

Disciplinary or Adverse Action- Due Process Procedure

Purpose

The purpose of the Due Process Procedure is to provide a mechanism to fairly and systematically address concerns regarding a postdoctoral fellow's (Fellow) performance, behavior, or conduct. All Fellows are expected to understand and conduct themselves in accordance with the performance criteria for their particular job and with all rules, procedures, and standards of conduct established by the System, University, and the Fellow's department or unit.

Rights and Responsibilities of Fellows

- Fellows have the right to receive information about the program's expectations and procedures for evaluation.
- Fellows have the right to receive regular and timely feedback regarding their performance and/or concerns of problematic behavior.
- Once Due Process procedures have initiated, Fellows have the right to receive information regarding decisions within the timeline outlined in this policy.
- Fellows have the right to respond to and/or appeal the program's decisions as outlined in this policy.
- Fellows have the responsibility to conduct themselves in a professional, respectful, and ethical manner.
- Fellows have the responsibility to make every reasonable attempt to remediate deficits.
- Fellows have the responsibility to adhere to the rules, procedures, and standards of conduct established by Texas Tech University System, Texas Tech University, and the Fellow's specific department or unit.

Rights and Responsibilities of the Postdoctoral Fellowship Program

- The program and its representatives have the right and discretion to initiate Due Process procedures including observation, probation, suspension, and dismissal as outlined and within the limits of this policy.
- The program and its representatives have the right to be treated in a professional, respectful, and ethical manner.
- The program and its representatives have the responsibility to make reasonable attempts to support Fellows in remediating concerns and deficiencies.
- The program and its representatives have the responsibility to make reasonable attempts to support Fellows in successfully completing the program.

Problems Identified and Defined

Fellows will be formally assessed and their performance will be documented throughout the training year. Deviations from standard training practices that may be identified as deficits include, but are not limited to, the following:

- Unprofessional and/or unethical behavior;
- Failure to demonstrate an acceptable level of competency;
- Failure and/or unwillingness to integrate professional standards into one's practice;
- Problematic behavior that negatively impacts other Fellows; and/or
- Problematic behavior that may cause harm to patients.

It is expected that any Fellow who qualifies for this fellowship program is able to progress satisfactorily through the program. However, when performance and/or progress are unsatisfactory, actions of a disciplinary or adverse nature may be taken as follows:

1. Observation. Observation is defined as an informal remediation measure that is generally utilized prior to probation. The purpose of Observation is to provide the Fellow with an interactive process of open communication, in which the Fellow has an opportunity to voice any concerns or disagreements with the evaluation of their performance, to address potential issues or deficiencies before they rise to the level of probation or suspension. It is the duty of the Training Director to establish a mechanism for evaluating the performance of each Fellow. In the event a Fellow's clinical or educational performance is found to be unsatisfactory, the Training Director shall meet with the Fellow at the earliest possible date, outline in writing the deficiencies, specify how they are to be corrected, and indicate the period of time in which correction or improvement is to occur. If, after a specified amount of time, progress has not been demonstrated, the Fellow may be placed on probation. However, observation is not a prerequisite if probation or disciplinary measures are more appropriate. Observation may not be appealed.

2.01 Hearing Required. When a formal review or disciplinary action, such as probation, suspension, or dismissal, is warranted, the Fellow will be notified in writing by the Training Director that the issue has been raised to a formal level of review and that a Hearing will be held.

2.02 Hearing. The supervisor or faculty/staff member will hold a Hearing with both the Training Director and the Fellow within 14 business days of issuing a Notice of Formal Review to discuss the problem and determine what action needs to be taken to address the issue. Other faculty/staff members may be present at the Hearing at the discretion of the Training Director or at the request of the Fellow. The Fellow will have the opportunity to present the Fellow's perspective at the Hearing and/or to provide a written statement related to the Fellow's response to the problem.

2.03 Outcome and Next Steps. The result of the Hearing will be determined by the Training Director and other faculty/staff member(s) who were present at the Hearing. This outcome will be communicated to the Fellow in writing within 5 business days of the Hearing. Potential outcomes include the following: probation (as set out below), suspension with or without pay (as set out below), or dismissal (as set out below).

