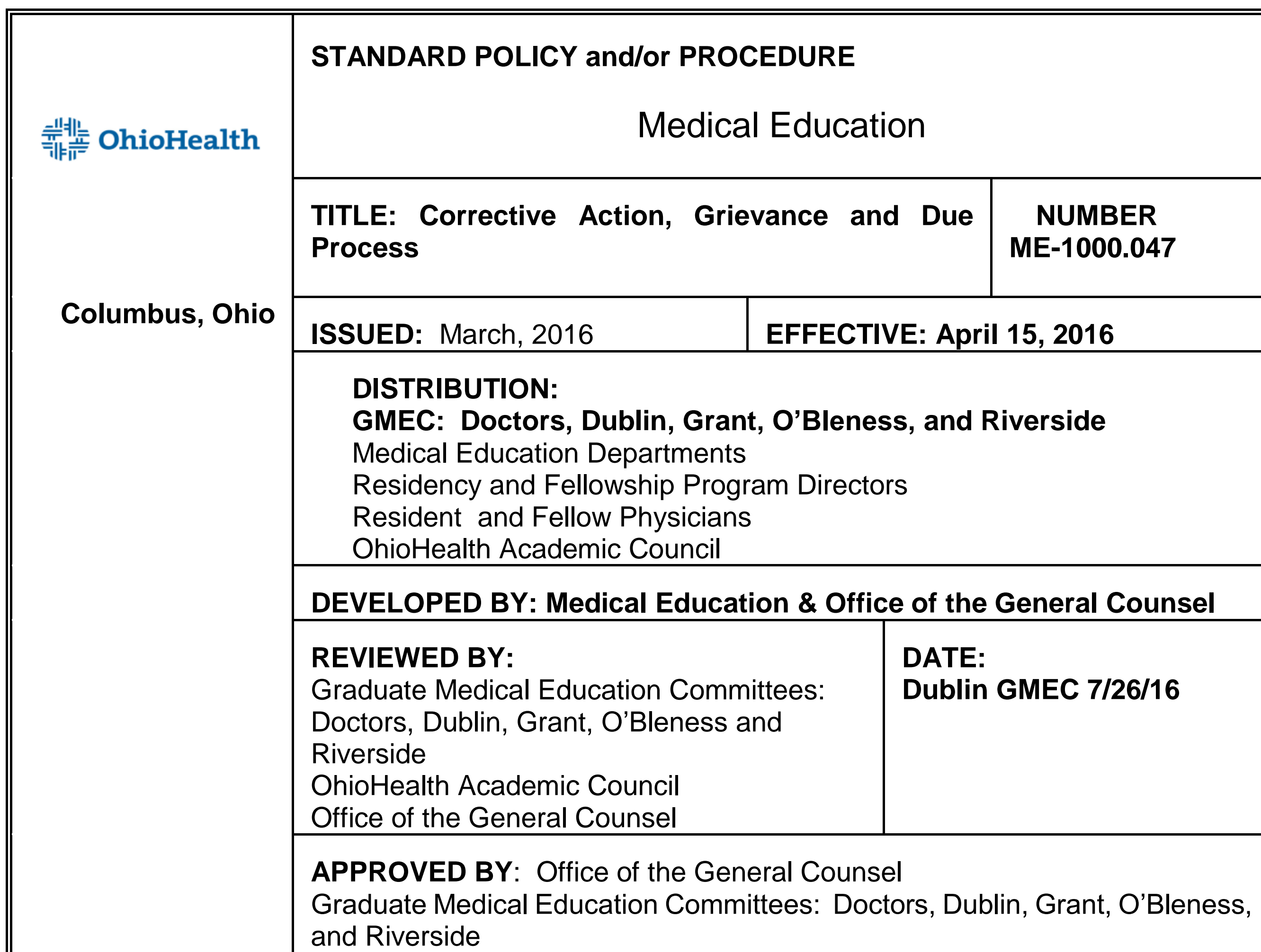

OhioHealth	STANDARD POLICY and/or PROCEDURE Medical Education	
	TITLE: Corrective Action, Grievance and Due Process	**NUMBER ME-1000.047**
Columbus, Ohio	**ISSUED:** March, 2016	**EFFECTIVE: April 15, 2016**
	DISTRIBUTION: **GMEC: Doctors, Dublin, Grant, O'Bleness, and Riverside** Medical Education Departments Residency and Fellowship Program Directors Resident and Fellow Physicians OhioHealth Academic Council	
	DEVELOPED BY: Medical Education & Office of the General Counsel	
	REVIEWED BY: Graduate Medical Education Committees: Doctors, Dublin, Grant, O'Bleness and Riverside OhioHealth Academic Council Office of the General Counsel	**DATE:** **Dublin GMEC 7/26/16**
	APPROVED BY: Office of the General Counsel Graduate Medical Education Committees: Doctors, Dublin, Grant, O'Bleness, and Riverside	

SCOPE

This Policy is in effect for Graduate Medical Education training programs at Doctors Hospital, Dublin Methodist Hospital, Grant Medical Center, O'Bleness Hospital, and Riverside Methodist Hospital (each "Hospital" individually and "Hospitals" collectively). This Policy applies to all interns, residents and fellows ("Resident/Fellow" individually and "Residents/Fellows" collectively) in the Hospitals' training programs. Each training program is responsible for determining the academic standards required for satisfactory progress through each year of study and the completion of the requirements. These standards must be approved by the Graduate Medical Education Committee ("GMEC") of the Hospital.

STATEMENT OF PURPOSE

The purpose of this Policy is to establish procedures for initiation of remediation and to provide guidance for the fair resolution of disputes regarding the Resident/Fellow's professional performance, conduct, and eligibility to continue in the Graduate Medical Education Program, or

for the adjudication of Resident/Fellow's complaints and grievances regarding the work environment or to issues related to the program or faculty. This Policy expressly supersedes any other appeals or grievance policies at the Hospital pertaining to Residents/Fellows. No other policies or procedures available to medical staff members or employees of the Hospital apply to Residents/Fellows.

