



National Capital Consortium
Graduate Medical Education
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**DEPARTMENT OF DEFENSE
UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES
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NCC POLICY AND PROCEDURES FOR ADVERSE ACTIONS AND DUE PROCESS

IV.D.1.b

A. Caveats:

1. All Adverse Action information is Quality Assurance Material protected under Title 10 USC 1102 and may not be released without the approval of the DIO or the Consortium Legal Counsel.
2. While the protection of the rights of the trainee is paramount, the purpose of these described procedures is to facilitate the administration of the Consortium. Failure to follow these procedures does not in and of itself provide the Trainee with grounds for redress. The Graduate Medical Education Committee (GMEC) has appointed an *Academic Hearing Subcommittee* to adjudicate requests for Adverse Actions including Extensions in Training, Probations and recommendations for Termination. All references in this section to the GMEC will include by implication any Subcommittee established by the GMEC.
3. The NCC maintains all adverse and non-adverse action records.
4. Trainee records cannot be expunged for any reason.

B. Purpose: To establish procedures concerning adverse actions for individuals in Graduate Medical Education (GME) in the NCC. This policy document provides specific guidance for Program Directors and other administrators, but it is not intended to preclude Program Directors from developing, within RC guidelines, additional internal procedures or criteria suitable for their own educational programs. When issues of patient safety arise, the patient's safety takes priority over the rights and privileges of the trainee and staff.

C. Trainee evaluation: Trainees must be provided written performance evaluations at appropriate intervals. Frequency of evaluations must satisfy Program Requirements published by the ACGME, and must be completed at least semi-annually. A program training file must be maintained for each trainee. When a Program Director identifies deficiencies in professionalism/officership, knowledge, skills, or attitudes, the Program Director must ensure remedial action. Remedial actions may be non-adverse or adverse. Recommendations for an adverse action must afford the trainee due process in accordance with the policies stated in this document. Program Directors must ensure that each incoming trainee has an opportunity to review a copy of these policies.

D. Definitions:

1. Adverse action: This is an institutional (NCC) action taken in response to documented failure to meet educational goals and objectives in the general competencies of medical knowledge, patient care, practice-based learning and improvement, interpersonal and communication skills, professionalism, and/or systems-based practice. By implication, in the usual situation, the trainee has not responded to counseling and in-program remediation or the failure by the trainee is of such an egregious nature that urgent intervention is warranted in the interest of patient safety. Adverse actions include summary suspension of training, academic probation, or recommendation for termination of training. These are described in detail elsewhere in this section. Since these are formal institutional actions, they are a permanent part of the trainee's record and can be reported in accordance with service and NCC policies to licensing and credentialing institutions under appropriate circumstances.
2. Non-adverse actions: This includes counseling and in-program remediation for failure to meet educational goals and objectives in the general competencies of medical knowledge, patient care, practice-based learning and improvement, interpersonal and communication skills, professionalism, and/or systems-based practice. Since this action is below the threshold requiring institutional action, records are maintained only at the program level and are not disclosed by the institution.
3. Breaches of military professionalism: Since training programs have been developed to advance Military Medicine and train Medical Officers, Program Directors must also identify and respond to trainee deficiencies in knowledge, skills, or attitudes regarding military officership, including failure to comply with service regulations. The Program Director will contact their DME to determine what type of an investigation. If the investigation reveals a significant violation of the Uniformed Code of Military Justice, the incident will be reported through the military chain of command. It will also be briefed as information to the GMEC Academic Hearing Subcommittee and may become a basis for an adverse action for breaches of professionalism that may adversely affect the trainee's suitability for the practice of medicine. Any action taken by the Command will not preclude action by the NCC based on the ACGME competencies. Any action taken by the NCC does not preclude disciplinary action by the trainee's Command, and the NCC will provide the Command with information on the facts and circumstances surrounding any action taken which involves the trainee.

