

University of Colorado School of Medicine

Graduate Medical Education

Policy: Remediation, Disciplinary Action and Grievance Policy		
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In this document, “Resident” refers to both specialty Residents and subspecialty Fellows.

REMEDICATION & DISCIPLINARY ACTION POLICY

The purpose of the policy is to describe the Graduate Medical Education guidelines to address any **Remediation** (which includes Focused Review, Suspension from clinical responsibilities or academic actions such as Non-Promotion due to failure to meet GME USMLE Policy or specialty board requirements) and **Disciplinary Action** (Probation, Suspension from the program, Non-Renewal or Termination). The Program Director, Program Clinical Competency Committee, Department Chair or Division Head and the resident should attempt to resolve problems with a resident’s performance and/or behavior on an informal basis prior to invoking the procedure set forth below.

All “written notification” referred to in this policy shall be by hand delivery or email.

Program Directors have the primary responsibility to monitor the resident’s progress and take appropriate academic and administrative disciplinary actions based on the resident’s performance as recommended by the Clinical Competency Committee and in accordance with all ACGME core competencies.

The Program Director, after consultation with the Associate Dean for Graduate Medical Education may proceed under this policy to address deficiencies in resident performance.

All written notices of Focused Review or Disciplinary Action (Probation, suspension from the program, renewal without promotion, non-renewal or termination) given to a resident must be reviewed by the Associate Dean for GME who may consult with University Counsel.

REMEDICATION

Focused Review:

1. Focused Review is used as remediation tool to provide a written constructive plan when ongoing and/or significant deficiencies in a resident’s performance or behavior are noted by the program’s Clinical Competency Committee or the Program Director.
2. Focused Review allows the resident to remain in Good Standing and continue active participation in the program while addressing the concerns and deficiencies identified in the written notice of Focused Review.
3. A remediation plan will be issued to strengthen the resident’s performance deficiencies that may cause disruption to a resident’s progression or continuation within the program.
4. Focused Review is intended as an unofficial remedial action. However, if the University is asked by an outside entity as part of licensing or credentialing request information related to the Focused Review status may need to be disclosed.
5. Neither the placement on, nor the failure of Focused Review is grievable under the Grievance Policy.

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ADMINISTRATIVE AND ACADEMIC DISCIPLINARY ACTIONS:

Probation:

1. Probation is used when ongoing and/or significant deficiencies in a resident's performance or behavior are noted by the program's Clinical Competency Committee, Program Director, or Department Chair and/or Section Head. A resident may be placed on Probation for any conduct or behavior that is determined to fall below accepted standards, however, the following issues **require** that a resident be put on Probation unless the Associate Dean for GME grants an exception:
 - a. Known or suspected drug or alcohol abuse
 - b. Conviction of a felony. Conviction means the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence. A resident who has been charged with a felony or other crime may be placed on Probation at the discretion of the Program Director, in consultation with the Associate Dean for GME.
 - c. Engaging in a sexual or romantic relationship with a current patient or a patient that has received care from the resident anytime in the previous 6 months
 - d. Falsifying records related to patient care including but not limited to medical records or other documents arising from the provision of medical care
 - e. Engaging in conduct that places a patient's safety at risk and is found to have resulted from a conscious disregard of patient risk by willfully ignoring safety steps
 - f. Having been found to have intentionally violated the Health Insurance Portability and Accountability Act (HIPAA) as determined by the appropriate HIPAA Privacy Official
 - g. Having been found to have violated University policy, including but not limited to sexual misconduct, harassment, scientific misconduct, workplace violence, and bullying.
2. The intent of Probation is to allow the Resident to continue active participation in the program while addressing the concerns and deficiencies identified in the written notice of Probation.
3. All residents placed on Probation will be issued a remediation plan for the purpose of identifying areas of weaknesses and strategies for performance improvement. The placement on Probation and the completion of a remediation plan may cause delay or disruption to a resident's progression or continuation within the program.
4. The period of Probation shall be specified in the Probation letter and normally should be a period of time appropriate to achieve the necessary performance or behavioral improvements. However, there may be instances where it is appropriate for the period to be as long as 12 months. The Program Director may determine whether the resident may receive credit for activities performed during the probationary and remediation period.
5. A resident placed on Probation is required to meet with the Associate Dean for GME.
6. In some circumstances such as professional ethical misconduct or substance abuse, a resident may be placed on Probation indefinitely through the remainder of the training program. The mentor and Program Director shall meet with the resident regularly during the probationary period to formally review the resident's progress. (Meetings may be held more frequently if deemed necessary.)
7. While on Probation, all moonlighting privileges and out-of-town electives for the resident will be suspended.