POLICY STATEMENT

Remediation is the process by which rule violations or deficiencies in performance are documented, called to the attention of the Resident/Fellow, and resolved. Remediation is intended to be a learning opportunity, but in some cases the deficiency may warrant Corrective Action. This Policy defines two types of Corrective Action: Non-Adverse Corrective Action and Adverse Corrective Action. When the proposed Corrective Action has an adverse impact on the Resident/Fellow's participation in the training program it is Adverse Corrective Action and the Resident/Fellow, in most instances, is entitled to appeal the recommendation before it goes into effect. This policy sets forth the process for appealing recommendations for Adverse Corrective Actions.

Any time written notice is required pursuant to this Policy the written notice shall be a hard copy and shall be personally delivered or sent by certified mail, return receipt requested, by regular U.S. Mail, and by e-mail with a return receipt requested.

REMEDIATION

Remediation is used when rule violations or deficiencies in performance have been identified, and is intended to provide the Resident/Fellow with notice about areas that must improve or Corrective Action could result. The first goal of each training program when a Resident/Fellow demonstrates deficiencies in performance should be, in most cases, to provide support to help the Resident/Fellow improve. The Program Director shall review all reports alleging rule violations or deficiencies in performance and shall meet promptly with the Resident/Fellow to discuss any reports which the Program Director believes to have substance, and shall place a written account of the meeting, including pertinent discussion, problems identified, and plans for remediation in the Resident/Fellow’s file. This shall not require the Program Director to meet with the Resident/Fellow after every negative performance evaluation, but the Program Director shall meet with the Resident/Fellow upon indication that the negative performance evaluation(s) indicate deficiencies in performance in need of remediation under this Policy.