- E. **Documentation:** All remedial actions must be based on adequate written documentation. Written documentation begins with written performance evaluations which should be defined in terms of the core competencies, and continues with written statements by the Program Director and/or the Training Committee concerning the success of the trainee in achieving the milestones in his/her professional development. Assessment of attitudes required for safe, effective, and compassionate patient care should be commensurate with the

trainee's level of advancement and responsibility. Normally, documentation will include the following as a minimum:

1. **E**xpectations: What is expected of the trainee in terms of the competencies? Must distribute Goals and Objectives that are competency based and by year group at least annually.
2. **D**eficiencies: In what areas is the trainee failing? Care should be given to be both comprehensive and specific. Trainee needs to be notified verbally and in writing exactly what the deficiencies are.
3. **I**mprovement: What specific written plan for remediation is being provided? How much improvement is needed.
4. **C**onsequences: What will occur if remediation is not accomplished?
5. **T**imeline: How long is the anticipated program of remediation to last?

F. Types of Action:

1. In-program remediation: When remedial action is necessary, the plan must be written and must consider improvements in all of the above listed factors. All plans of remedial action must include written objective criteria by which improved performance may be judged. When conducted at the program level this is not considered an adverse action. The Program Director will not allow the trainee to perform an elective outside rotation without the approval of the DIO.
2. Adverse Remedial Action:
 - a. *Summary Action to suspend training status*: If a Program Director receives information that indicates any of the following: significant improper, unethical, or unprofessional conduct by the trainee, or conduct likely to adversely affect the trainee's ability to engage safely in patient care activities, or a health problem likely to adversely affect the trainee's ability to engage in patient care activities, or substandard patient care by the trainee, the Program Director will immediately contact the DIO to consult on appropriate actions. If further investigation is deemed necessary, the Program Director must inform the trainee's command element, which will perform any inquiry or investigation.
 - b. If the Program Director determines that the nature of the suspected improper, unethical, or unprofessional conduct is of a nature that suspension from training status or patient care is necessary to allow the trainee sufficient time to address the issue or patient safety is a concern, the Program Director must follow the following procedures:
 - i. Notify the trainee in writing that his/her training status and patient care activities are suspended.
 - ii. Notify in writing, the clinical department chief to whom the trainee is assigned that the trainee's training status and patient care activities are suspended; in cooperation with the clinical department head, make arrangements for continuing care of the trainee's patients. This notification may trigger a Command response for the protection of patients, further restricting the trainee's activities until the issue can be adjudicated.
 - iii. Submit a written record of the allegation(s) and actions taken to suspend training status and/or patient care activities to the GMEC via the DIO. The

DIO will schedule, a meeting of the GMEC Academic Hearing Subcommittee to consider the summary suspension of training status.

- iv. Submit, as appropriate, a recommendation for probation or termination of training to the GMEC Academic Hearing Subcommittee.

- 3. Academic Probation: Probation is a period of supervision, assigned to assist a trainee in understanding and correcting specific, serious deficiencies in knowledge, skills, and attitudes. Probation may be imposed only by action of the GMEC Academic Hearing Subcommittee, and may be ended only by action of the Subcommittee. Regardless of the original term of probation, removal from probation requires an act of the GMEC Academic Hearing Subcommittee. Probation may end in a return to full training status or in a recommendation for termination. Normally, a Program Director may recommend probation only after a period of documented non-adverse counseling and assistance at the program level directed at specific documented deficiencies. Once a trainee is placed on probation they may not serve on committees or perform outside elective rotations without the approval of the DIO.