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8. During and at the end of the probationary period, the Program Director will review the resident's progress and determine whether satisfactory improvement has been made based on information obtained from the Clinical Competency Committee as well as various sources and results relating to terms of remediation outlined in the Letter of Probation, which may be solicited from faculty, staff and peers of the resident. If improvement has been unsatisfactory during the probation period, the resident may be (1) continued on Probation for a specific period of time not to exceed an additional six months or (2) terminated.
9. A resident who fails to meet the conditions of remediation or who demonstrates a recurrence of unsatisfactory performance may be subject to further disciplinary action, including termination.
10. The placing of a resident on Probation is not grievable under the Grievance Policy.
11. A resident on Probation is not in good standing.

Suspension from Clinical Service Responsibilities:

1. Suspension from clinical responsibilities involves removal from clinical service responsibilities for an indefinite period of time, usually not to exceed 30 days, without prior notice or the probationary/remedial period described above due to significant performance deficiencies related to patient safety. While suspended from clinical responsibilities, the resident may be required to meet non-clinical expectations for continued learning such as conferences, reading, and research.
2. Immediate suspension from clinical service responsibilities may be imposed at the discretion of the Program Director, Clinical Competency Committee, Department Chair and/or Section Head, or Associate Dean for GME.
3. Short-term paid suspension from clinical responsibilities may be granted by the Associate Dean for GME.
4. The Program Director will ensure communication of a resident's clinical suspension is made to site director(s) and the GMEC hospital liaison responsible for resident education at the clinical site at which the precipitating event(s) occurred and all other relevant parties in a timely manner.
5. Suspension from clinical service responsibilities is not grievable under the Grievance Policy.

Suspension from the Program:

1. Suspension from the program involves removal from the program for an indefinite period of time without prior notice due to serious deficiencies in knowledge, performance, or behavior.
2. The decision to suspend a resident from the program may be made at the discretion of the Program Director, Clinical Competency Committee, and the Department Chair and/or Section Head with the prior approval of the Associate Dean for GME.
3. During the period of suspension from the program, usually not to exceed 30 days, the Program Director, Clinical Competency Committee, Department Chair and/or Section Head, and Associate Dean for GME must determine whether the resident should be reinstated to the program or terminated. The GMEC hospital liaison responsible for resident education at relevant clinical sites will be consulted to determine if the resident can return for training at that clinical site.
4. Suspension from the program is grievable under the Grievance Policy and Procedure.

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Renewal Without Promotion:

1. Renewal without promotion means the resident will not be promoted to the subsequent PGY-year at the completion of the current year of training.
2. Renewal without promotion should be used when a resident has not been able to demonstrate the knowledge, skills, or behaviors required to advance to the next level of training and responsibility.
3. Upon determination of the Program's Clinical Competency Committee and approval of the Department Chair and/or Section Head, Program Directors are required to provide the resident with a written notice of the intent to renew without promotion no later than four months prior to the end of the resident's current agreement. If the primary reason/s for the renewal without promotion occurs within the four months prior to the end of the training agreement, the Program Director will provide the resident with as much written notice of the intent not to renew as the circumstances allow.¹
4. Renewal without promotion is grievable under the Grievance Policy and Procedure.

Non-Renewal:

1. Non-Renewal means the resident will not be offered a contract for the next academic year or training period. Non-renewal decisions are made by the Program Director with advice from the program's Clinical Competency Committee and the approval of the Department Chair and/or Section Head.
2. The resident will receive credit for the portion of the training program successfully completed, as determined by the Program Director.
3. Program Directors are required to provide the resident with a written notice of intent not to renew the resident's training agreement no later than four months prior to the end of the resident's current agreement. If the primary reason/s for the non-renewal occur within the four months prior to the end of the training agreement, the Program Director will provide the resident with as much written notice of the intent not to renew as the circumstances allow.¹
4. Non-Renewal is grievable under the Grievance Policy and Procedure.