Remediation may consist of Non-Adverse Corrective Action or Adverse Corrective Action in any of the ACGME, AOA, or CPME competency areas as appropriate. Corrective Action may be taken in the interest of improving the performance of a Resident/Fellow, in the interest of patient safety, or in the interest of the training program as a whole.

Non-Adverse Corrective Action

"Non-Adverse Corrective Action" means any action which is intended to call attention to and correct a deficit in the performance of a Resident/Fellow, whether in academic, professional, or behavioral areas, but which does not limit, restrict, or preclude the Resident/Fellow's continued participation in the training program. Non-Adverse Corrective Action includes

negative performance evaluations, verbal counseling, written counseling, work improvement plans, and similar actions intended to improve performance. A Non-Adverse Corrective Action which does not result in the desired improvement may become an Adverse Corrective Action.

Adverse Corrective Action

An "Adverse Corrective Action" has the potential to preclude the Resident/Fellow from actual participation in the residency/fellowship program, e.g., repeating one or more months of the program due to performance deficiencies, suspension or non-renewal or termination of the Resident's contract. Only Adverse Correction Actions are subject to appeal or grievance.

The following is a non-exhaustive list of Adverse Corrective Action:

1. **Repetition:** Repetition is the decision to require a Resident/Fellow to repeat one or more months, up to a full year, of the training program due to performance deficiencies. (A deferral due to leave of absence from the training program is not repetition.)

2. **Suspension:** Suspension is the removal of the Resident/Fellow from training program activities for a period of time, with the intention of returning to the training program. The period of time may be defined in terms of days, weeks, or months, or it may be defined as the time needed to fulfill certain stated conditions. A suspension may be without pay.

3. **Probation:** Probation shall be used for Residents/Fellows who are in jeopardy of not successfully completing the requirements of the training program or who are not performing or behaving satisfactorily. Conditions of probation shall be communicated to the Resident/Fellow in writing and should include: a description of the reasons for the probation, an individualized remediation plan, and the expected time frame for the required remedial activity. Failure to correct the deficiency within the specified period of time may lead to an extension of the probationary period or other adverse corrective actions. The probationary period should not be less than 30 calendar days and its duration should be appropriate for issue(s) of concern.

4. **Involuntary Termination:** "Termination" as used in this Policy refers to the decision to end a Resident/Fellow's contract prior to the normal expiration date, other than as part of a mutually-agreed upon transfer to another program. The voluntary termination of the Resident/Fellow’s contract by the Resident/Fellow or other voluntary departure from the training program is not a “Termination” under this Policy.

5. **Summary Suspension:** Summary Suspension is a suspension that takes effect without prior notice and remains in effect during the appeal process, if any. Because of its disruptive nature, Summary Suspension may be imposed when the Resident/Fellow's activities jeopardize the safety of patients, peers, staff, or visitors, or could significantly disrupt Hospital operations or when substantial material questions arise related to but not limited to (a) the Resident/Fellow’s failing to obtain or maintain required licensure, no longer meeting the qualifications for licensure, failing to obtain or maintain a degree or credential necessary to participate in the program or necessary to obtain or maintain licensure or

certification, or failing to satisfy fundamental program or hospital requirements; (b) failing to comply with program or hospital training rules and regulations; or (c) committing a felony or other crime that could preclude the Resident/Fellow from practicing medicine or participating in the program. Summary Suspension may be recommended by the Program Director and must be approved by the Director of Medical Education. Summary Suspension can be followed by recommended Corrective Action, reinstatement, or dismissal. Residents/Fellows placed on Summary Suspension will generally remain on paid administrative leave during the appeal process (if an appeal is filed), although the program may, in its sole discretion, terminate paid administrative leave and place the Resident/Fellow on unpaid leave beginning thirty (30) calendar days after the date of suspension.

