and judgment. The Program Director and DIO should contact the Office of General Counsel and/or Human Resources Department for assistance as necessary or helpful.

If the Program Director determines that Disciplinary Action is not warranted, the Program Director may consider issuance of a Notice of Concern.

2. If deemed necessary and/or as required by Dartmouth-Hitchcock policy and procedure (for example, as may be required by the Non-Discrimination and Anti-Harassment Policy), an internal investigation of the Misconduct should occur, prior to the decision to recommend Disciplinary Action.
3. The Program Director meets with the Resident to discuss the Misconduct that occurred and provides the Resident an opportunity to be heard regarding the Misconduct. It is advisable but not required for another faculty member or an individual from the GME Office to attend the meeting. For any occurrence of serious Misconduct, it is advisable that a member of the Human Resources Department attend the meeting.
4. Following a determination that a recommendation for Disciplinary Action should be issued, the Program Director prepares a written notice of recommendation of Disciplinary Action utilizing the GME Office's Disciplinary Action Notice template. This Disciplinary Action Notice is reviewed by the DIO or their designee in consultation with the Office of General Counsel. Following acceptance of the Program Director's recommendation by the DIO or their designee, the Disciplinary Action is issued to the Resident. The Disciplinary Action Notice for the Resident should include the following items:
 - The specific Disciplinary Action to be taken

- A description of the Misconduct that is the basis for the Disciplinary Action
 - The specific improvement and/or corrective action that is required, unless the Disciplinary Action is Dismissal
 - Notice of the right to appeal, along with a copy of this policy.
5. The Disciplinary Action Notice should be signed by the Program Director and delivered by the Program Director to the Resident in person, if possible. The Resident should be requested to co-sign the notice to acknowledge receipt. If hand delivery is not possible, the Disciplinary Action Notice is emailed to the Resident and mailed to the Resident's home address by certified mail/return receipt requested or by national overnight courier service. A copy of the signed Disciplinary Action Notice is forwarded to the GME Office. The GME Office uploads the document to the Resident's file in MedHub and forwards a copy to Employee Relations.

D. Administrative Leave Pending Appeal/Decision

The Program Director may remove the Resident from participation in the program pending expiration of the time frame to request appeal and final resolution of the appeal. In making a determination as to whether to remove the Resident from the program pending final resolution, the Program Director should consult with the DIO and take into account whether the Resident's continued participation could endanger the health or wellbeing of patients, staff, or others. The Program Director should also consider the nature of the underlying concern giving rise to the Disciplinary Action (i.e., an allegation of serious Misconduct tends to weigh in favor of removal from participation pending resolution). In this event, the Office of General Counsel and Employee Relations should be alerted. This action is not disciplinary in nature and therefore cannot be appealed. This type of leave is intended to be a short-term measure until there is a final decision on the Disciplinary Action and the appeal (if invoked by the Resident) is final. The Resident continues to be paid their stipend and maintain elected medical/dental benefits while on administrative leave until there is a final decision on the Disciplinary Action and the appeal (if invoked by the Resident) is final.

E. Disciplinary Action Appeal Procedure

A Resident may appeal a Disciplinary Action. No report of Disciplinary Action to any outside entity, including but not limited to any certifying body, professional association, or other training program, may be made until the appeal process has concluded or any appeal rights have expired, unless any such disclosure is authorized in writing by the Resident or disclosed pursuant to compulsory legal process, in which case the Office of General Counsel should be consulted prior to such disclosure.

The foregoing does not prevent the Program Director or GME Office from notifying necessary persons or entities that the Resident is on leave for purposes of ensuring appropriate patient coverage.

The recommended Disciplinary Action becomes final at such time as: the time frame for request for an appeal expires and the Resident has not submitted a request for an appeal; the Resident withdraws an appeal request; or the appeal process concludes and the hearing panel upholds or modifies the recommended Disciplinary Action.

1. Initiating the Appeal

a. Filing of Appeal with Graduate Medical Education Office:

- To initiate the appeal process, the Resident must submit a written request for appeal to the DIO within ten (10) days of receipt of the notice of recommendation

of Disciplinary Action. Notification must occur in writing by the end of business on the tenth and final day (5:00 pm ET).