Termination:

1. Termination involves 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, as determined by the Program Director, Clinical Competency Committee, Department Chair and/or Section Head, and the Associate Dean for GME.
2. Termination is typically preceded by Probation, which provides notice to the resident that there are significant deficiencies in the resident's knowledge, performance, or behaviors. Termination may also be preceded by other disciplinary actions.
3. There may be instances where immediate Suspension or Termination from the program without Probation or other disciplinary actions will occur.
4. Termination may occur at any point other than the end of the academic year or end of the stated contract period, at which time the decision to discontinue a resident's training would be considered a non-renewal.

¹ ACGME Institutional Requirements IV.C.1.a)

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5. The Program Director and Department Chair and/or Section Head are responsible for notifying the Associate Dean for GME of the intent to terminate the resident from the residency training program. The Associate Dean for GME will review the department's intended action prior to any notification being sent to the resident. After such a review, the Program Director, must notify the resident in writing of the decision to terminate the resident. The notification must identify the reasons for termination and the resident's right to appeal the termination decision.
6. A resident may be allowed to resign in lieu of termination. Should a resident decide to resign in lieu of termination, the resident must submit a letter of resignation within 10 calendar days of receiving the notice of termination. A resident will not be allowed to resign after the resident submits an appeal or after the 10 day time period expires.
7. Termination from the program is not grievable if the action directly related to Suspension from the program and the resident had already invoked the grievance procedure for the Suspension action.
8. Termination is grievable under the Grievance Policy and Procedure.

Referrals to CPHP

1. If warranted, a resident may be referred CPHP for evaluation and treatment. Referrals to CPHP require measured consideration and should not be mandated solely because a resident is being placed on Focused Review or Probation.
2. The Program Director may not mandate referral of a resident to CPHP without consultation with the Associate Dean of GME.
3. If the Program Director believes that a resident could benefit from the services of CPHP but the situation does not warrant mandating a visit to CPHP such as interpersonal or professionalism skills the Program Director can recommend a resident seek the services of CPHP.
4. A referral to CPHP is mandatory in instances where the resident may have a drug or alcohol issue or if the Program Director believes that CPHP will provide assistance in addressing the issues confronting the resident.
5. Residents who are referred to CPHP as a condition of Probation, must allow exchange of information between CPHP and the Program Director and Associate Dean for GME. The resident shall sign a release of information from the CPHP as a condition of Probation.

Notification of State Boards

1. Reporting required for residents terminated, suspended from the program or required to repeat the year, pursuant to the Medical Practice Act, 12-240-129(3) C.R.S.:

Licensed physicians responsible for the supervision of interns, residents, or fellows in graduate training programs shall promptly report to the board anything concerning a licensee in the graduate training program that would constitute a violation of this article. The physicians shall also report to the board any licensee who has not progressed satisfactorily in the program because the licensee has been dismissed, suspended, or placed on Probation for reasons that constitute unprofessional conduct as defined in section 12-240-121, unless the conduct has been reported to the peer health assistance program pursuant to section 12-240-131.

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Licensed physicians are obligated under CRS 12-240-125(3) to report unprofessional conduct of other licensed physicians to the Colorado Medical Board (“CMB”). As defined by the statute:

In the discharge of its duties, the board may enlist the assistance of other licensees. Licensees have the duty to report to the board any licensee known, or upon information and belief, to have violated any of the provisions of section 12-240-121 (1); except that a licensee who is treating another licensee for a behavioral, mental health, or substance use disorder or the excessive use of any habit-forming drug, shall not have a duty to report his or her patient unless, in the opinion of the treating licensee, the impaired licensee presents a danger to himself, herself, or others.

The GME Director of Finance and Administration sends notification to the CMB indicating whether off-cycle trainees have completed the training program. The Program Director notifies the CMB each academic year via CMB Training Program Statement of program completion for all on-cycle trainees.

2. Reporting of residents placed on Probation to the CMB is not required of the University except as set forth above.
3. If as a condition of Focused Review or Probation a resident is required to be evaluated and or treated by CPHP for a medical condition or habitual intemperance or excessive use of any habit-forming drug, it will be left to the discretion of CPHP whether or not that person needs to be reported to the CMB. In the event the resident fails to comply with this condition of Focused Review or Probation, the resident either will be suspended or terminated, which would result in a report to the CMB by the University. CPHP also has discretion regarding reporting to CMB those residents who have been referred to CPHP through mechanisms other than Focused Review or Probation. Residents are encouraged to voluntarily self-refer to the Colorado Physician Health Program for any health condition or concern about a potential health condition. Residents may self-refer at any time, without or prior to any workplace intervention. This service is confidential. Residents and fellows who self-report and utilize CPHP services for treatment of a mental disability, or drug or alcohol abuse do not have to disclose their health conditions when applying for a Colorado license or renewing a license, with the exception of legal charges. See CPHP Confidentiality information at <https://cphp.org/faqs/>.