3. Probation.

3.01 Criteria for Probation. Where a Fellow's performance fails to meet the standards set by the Psychiatry department, the Fellow may be placed on probation by the Training Director. Probation occurs when a Fellow is notified that their progress, professional development, or conduct is such that continuation in the program is at risk.

3.02 Notice of Probation. The Training Director shall notify the Fellow in writing regarding the probation, outline the reasons for the action, establish a time frame for the probation, provide a specific remedial plan with deadlines, and conduct a follow-up probation evaluation at the designated time, or sooner, if necessary. Notice of probation may be delivered to the Fellow by certified mail, Return Receipt Requested, at their last known address, or hand-delivered to the Fellow with written acknowledgement of delivery. In the event neither form of communication referenced above is successful, notice to the Fellow may be given via email attachment with read/receipt notation. Unless precluded by special circumstances from doing so, the Training Director must meet in person with the Fellow to discuss the probation.

3.03 Remediation. As a rule, 60 calendar days will be allowed for the Fellow to correct or remediate the identified deficiency or conduct. However, some probationary periods may be for a shorter period of time. If at the end of or during the probationary period the Training Director determines that the Fellow has not corrected or remediated the identified deficiency or conduct, the Fellow may be dismissed from the program. However, probation

is not necessarily a prerequisite to dismissal if circumstances dictate otherwise. If at the end of or during the probationary period the Training Director elects to dismiss the Fellow, the dismissal procedures outlined in Section 5 shall be utilized.

3.04 Appeal of Probation. If a Fellow is placed on probation, the decision may be appealed in accordance with the procedures outlined in Section 7.

3.05 Satisfactory Completion of Probation. If the Training Director is satisfied that the Fellow has corrected or remediated the identified deficiency or conduct, along with any other deficiency that may have arisen during the probationary period, the Fellow will then be notified in writing that the probationary status has been lifted.

3.06 Dismissal Following Appeal. If a Fellow is dismissed at the end of the probationary period, the dismissal may be appealed in accordance with the procedures outlined in Section 7.

4. Suspension.

4.01 Criteria for Suspension. The Training Director may suspend a Fellow with or without pay depending on the circumstances, which may include, but not be limited to, any situation where a serious charge is brought against the Fellow, or concern exists that the Fellow's performance of their duties is seriously compromised or may constitute a danger to patients, others, or self.

4.02 Notice of Suspension. The Fellow will be notified of their suspension by certified mail, Return Receipt Requested, to their last known address, or hand-delivered with written acknowledgement of delivery. In the event neither form of communication referenced above is successful, notice to the Fellow may be given via email attachment with read/receipt notification.

4.03 Investigation. An investigation will be initiated within 5 business days from the date of the suspension and shall be completed within 30 calendar days. At the conclusion of the investigation, the Training Director shall confer with the Fellow as soon as practicable, but in no event later than 30 calendar days from date of suspension, except as reference hereinabove.

4.04 Appeal of Suspension. If a Fellow is suspended, the decision to suspend may be appealed in accordance with the procedures outlined in Section 7.

4.05 Lifting of Suspension. Suspension will be lifted when the investigation is completed on or before the 30th day following imposition of suspension. Upon completion of the investigation and its findings, a determination will be made as to the proper course of action. Such action will be communicated in writing to the Fellow.

5. Dismissal.

5.01 Authority. The authority to dismiss a Fellow resides solely with the Dean of the School of Medicine.

5.02 Criteria for Dismissal. The Training Director may recommend that a Fellow be dismissed for unsatisfactory performance, lack of professionalism, or conduct during the term of their annual program agreement/contract. Examples include, but are not limited to, the following:

- A. Performance that presents a serious compromise to acceptable standards of

- patient care or jeopardizes patient welfare.
- B. Failure to progress satisfactorily in fund of knowledge, skill acquisition and/or professional development.
 - C. Unethical conduct.
 - D. Excessive tardiness and/or absenteeism.
 - E. Illegal conduct.
 - F. Unprofessional conduct.

5.03 Notice of Dismissal. When recommending dismissal, the Training Director shall use the Disciplinary Action Form (DAF) and include any related documentation providing the basis for dismissal. The Training Director shall specify in writing the areas deemed unsatisfactory and state with specificity the reasons for the dismissal. A copy of the recommendation for dismissal must be provided to the Fellow made the subject of the action.