- a. A recommendation for probation should be based upon one or more of the following and described in terms of the specific competencies the trainee has failed to achieve:
 - i. Documented failure to meet academic or technical performance standards or objectives of the program.
 - ii. Documented failure or non-passing grade for a rotation.
 - iii. Lack of endeavor in the training program.
 - iv. Lack of application of the trainee's knowledge and skill.
 - v. Unprofessional conduct (medical and/or military).
 - vi. Documented failure to satisfactorily progress toward correction of deficiencies despite documented prior counseling regarding the same.
 - vii. Documented regression or failure to satisfactorily progress in training after removal from probationary status, despite documented prior counseling regarding the same.
 - viii. Disciplinary problems.
 - ix. Substance abuse (in accordance with and within the constraints set by applicable service regulations concerning management of substance abuse).
 - x. Other circumstances.
- b. *Procedure for Recommending that a Trainee be placed on Academic Probation:* The Program Director will give the trainee notice, in writing of the proposal that the trainee be placed on probation to include:
 - i. The recommended duration of academic probation.
 - ii. A specific written plan is developed in conjunction with the trainee to assist the trainee in overcoming the problem or problems. This plan is usually based on a 90-day remediation period.
 - a. As a required part of the remediation plan (whether specifically stated in the plan or not), trainees that are on NCC level probation are **not** authorized to travel to complete an elective rotation. Travel to a required rotation or course must be authorized by the NCC Executive Director prior to travel. In addition, travel to conferences will **not** be allowed. Program Directors may request specific exemptions to this

policy. Factors which will be considered by the NCC Executive Director will include the nature of the basis for probation, the location of the rotation or course, the necessity of the rotation or the conference.

- iii. The deficiencies, acts, or circumstances for which the probationary status is recommended.
- iv. Records of this notification, which should include signed acknowledgement of receipt by the trainee, shall be maintained by the Program Director.
- v. The Program Director will then submit a written request for probation to the Academic Hearing Subcommittee via the DIO. The request must include the information in the notice given to the trainee as listed above.
- vi. The request should arrive at the office of the DIO no later than ten (10) calendar days prior to the next regularly scheduled or special meeting of the Academic Hearing Subcommittee.
- vii. The DIO will notify the trainee that the GMEC Academic Hearing Subcommittee will conduct a hearing concerning the recommendation for probation, and of the trainee's due process rights.
- viii. Upon being placed on NCC level probation, a trainee must resign or request and be granted a leave of absence for the length of the probation from membership of any military, academic, or professional committees (both local and national). Program Directors may request specific exemptions to this policy. Factors which will be considered by the NCC Executive Director will include the nature of the basis for probation.
- c. *Procedure for removal from probation:* Once a period of probation has been imposed, removal from probation is not automatic but requires an affirmative vote by the Academic Hearing Subcommittee based on the recommendation of the Program Director and/or CCC.
- 4. Administrative Probation: Administrative Probation is a separate category of probation reserved exclusively for military trainees, mandated specifically by their parent service, only to be used for the following non-clinical reasons:
 - a. Failure to obtain a medical license in the time allotted by the military service in which the trainee is a member;
 - b. Failure to successfully complete a service specific physical fitness test; and
 - c. Failure to meet service specific weight/body fat requirements.
 - d. *Procedure for recommending Administrative Probation:*
 - i. The Program Director will submit a request to the DIO asking that the service member be placed on Administrative Probation.
 - ii. The request will include an outline of reason(s) for the action.
 - iii. Once notified of this action, the service member has 7 calendar days to respond directly to the DIO to refute the basis of the Administrative Probation. Once the 7-day period has ended, if the trainee has not sufficiently rebutted the basis of the action, the DIO will place the military trainee on Administrative Probation.
 - iv. While no additional action is necessary, the DIO will inform the GMEC Academic Hearing Subcommittee of all actions taken. During Administrative Probation the Program Director will regularly update the

GMEC Academic Hearing Subcommittee on the progress of the military trainee.

- v. When the condition that brought forth the action is corrected, the Program Director will notify the DIO, who will remove the trainee from Administrative Probation.
- e. *Reporting to outside organizations:*
 - i. As this special type of probation is solely the product of the military medical system, affecting only those trainees in uniform, action taken under this section will normally not be reported to outside organizations.
 - ii. Trainees will be advised that they need not report Administrative Probation actions outside of military channels. However, trainees should be advised that such probation may be documented in their annual military report.

5. Resignation from Training:

- a. If at any time a trainee chooses to resign from training, it must be done in writing and endorsed by the Program Director.
- b. Upon notification of a resignation from training, the DIO will provide the necessary verbiage with regard to their military requirements.
- c. If a trainee opts to resign from training after receiving NCC notification of the program's intention to bring them forth for academic probation or termination from training status, the trainee must resign 'in lieu' of that impending action.