GRIEVANCE POLICY:

For purposes of this policy, the term “Disciplinary Action” means Suspension from the program, renewal of a Training Agreement without Promotion and Non-Renewal of a resident training agreement, or Termination from the program.

The decision to take Disciplinary Action against a resident is an academic responsibility and is the decision of the University of Colorado School of Medicine Graduate Medical Education programs. It is expected that prior to initiating Disciplinary Action, the appropriate probationary and remedial periods will have occurred, however, there may be instances Disciplinary Action is warranted absent probation and/or remediation. Disciplinary Action may be taken at any time, including while the resident is on leave.

A resident may grieve a Disciplinary Action in accordance with this policy.

The grievance process is intended to protect the rights of the resident and the training program and to ensure fair treatment for both parties.

All “written notification” associated with the formal grievance process shall be by hand delivery or email.

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Grievance Procedure:

1. **Notification of Intent to Appeal:** A resident shall be informed by written notification of the decision to take Disciplinary Action. The resident may appeal the Disciplinary Action within ten (10) calendar days of the resident's receipt of the written notice. The appeal notice period shall begin to run based on the date the written notice is received by the resident. However, in the event the resident refuses to accept the notice or otherwise does not receive the written notice, the University will presume that the written notice is received within three (3) calendar days following hand delivery or email to the resident. In that case, the resident will have a total of thirteen (13) calendar days from the date of delivery to file an appeal.

All appeals must be submitted in writing to the Associate Dean for GME. The appeal should state the facts on which the appeal is based, the reason(s) the resident believes the Disciplinary Action was in error, and the remedy requested.

A resident may be allowed to resign in lieu of termination. Should a resident decide to resign in lieu of termination, the resident must submit a letter of resignation within 10 calendar days of receiving the notice of Disciplinary Action. A resident will not be allowed to resign after the resident submits an appeal or after the ten day time period expires.

2. **Assembly of Review Committee:** Upon receipt of an appeal, the Senior Associate Dean for Education (or designee) will convene an ad hoc committee to review the resident's case. The review committee will include the Senior Associate Dean for Education (or designee), one Program Director from a different training program, one full-time faculty member from a different training program, and one representative from the Housestaff Association who is in a different clinical training program. The Senior Associate Dean for Education will serve as the Hearing Officer, in a non-voting capacity, and will chair the review committee. The resident may object to a member of the review committee for cause. The Hearing Officer has sole discretion to replace a member if deemed warranted. The Review Committee may seek advice from outside experts in the field of the resident's specialty if deemed necessary.

The Hearing Officer will schedule the appeal hearing and notify the GME Office of the hearing date. Schedule permitting, the appeal hearing should occur within thirty (30) calendar days from the receipt of the resident's appeal.

The GME Office will send a Hearing Notice to the resident and the Program Director. The Hearing Notice will contain the names of the Review Committee members, the date, time and location of the appeal hearing, and the deadline to submit position statements and evidence. The resident should receive at least ten (10) calendar days' notice of the hearing date, unless circumstances warrant a need to conduct the hearing sooner.

3. **Position Statements and Evidence:** The resident and the Program Director may submit a position statement and evidence to the Review Committee prior to the hearing. The position statement and any evidence the resident or the Program Director wants the Review Committee to consider must be submitted to the GME Office at least (5) five calendar days prior to the appeal hearing. Submissions should contain a statement outlining the party's position, witness statements, and all other documentation or evidence believed to be relevant to the appeal and the Disciplinary Action. Failure to submit a position statement or evidence by the deadline and in the manner required by the GME Office may result in the material not being considered by the Review Committee.

The GME Office will facilitate the exchange of position statements and evidence between the Program Director and the resident and will provide copies of all relevant documentation to the Review Committee.