- Notice of request for appeal may be submitted by the Resident utilizing internal Dartmouth-Hitchcock electronic mail. After this time period, the Resident's right to appeal is forfeited and the recommended Disciplinary Action shall become final.
- b. Convening and Constitution of Ad Hoc Appeal Panel: Within ten (10) days of receipt of the request for appeal by the DIO, the DIO or their designee appoints an ad hoc review panel to hear the Resident's appeal. The DIO or their designee selects and forms a panel consisting of the DIO or their designee, the Chief Medical Officer or their designee, a resident or fellow (not from the clinical department of the program in which the Resident participates), and two Program Directors (not from the clinical department of the program in which the Resident participates) or one Program Director and one physician faculty member (not from the clinical department or program in which the Resident participates) (hereafter called the "Panel").
- c. Panel Chair: The Panel is chaired by the DIO or their designee (the "Panel Chair"). No person who has actively participated in the initiation or recommendation of the Disciplinary Action or who has personal direct knowledge of the facts underlying the basis for the proposed Disciplinary Action is appointed to the Panel. Personal direct knowledge means that the person has either witnessed the facts in question underlying the proposed adverse action, or has first-hand knowledge of the Resident's performance (e.g., participated in evaluation of the Resident and such evaluation is a basis for the proposed Disciplinary Action).
- d. Scheduling of Hearing: The GME Office schedules the appeal hearing and notifies the Panel of the hearing date. The appeal hearing should occur within fifteen (15) days of appointment of the Panel. The Panel Chair may, upon written request of either the Resident or the Program Director, for good cause shown, or on their own for other reasonable reasons, extend or reschedule the hearing date. Any extension of the hearing date requires the generation of a new hearing notice.
- e. Notice of Hearing: The GME Office sends a hearing notice to the Resident and Program Director. The hearing notice contains the names of the Panel members; the date, time, and location of the appeal hearing; and the deadline to submit evidence. The GME Office sends the notice at least ten (10) days prior to the hearing date. This notice requirement to the Resident may be met by regular US Postal Service with a copy to the Resident's Dartmouth-Hitchcock e-mail address. Notice to the Program Director may be accomplished via Dartmouth-Hitchcock email. The DOI or their designee reserves the right to make necessary changes to the hearing panel membership after distribution of the hearing notice should a need arise.
- f. Withdrawal of Appeal: The Resident may, at any time, withdraw the appeal by informing the DIO in writing of their decision to withdraw the appeal. The withdrawal of the appeal shall become binding immediately upon receipt of a withdrawal of the appeal by the DIO. Once withdrawn, an appeal may not be reinstated.

2. Evidence

- a. Any written evidence that the Resident or the Program Director wishes the Panel to consider must be submitted to the GME Office at least five (5) days prior to the appeal hearing date, including written statements solicited of others not invited to speak. Failure to submit evidence in the time and manner required by the GME Office may result, at the discretion of the Panel

Chair, in the material not being considered by the Panel.

- b. **Written Statements:** The Resident and Program Director may also ask others not invited to speak to submit written statements which must be submitted to the GME Office at least five (5) days prior to the hearing date. Failure to submit written statements in the time and manner set forth herein may result, at the discretion of the Panel Chair, in the material not being considered by the Panel.
- c. **The GME Office facilitates the exchange of evidence between the Resident and the Program Director and provides copies of all evidence to the Panel in advance of the hearing.**
Witnesses: The Resident and the Program Director may invite up to three (3) witnesses each to present before the Panel. The names and titles of all witnesses must be submitted to the GME Office at least five (5) days prior to the hearing date.
- d. **Resident Support:** The Resident may invite one (1) individual to accompany them during the Hearing. The individual can be a Dartmouth-Hitchcock employee or a family member but may not be legal counsel. The individual can remain present during the entire Hearing and the Resident may confer with them during the proceeding. The support person may not address the Panel during the Hearing. The support person's name and title (or relationship to the Resident) must be submitted to the GME Office at least five (5) business days before the hearing date.

3. Appeal Hearing

- a. The Resident must be physically present at the hearing. Failure by the Resident to be present in person shall be deemed a withdrawal of the appeal by the Resident.
- b. The Panel Chair has wide discretion with respect to conducting the appeal hearing. In general, appeal hearings proceed according to the following format:
 - The Program Director may make a presentation to the Panel up to twenty (20) minutes. The Program Director then has an opportunity to present witnesses. The time allotted for witnesses will be an additional 20 minutes in aggregate.
 - The Resident may make a presentation to the Panel up to twenty (20) minutes. The Resident then has an opportunity to present witnesses. The time allotted for witnesses will be an additional 20 minutes in aggregate.
 - The Program Director and the Resident each have the opportunity to ask questions of the other's witnesses.
 - The Program Director and the Resident each have up to ten (10) minutes to respond to the statements made by the other.
 - At any time during the hearing, the Panel may ask questions of witnesses, the Resident and/or the Program Director.
 - The Panel may also, at its sole discretion and without special notice, recess the hearing and reconvene later in order to study new evidence presented during the hearing.
- c. Neither the Resident nor the Program Director may be assisted or represented during the appeal hearing by counsel. Nothing in this policy is construed as prohibiting either the Program Director or the Resident from soliciting the advice of counsel at any time before or after the hearing. No inference may be drawn against an individual as a result of that individual's having sought the advice of counsel.