6. Termination from training:

- a. Termination is the most serious action that may be recommended by a Program Director. Normally, the Program Director may recommend termination only after a period of documented non-adverse counseling and assistance directed at specific documented deficiencies while on probation with attempts at remediation.
- b. The Trainee should be afforded, and have documented, reasonable opportunity to correct his/her deficiencies before a Program Director can recommend termination to the NCC Academic Hearing Subcommittee.
- c. Egregious behavior leading to summary suspension of training, serious misconduct (including commission of military and/or civilian offenses), as well as patient safety considerations represent exceptions to the general need for attempting remediation while on academic probation prior to recommending termination.
- d. *A recommendation for termination of training may be made:*
 - i. When deficiencies in performance persist, despite documented efforts to correct the deficiencies during non-adverse remedial measures or probation.
 - ii. When deficiencies recur after prior periods of remediation or probation.
 - iii. When continuation in training presents a hazard to patients
 - iv. When serious unethical or unprofessional conduct is involved.
- e. *Procedure for Recommending Termination of a Trainee:*
 - i. The Program Director gives the trainee notice, in writing, of the deficiencies, acts, or circumstances for which termination is recommended. Records of this notification, which should include a signed acknowledgment of receipt, shall be maintained by the Program Director.
 - ii. The Program Director then submits a written request for the termination to the

- NCC Academic Hearing Subcommittee via the DIO. The request must include the information in the notice given to the trainee.
- iii. The request must arrive at the office of the DIO at least ten (10) calendar days prior to the next regularly scheduled or special meeting of the GMEC.
 - iv. The DIO will notify the trainee of the date that the NCC Academic Hearing Subcommittee will meet concerning the recommendation for proposed termination and of the trainee's due process rights. ([See Trainee Rights and Responsibilities](#))
7. Extension of Training and/or Non-Promotion to next Year Level:
- a. Under ordinary circumstances, brief periods of absence (e.g. due to illness or pregnancy) can be accommodated provided training requirements and milestones are met or made up in a satisfactory manner.
 - b. In those instances in which there is excessive absence, the Program Director will investigate the circumstances, and may recommend an extension/non- promotion with the concurrence of the Academic Hearing Subcommittee.
 - c. Extension of training/non-promotion to next year level may also be recommended as a part of a recommendation for probation or for other reasons. Service-specific GME administrative authorities must be notified of all recommendations for extension of training.
 - d. *Procedure for Recommending Extension of Training for Academic Reasons:*
 - i. The Program Director must give the Trainee notice, in writing, of the deficiencies, acts, or circumstances for which extension/non-promotion is recommended. Records of this notification, which should include signed acknowledgement of receipt by the trainee, shall be maintained by the Program Director.
 - ii. The Program Director then submits a written request for extension/non- promotion to the Academic Hearing Subcommittee via the DIO. The request for extension/non- promotion must include the information in the notice given to the trainee.
 - iii. The request should arrive at the Office of the DIO at least ten (10) calendar days prior to the next regularly scheduled or special meeting of the Academic Hearing Subcommittee.
 - iv. The DIO will notify the trainee of the date that the Academic Hearing Subcommittee will consider the recommendation for extension/non-promotion and of the trainee's due process rights.
 - e. *Procedure for Recommending Extension of Training for Non-Academic Reasons:*
 - i. The Program Director, after notifying the trainee, will notify the DIO in writing of the need for an extension in training/non-promotion due to medical or administrative reasons.
 - ii. The DIO will approve the action and make the changes known to the appropriate Service GME Office and notify the GMEC of actions taken at the next meeting.
8. Administrative Procedures and Responsibility for Adverse Actions:
- a. *Program Director:* Regularly, at least twice a year, assesses the trainee's progress in his/her training program. If this assessment or any other assessment during the period of evaluation indicates the necessity of remedial action, the Program

Director performs, directs, or recommends appropriate non-adverse or adverse remedial action. Documentation of such recommendation should be maintained in the trainee's training file.