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Statements/Evidence	Timeline
Resident may resign in lieu of termination Or Resident may submit appeal	10 calendar days after receiving Notice of Disciplinary Action or 13 calendar days if resident refuses to accept the notice or otherwise does not receive the written notice.
Appeal Hearing Notice from Sr. Assoc. Dean for Education	Sent within 30 days of resident's request for appeal. (Resident should receive at least 10 calendar days' notice of hearing date.)
Resident may object to any member of hearing committee. and Resident & Program Director submit written statements & evidence	At least 5 calendar days prior to date of appeal hearing.
Resident may submit written response to Program Director's statement/documents to be submitted during hearing	At least 7 calendar days after receiving Program Director statement/documents.

The hearing is an academic proceeding and the rules of evidence shall not apply. The Hearing Officer has discretion regarding what evidence is relevant.

4. Appeal Hearing:

- A. The Hearing Officer has broad discretion with respect to conducting the appeal hearing. In general, appeal hearings will proceed according to the following format:
 1. The Program Director may make a presentation to the Review Committee up to twenty (20) minutes.
 2. The resident may make a presentation to the Review Committee up to twenty (20) minutes.
 3. The Program Director will have up to ten (10) minutes to respond to the statements made by the resident.
 4. The resident will have up to ten (10) minutes to respond to the statements made by the Program Director.
 5. The Review Committee may ask questions of the resident and/or the Program Director.
- B. Witnesses other than the Program Director and the resident will not be permitted to participate in the appeal hearing unless approved by the Hearing Officer. In the event the Hearing Officer elects to allow additional witnesses, the Program Director and the resident may question those witnesses.
- C. The Review Committee and the Program Director shall be assisted and advised during the appeal process and accompanied at the appeal hearing by attorneys from the CU Anschutz Legal Office.
- D. The resident may be assisted during the appeal process and accompanied at the appeal hearing by an advisor of the resident's choosing, who may be an attorney at the resident's own expense.
- E. Advisors and attorneys may consult with the parties, but their participation should be limited to consultation and they may not answer questions on behalf of a party or act as a witness.
- F. Appeal hearings are confidential and not open to the public. Only participants, advisors or attorneys, and Review Committee members may attend.
- G. The appeal hearing will be audio recorded by the Hearing Officer. Either party may request a copy of the recording at the conclusion of the hearing. In addition, either party may, at its own expense, have a transcript of the hearing prepared.

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5. **Panel Deliberation and Decision:** Following the appeal hearing, the Review Committee shall deliberate privately with the assistance of the Office of University Counsel. The Review Committee's deliberations will not be audio recorded. The final decision will be made by a majority of the Review Committee members. The Review Committee will prepare a written statement setting forth its conclusions and its reasoning in support of those conclusions. The Review Committee's decision will be sent to the resident, the Program Director and the Associate Dean for GME within fourteen (14) calendar days after the appeal hearing. The decision of the Review Committee is final with no further right to appeal. Should the resident be reinstated, the Review Committee may recommend an additional period of probation or remediation as a condition of continuation. The Program may choose to adopt these recommendations.
6. **Burden of Proof:** The resident has the burden to demonstrate, by a preponderance of the evidence, that the Disciplinary Action issued by the program was arbitrary and capricious. A preponderance of the evidence means it is more likely than not. Arbitrary and capricious means there was no reasonable basis for the program's decision to take the Disciplinary Action. The Hearing Review Committee may only review the Disciplinary Action decision for the purpose of determining whether there was no reasonable basis for the decision, all other issues (e.g. professionalism, or evaluations) are beyond the scope of the Hearing Review Committee.
7. **Time Limits:** Time limits set forth in this policy must be adhered to by all parties. Time limits may be extended for good cause at the discretion of the Associate Dean for GME. A resident who fails to meet the time limits set forth herein may be deemed to have waived or withdrawn the appeal.

Remediation - Disciplinary Action Type	Requires DIO & Dept Review	Requires Legal Review	Other Requirements	Right of Appeal Grievance Policy
Focused Review	X	X		
Probation	X	X	Meet with DIO, Consider CPHP	
Suspension from <u>Clinical</u> Activities	X	X	Decision in 30 days	
Suspension from <u>Program</u>	X	X	Decision in 30 days	X
Renewal without Promotion	X	X	Generally, Probation first; Written notice to resident 4 months prior to renewal date or ASAP	X
Non-Renewal	X	X	Generally, Probation first; Written notice to resident 4 months prior to renewal date or ASAP	X
Termination	X	X	Generally, Probation first	X