5.04 Appeal by Fellow. Dismissal is subject to appeal, as it suggests poor performance, unprofessional conduct or malfeasance. Upon receipt of the written recommendation for dismissal and the Disciplinary Action Form, the Fellow may initiate an appeal by submitting to the Psychiatry Program Chair within 5 business days a written notice of appeal, outlining in detail their issues regarding the appeal and the remedy sought.

5.05 Timeliness of Appeal. In the event the Fellow elects not to appeal the decision, or the Fellow fails to appeal within the prescribed 5 business days, the Fellow will be deemed to have waived the right to appeal.

6. Job Abandonment.

6.01 Definition. Job abandonment, defined as 3 consecutive days of unexcused absence from the program without notice to the Training Director, is tantamount to resignation. Any exception must first be approved by the Psychiatry Department Chair.

6.02 Documentation. The Training Director shall use the DAF to report action taken and include information from the program for completing the DAF. The DAF and other documentation regarding such action shall be forwarded for signature to those individuals listed on the form.

7. Appeal.

7.01 Appeal Hearing Subcommittee. Upon receipt of the Fellow's written notice of appeal, if applicable, the Chair of the Psychiatry Department shall appoint an ad hoc Appeal Review Subcommittee (Subcommittee), which shall be charged with conducting an appeal hearing to review the recommendation of dismissal (suspension) of the Fellow.

7.02 Composition of Subcommittee. The Subcommittee shall be comprised of one TTUHSC faculty member selected by the Program, one TTUHSC faculty member selected by the Fellow, one TTUHSC faculty member who serves as a chair, and another Fellow representative. The Subcommittee chair shall set a date for the appeal hearing and notify all parties concerned of any other procedural information that will be observed.

7.03 Documentation for Appeal. At least 5 business days prior to the appeal hearing, the Fellow and the Training Director shall provide to each other and the Subcommittee all relevant documents that will be used in the appeal process to include, but not be limited to,

the written request for appeal, all reports, evaluations and recommendations related to the action taken, and their file as maintained by the department.

7.04 Witnesses. At least 5 business days prior to the appeal hearing, the Fellow and Training Director shall provide to each other and the Subcommittee the names of witnesses, if any, that each will utilize at the appeal hearing. The Fellow and Training Director shall each be responsible for arranging the participation of their respective witnesses for and during the appeal hearing.

7.05 Legal Counsel. The Fellow shall have the right to appear in person before the Subcommittee and may be accompanied by legal counsel retained by the Fellow. If legal counsel is to accompany the Fellow, they shall notify the Subcommittee in writing at least 5 business days in advance of the scheduled appeal hearing, at which time the Subcommittee shall immediately notify the Training Director and the Office of General Counsel (OGC). In the event the Fellow is to be accompanied by legal counsel, a representative from the OGC shall attend on behalf of the university. Legal counsel may serve only in an advisory capacity to the Fellow and TTUHSC and may not participate in the appeal hearing.

7.06 Conduct of Appeal Hearing. At the beginning of the appeal hearing, the Chair of the Subcommittee shall review with the participants the procedural rules that shall be observed.

7.07 Witness Available by Telephone. Only if a witness is not readily available to attend the appeal hearing in person, the Subcommittee may consider allowing the witness to participate by telephone. If applicable, the Fellow and Training Director, respectively, shall notify the Subcommittee and each other at least 24 hours in advance of the appeal hearing that a witness will not be available in person.

7.08 Audiotape of Appeal Hearing. The appeal hearing will be audiotaped, and either of the parties may obtain a copy upon written request. No transcript will be provided.

7.09 Evidence. At the appeal hearing, the Fellow shall present to the Subcommittee and the Training Director the basis of this appeal and may introduce evidence considered to be relevant and material to the case. However, all evidence offered must be reasonably related to the facts and statements concerning the reasons for dismissal and the Fellow's appeal. The Fellow bears the burden of establishing that the dismissal (suspension) is unjustified. The Subcommittee shall determine whether information provided at the appeal hearing is relevant and material to the case and whether it is reasonably related to the matter of the dismissal.

7.10 Failure to Appear. The Fellow is expected to attend and participate in the appeal hearing. If the Fellow elects not to attend an appeal hearing after appropriate written notice, the dismissal (suspension) will be reviewed as scheduled on the basis of the information available, and a recommendation will be made by the Subcommittee.