6. **Summary Dismissal.** When a Termination is recommended, in severe or egregious circumstances, a Summary Dismissal may be imposed. Severe or egregious circumstances include but are not limited to: (a) the Resident/Fellow failing to obtain or maintain required licensure or no longer meeting the qualifications for licensure, failing to obtain or maintain a degree or credential necessary to participate in the program or necessary to obtain or maintain licensure or certification, or failing to satisfy fundamental program or hospital requirements; (b) willful, flagrant, or gross failure to comply with Hospital or training program rules and regulations, (c) the arrest of the Resident/Fellow on felony charges or other crimes that could preclude the Resident/Fellow from practicing medicine, or (d) actions that demonstrate a threat to the safety of patients, peers, staff, or visitors, or to the operations of the Hospital.

PROCESS FOR CORRECTIVE ACTION

Non-Adverse Corrective Action.

Non-Adverse Corrective Action may be undertaken by the Program Director at the Program Director's sole discretion. A written copy documenting the Non-Adverse Corrective Action shall be placed in the Resident/Fellow's academic file. If the Non-Adverse Corrective Action includes a time period by which certain performance goals must be reached, the Program Director shall document in writing and place in the Resident/Fellow's academic file the Resident/Fellow's success or failure to achieve such goals.

Adverse Corrective Action.

The Program Director may recommend initiation of Adverse Corrective Action, including but not limited to any of the types of Adverse Corrective Action listed above.

While it is generally intended that the Resident/Fellow will be given the opportunity to improve and correct deficiencies and that remediation will be progressive, the Program Director is not required to use informal remediation or Non-Adverse Corrective Action prior to the recommendation of Adverse Corrective Action or to progress through types of Adverse Corrective Action in every circumstance. Depending on the facts and circumstances of each situation, the

Program Director may recommend Adverse Corrective Action at any stage in the process of remediation.

Adverse Corrective Action shall be undertaken as follows: The Program Director shall assemble all documentation supporting the need for the Adverse Corrective Action, and then shall consult with the Director of Medical Education ("DME") and:

1. The Program Director and DME shall consult with members of the Clinical Competency Committee, faculty, the GMEC, or other advisors deemed appropriate.

2. The Program Director shall prepare a written notice to the Resident/Fellow setting out the proposed Adverse Corrective Action, which shall include (a) the reasons for the action, with enough specificity for the Resident/Fellow to understand and respond; (b) the duration of the Adverse Corrective Action, if any, and the conditions that must be fulfilled before the suspension is lifted, if applicable; (c) the ramifications of the Adverse Corrective Action upon the Resident/Fellow's expected completion or graduation date; and (d) the process by which the Resident/Fellow may appeal the recommendation, with a copy of this Policy attached to the notice. This notice shall be presented to the Resident/Fellow in a face-to-face meeting in which the Program Director reviews the proposed Adverse Corrective Action and the reasons for it. If such a meeting is not possible, then the written notice shall be sent to the Resident/Fellow by both certified mail, return receipt requested, by regular U.S. Mail, and by e-mail with a return receipt requested.

3. The Resident/Fellow shall have ten (10) business days (Monday through Friday) from receipt of the written notice to initiate an appeal of the proposed Adverse Corrective Action. Such request must be in a written notice submitted to the DME and must be received within the ten (10) period.

    a. If the Resident/Fellow does not submit a timely request to initiate an appeal, the proposed Adverse Corrective Action shall then take effect.

    b. If the Resident/Fellow does submit a timely request to initiate an appeal, then the appeal shall proceed in accordance with the Appeal Procedure set forth below.

<u>Summary Suspension or Dismissal.</u>

If the proposed Adverse Corrective Action is a Summary Suspension or Summary Dismissal, all the steps set forth above under Adverse Corrective Action shall apply, however, the Summary Suspension or Dismissal shall take effect immediately and shall remain in effect unless and until the decision is reversed or modified through the Appeal Procedure described below.

APPEAL PROCEDURE AND DUE PROCESS

The Department of Medical Education and the GMEC intend that Residents/Fellows be treated in a fair, reasonable and equitable manner. Toward that end, and consistent with ACGME and AOA Institutional Requirements, the training program has established the following policies and procedures for appeals and grievances.