- b. *DIO*: On receiving a properly constituted request for an adverse action, the DIO shall:
 - i. Place the action on the agenda of the GMEC Academic Hearing Subcommittee which will meet at least seven (7) calendar days after receipt of the request. This requirement may expressly or by implication be waived by the trainee or waived by the DIO if the DIO determines exceptional circumstances exist;
 - ii. Notify the trainee of the meeting of the Subcommittee, of specific adverse action, and of his/her due process rights;
 - iii. Forward any additional evidence of relevant information to the Subcommittee;
 - iv. Chair any adverse action proceeding and determine the relevancy of information brought before the GMEC Academic Hearing Subcommittee.
- c. *GMEC Academic Hearing Subcommittee*:
 - i. On receiving a properly constituted request for an adverse action, the GMEC Academic Hearing Subcommittee shall consider the request and all other information and evidence received at the hearing.
 - ii. After the evidence has been reviewed, the voting members of the Subcommittee, to include trainee members who have full voting rights, will deliberate in private out of the presence of the appearing trainee, trainee representation (if any), the Program Director, and any conflicted Subcommittee members. The Subcommittee will determine by majority vote the action to be taken. In the case of a recommendation for termination, a 2/3 majority is required.
 - iii. In the event that in the final vote any Subcommittee member(s) opt to abstain from voting, the abstentions are not counted as votes and will be removed from the denominator to determine the final percentages of the vote. The Subcommittee must still achieve at least 8 voting members who have not abstained and cast votes for or against an action. The total votes cast, yes or no, in a particular case shall be recorded in the Subcommittee minutes.
 - iv. The DIO shall prepare a summary of the Subcommittee's proceedings and recommendations. The proceedings and recommendations should be mentioned in the minutes of the GMEC Academic Hearing Subcommittee, but detailed records of the proceedings and vote shall be maintained privately by the DIO's office.
 - v. If the recommendation is for termination, the DIO shall forward the summary recommendations, along with the Program Director's original request and the trainee's written statements, if any, to the Board of Directors, for approval, and notify the GMEC at its next meeting.
- d. *Board of Directors*:
 - i. The Board of Directors will make the final decision on all recommendations for termination of trainees assigned to NCC-sponsored programs.
 - ii. The Board of Directors, by majority vote, will approve, modify, or disapprove the recommendation of the GMEC Academic Hearing Subcommittee, and

order appropriate action. The Board of Directors may also send a case back to the Subcommittee for further review.

- iii. The DIO shall notify the trainee in writing, through the Program Director, of the Board of Directors' decision. If the decision is to terminate, the trainee shall have five (5) calendar days from receipt of the Board of Directors decision to prepare and present to the Board of Directors, in writing, a request for reconsideration of the Board of Directors decision.
- iv. After receipt and examination of a request for reconsideration, the Board of Directors may revoke the decision to terminate and place the trainee on a defined period of probation, with a recommended plan of remediation, or may affirm the decision to terminate.
- v. The decision of the Board of Directors to terminate, lacking a request for reconsideration or after examining a request to reconsider, is final.
- vi. The trainee does not have the right to request to appear in-person before the Board of Directors. However, the Board of Directors reserves the right to request a trainee to appear in person for cases involving termination from training and/or in the reconsideration of such cases.
- vii. The result of the Board of Directors decision to terminate will be forwarded to the Offices of the Surgeon General GME offices of the trainee's parent service.

9. Trainee Rights and Responsibilities:

Note: The trainee may waive any of these rights either expressly or as otherwise indicated below.