- d. Appeal hearings are confidential. Only participants as outlined in this policy and Panel members may attend. The hearing may not be audio or video recorded, though general minutes are maintained by the Panel Chair or its designee. To the greatest extent permitted by law, hearing minutes shall be confidential and protected under New Hampshire Quality Assurance statutes or other state and federal confidentiality laws.
- e. The hearing is not controlled by legal rules of evidence or procedure. The Panel considers such evidence as reasonable persons are accustomed to rely on in the conduct of serious affairs. The Panel decides all other procedural matters not specified in this policy. The Panel and Dartmouth- Hitchcock may rely on and accept as true, any finding of fact contained in a final decision by the applicable licensing, certifying, or regulatory authority.

4. Deliberation and Decision

- a. Following the appeal hearing, the Panel deliberates privately.
- b. If the Panel determines that additional meetings are required after the initial appeal hearing above, a final determination by the Panel must be made within twenty (20) days of the initial hearing meeting.
- c. The final decision as to whether to uphold, modify, or reverse the proposed Disciplinary Action is made by a majority vote of the Panel members. A decision to uphold the recommended Disciplinary Action may be made by the Panel upon a finding that the recommended Disciplinary Action is reasonable under the circumstances.
- d. The Panel prepares a written decision setting forth its conclusions and reasoning in support of those conclusions.
- e. The Panel's decision is sent to the Resident, the Program Director and the DIO within ten (10) days after final determination of the Panel.
- f. The decision of the Panel shall be final and binding.
- g. The Panel's decision must be documented in the Resident's file in MedHub.

5. Legal Action

- a. No legal action concerning Dismissal may be brought by a Resident unless and until:
 - The Resident has filed a written request for an appeal of the recommended Disciplinary Action following the procedure and within the time prescribed above; and
 - The Resident was notified in writing of the decision of the Panel, or the Panel failed to take any action on the Resident's written request for appeal within the time prescribed.

6. Time Limits and Computation of Time

- a. Time Limit: Time limits set forth in this policy must be adhered to by both the Resident and Dartmouth-Hitchcock unless extended for good cause at the discretion of the DIO or their designee. A Resident who fails to meet the time limits for submitting a request for an appeal hearing shall forfeit their right to an appeal. A Resident who fails to appear at a hearing is deemed to have withdrawn the appeal. In either case (failure to file an appeal or failure to appear) further legal action is precluded.

- Deadlines are by 5:00 pm ET.
- b. Computing Time: The following rules apply in computing any time period specified in this policy:
- When the period is stated in days or a longer unit of time
 - Exclude the day of the event that triggers the period.
 - Count every day, excluding intermediate Saturday, Sunday, and legal holidays.
 - Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday
 - If the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.
 - Legal holidays are those designated by Dartmouth-Hitchcock policy.

Summary of Events and Timing for the Appeal Process

Event	Related Time Frame Requirement
Initiating Appeal	Resident must submit request for appeal within 10 days after receipt of notice of recommendation of Disciplinary Action
Appointment of Appeal Panel	Within 10 days of receipt of the appeal request, DIO appoints the Appeal Panel
Appeal Hearing	Occurs generally within 15 days after the appointment of the Appeal Panel
Notice of Appeal Hearing	GME Office sends the Notice to Resident and Program Director at least 10 days prior to the appeal hearing date
Submission of Evidence, Witnesses & Support Person	Resident and Program Director submit evidence and names of witnesses and support person (Resident option only) at least 5 days prior to the appeal hearing date
Notice of Decision	Panel's decision sent to the Resident, the Program Director and the DIO within 10 days after final determination of the Panel unless Panel requires additional meeting time (then 20 days after the initial appeal hearing meeting).

F. Reporting to the New Hampshire Board of Medicine

Under New Hampshire law, certain actions involving physician discipline or adverse action must be reported to the Board of Medicine. In addition, behavior incompatible with the role of a physician

including illegal, immoral or unethical behavior must also be reported to the Board of Medicine.

Required reports shall be made by Dartmouth-Hitchcock following the conclusion of the appeal process, if invoked by the Resident, or following conclusion of the time period for the Resident to request an appeal. The DIO is designated as the Dartmouth-Hitchcock representative who makes required reports in connection with GME matters to the New Hampshire Board of Medicine. The DIO is encouraged to consult with the Office of General Counsel for guidance in making required reports.

V. References N/A

Responsible Owner:	Graduate Medical Education (GME)	Contact(s):	Karen Miller
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