Adverse Corrective Action Appeal Procedure

1. **Request.** If an appeal of Adverse Corrective Action recommendation is properly requested, as described in Section 3 of "Adverse Correction Active above," or a grievance is referred, as described in "Grievance Procedure" below, then this procedure shall be initiated.

2. **Review Subcommittee.**

    a. Appointment: Within a reasonable time following receipt of the written appeal or grievance request, the DME shall send copies of the grievance/appeal to the involved Program Director and the Chair of the GMEC. The Chair of the GMEC shall name a subcommittee of the GMEC to hear the intended action. The subcommittee shall consist of three (3) members who were not directly involved in the alleged offenses. The subcommittee will ideally be comprised of members of the GMEC who are in departments other than the Resident's/Fellow's. The Chair of the GMEC may serve on the subcommittee unless he or she is also the DME. If necessary, members of the faculty who are not a part of the GMEC can be appointed to the subcommittee. The DME shall notify the Resident/Fellow of receipt of the appeal/grievance request and of the membership of the subcommittee.

    b. Record: In an appeal of recommended Adverse Corrective Action, the Program Director shall submit all underlying materials regarding the recommended Adverse Corrective Action, including the written notice given the Resident/Fellow, to the subcommittee upon appointment. In a grievance hearing, the Program Director shall submit all underlying materials regarding the grievance, including the written complaint of the Resident/Fellow.

    c. Meeting: Within twenty (20) business days of its formation, the subcommittee shall meet to hear the Resident/Fellow's grievance or appeal from the recommended action. The hearing proceedings will be closed, except for as noted below.

    d. Purpose: The purpose of the review is to determine if there is sufficient evidence, in the subcommittee's opinion, to support the recommended Adverse Corrective Action or Resident/Fellow complaints and grievances related to the work environment or issues related to the program or faculty.

    e. Notice: The Resident/Fellow is entitled to at least five (5) business days' notice of the date, time and place of the hearing. Notice shall either be by personal delivery or by both certified mail, return receipt requested, by regular U.S. mail, and by e-mail with a return receipt requested.

f. Advance Submission: At least three (3) business days in advance of the hearing, both the Program Director and the Resident/Fellow may submit to the DME for distribution to the subcommittee, with a copy to each other, any written statements and/or documentation they wish the subcommittee to consider. Supporting documentation may not be introduced at the hearing unless included in this advance submission. The subcommittee may request additional information to be submitted as advance submission in at its discretion. If either side wishes to have witness testimony at the hearing, a request to allow such testimony, identifying the witness and nature of testimony, shall be submitted to the subcommittee as an advance submission. The subcommittee shall notify the Program Director and Resident/Fellow whether or not witness requests will be permitted at least one (1) business day prior to the hearing.

3. **Hearing.**

a. The subcommittee may, at its discretion, request the presence of an attorney for the sole purpose of advising the subcommittee on procedure and other legal issues arising from the subcommittee's deliberations. Such attorney shall not act as an advocate for either the Program Director or the Resident/Fellow and shall make no presentations other than responses to questions from subcommittee members. The DME (or Chief Academic Officer in the absence of the DME) shall attend the hearing as an observer but shall not be present during the subcommittee's deliberations.

b. The Program Director (or designated faculty member in the absence of the Program Director) shall present the proposed Adverse Corrective Action on behalf of the Program, as well as the reasons for it. The Program Director may present any documentation in support of the proposal, provided that documentation has been identified and shared with the Resident/Fellow in advance. The Program Director may not use an attorney to present the reasons for the recommendation. The subcommittee may ask any questions it has for the Program Director.

d. The Resident/Fellow shall be invited to appear before the subcommittee and present his or her evidence to support the complaints or grievance or objections to the proposed Adverse Corrective Action. The Resident/Fellow may be accompanied by a physician advocate from the Medical Staff, but may not have an attorney present. This advocate may advise the Resident/Fellow and offer statements prepared on the Resident/Fellow's behalf. The subcommittee may ask any questions it has for the Resident/Fellow; questions directed to the Resident/Fellow must be answered by the Resident/Fellow, not by the advocate.