- a. *Preliminaries to Hearings:* Upon receipt of written notification from the DIO that he/she will be considered for an adverse action at a scheduled meeting of the GMEC Academic Hearing Subcommittee, a trainee has five (5) calendar days to inform the DIO, in writing, that he/she will submit written evidence and/or appear in person at the scheduled meeting of the GMEC Academic Hearing Subcommittee. Trainees may decline to submit evidence or appear in person at the scheduled GMEC Academic Hearing Subcommittee hearing. This declination constitutes a waiver by the trainee of his/her right to participate in the proceedings.
- b. If the trainee asks to be present at the hearing, but cannot attend the scheduled hearing, and postponing the hearing is not possible, the GMEC Academic Hearing Subcommittee may proceed with the action in the trainee's absence after formally recording the circumstances and the necessity of proceeding in a timely manner. Reasonable attempts may be made to reschedule the hearing to enable the trainee to attend.

10. Hearing procedures if the trainee elects to be present:

- a. The proceedings of the GMEC Academic Hearing Subcommittee are administrative procedures and are not bound by formal rules of evidence or a strict procedural format. The GMEC Academic Hearing Subcommittee may question witnesses and examine documents as necessary.
- b. In all hearings concerning adverse actions, the following rights for the trainee apply, if the trainee elects to be present at the hearing:

- i. The right to obtain notice of the grounds for the action at least seven (7) calendar days before the next Academic Hearing Subcommittee meeting ([See above for exceptions](#));
 - ii. The right to review copies of documents to be considered by the Committee;
 - iii. The right to know who will testify/speak at the hearing;
 - iv. The right to secure a representative and/or counsel at his/her own expense; the representative/counsel does not have the right to address the Subcommittee or witnesses directly and is limited to the roles of advisor or observer.
 - v. The right to present matters at the hearing and/or to provide a written statement;
 - vi. The right to question witnesses and/or to bring witnesses of his/her own (witnesses may only be present to provide their own statement and are subject to questions from the program representative/subcommittee);
 - vii. The right to make a statement on his or her own behalf.
 - c. For hearings in which the trainee is being considered for termination from training, the trainee will be provided no more than 45 minutes to address the Subcommittee; for all other adverse actions, the trainee will be provided no more than 15 minutes to address the committee. If warranted, the Chair may allow additional time.
11. Hearing procedures if the trainee elects **NOT** to be present:
- a. In all hearings concerning adverse actions, the following rights apply for the trainee, if the trainee elects **not** to be present at the hearing:
 - i. The right to review notice of the grounds for the action at least seven (7) calendar days before the next GMEC Academic Hearing Subcommittee meeting ([See above for exceptions](#));
 - ii. The right to review copies of documents to be considered by the Subcommittee;
 - iii. The right to know who will testify/speak at the hearing;
 - iv. The right to secure a representative and/or counsel at his/her own expense to attend the hearing who may address the specifics of the reason for the proposed action;
 - v. The right to have matters presented at the hearing;
 - vi. The right for the representative to question witnesses.
 - vii. The right to submit a written statement in his/her own behalf.
 - b. The trainee will be given notice of these rights by having the information personally delivered through the Program Director, DME or appropriate military chain of command to the trainee.
 - c. The failure of the trainee to appear before the Subcommittee shall constitute a waiver of a request for reconsideration if termination is recommended.
 - d. **NOTE:** *Subcommittee hearings may be recorded for the purpose of preparing minutes of the meeting. A verbatim transcript will not be produced and the tapes or other recording medium will not be archived.*
12. Other Actions Leading to Termination of Training:
- a. *Release from Active Duty:* Policies set by the Defense Officer Personnel

Manpower Act and the individual uniformed services may provide for the release from active duty of certain officers who fail selection to the next higher officer grade. Because continuation in training in Consortium-sponsored programs requires that trainees be on active duty, release from active duty necessarily terminates trainee status, but is not considered an adverse action.

- b. *Physical Training and Weight Reference Agreement:* Trainees must meet all parent service fitness standards and failure to do so may lead to administrative separation and thus termination of training.
- c. Other personnel actions as deemed necessary by the trainee's parent military Service.

NOTE: Since placement on academic probation, and termination from training are formal institutional actions, it will become a permanent part of the trainee's record, and can be reported in accordance with service and NCC policies to licensing and credentialing institutions when requested or required.

Approved at the 1 Nov 2023 GMEC meeting.