d. Order of Business

i. Call to Order and Introduction

a. Members of the hearing subcommittee and counsel

b. Resident/Fellow and physician advocate, if any
c. Program Director or designee

ii. Brief review of procedures
iii. Presentation of the proposed Adverse Corrective Action by the Program Director, including the review of the written communication provided to the Resident/Fellow and any supporting documentation. (exclusive of time for questions asked by the subcommittee, this presentation shall not exceed 30 minutes except with prior approval of the subcommittee).
iv. Presentation of the Resident/Fellow (exclusive of time for questions asked by the subcommittee, not to exceed thirty (30) minutes except with prior approval of the subcommittee).
v. Rebuttal presentations and summary statements. The Program Director and the Resident/Fellow may respond to each other's presentations, with the Program Director going first. (Rebuttal shall not exceed ten (10) minutes per side except with approval of the Subcommittee).
vi. Additional questions by the subcommittee to either party, if any
vii. The subcommittee may call a break or recess for deliberations at any time, but at the conclusion of the hearing the subcommittee shall adjourn to complete deliberations. The subcommittee may convene additional hearings in its sole discretion, and may limit the topics of such hearings if and as it deems appropriate. If such additional hearings are called, the subcommittee shall provide as much notice as possible to the Program Director and to the Resident/Fellow. The subcommittee may call such additional hearings for the purpose of interviewing witnesses called by the subcommittee. Additional hearings shall be consistent with the provisions of this Section 3, except that the subcommittee may limit the statements, testimony, and questions to those specific issues to be resolved and to shorter times as deemed appropriate.

4. **Report and Recommendation.** Upon completing its deliberations, the subcommittee shall submit a written recommendation to GMEC. The subcommittee must reach their decision by a majority vote based upon the evidence presented. The recommendation can be to:

a. affirm the program's intended action, or
b. revise or modify the program's intended action, or
c. not affirm the program's intended action.

A written copy of the subcommittee's recommendation will be given to the Resident/Fellow.

5. **GMEC Action.** The subcommittee's report and recommendation will be presented to GMEC at its next regular meeting. The report will be in writing and will give the subcommittee's recommendation and a brief description of the reasons for it. The GMEC may only accept or reject the subcommittee's report and recommendation. The GMEC will vote on whether to accept or reject the report and recommendation.

6. **Final Decision.** If the GMEC accepts the subcommittee's report and recommendation, the report and recommendation are the final decision. If the GMEC rejects the subcommittee's report and recommendation, the matter will be referred to the DME (or Chief Academic Officer in the absence of the DME) for final decision, and in that case, the decision of the DME (or Chief Academic Officer in the absence of the DME) shall be final and not subject to further appeal or grievance.

Grievance Procedure

Within thirty (30) calendar days after an incident which forms the basis of a complaint or grievance relating to the work environment or to issues related to the training program or faculty, to initiate the Grievance Procedure the Resident/Fellow must submit a written statement to the DME describing the grievance or complaint with enough specificity to allow the DME to understand the basis of the grievance and respond to it. The written grievance or complaint must specify the violation(s) alleged and the remedy sought. The Grievance Procedure will not be granted if the DME receives the request after the thirty (30) day period has expired. Failure to file within thirty (30) days forever bars the use of the Grievance Procedure by the Resident/Fellow. To the extent that the DME determines the grievance has some validity, the DME may address the issue as he or she deems appropriate to resolve the grievance. To the extent that the DME determines that the grievance has some validity and either (1) should be resolved with a hearing or (2) the DME has previously attempted to address the issue without a hearing and the Resident/Fellow believes the grievance is not resolved, then the DME shall refer the grievance on for a hearing. The grievance hearing will follow the Adverse Corrective Action Appeal Procedure specified above.