

Discipline: Appeals and Due Process

Facility: CMC
Origin Date: July 2009
Revision Date: September 2024
Sponsor: GMEC

1. PURPOSE:

Carilion Clinic recognizes a Resident's right to appeal actions under specific circumstances. This Policy describes the appeal process for designated actions.

2. SCOPE:

This policy applies to trainees (Trainees) in all ACGME, Council on Podiatric Medical Education (CPME), and Commission on Dental Accreditation (CODA) accredited post-graduate training programs sponsored by Carilion Medical Center (CMC).

3. DEFINITIONS:

Appeal is a formal process whereby a Trainee requests an opportunity to contest a prior formal action.

Adverse Actions include probation, suspension (See Institutional Suspension policy), non-renewal of contract, and dismissal.

Probation is a formal, adverse action taken by the Program Director to correct either repeated or concerning deficiencies noted in the Trainee's performance and to indicate that continuation in the program is in jeopardy. Probation may be appealed by the trainee.

Non-Renewal of Contract is a formal action taken by the Program Director when a determination is made to withhold reappointment or renewal of a Trainee contract for a subsequent period of training in the program. In most, but not all, cases, non-renewal of contract occurs after a Trainee has failed to correct identified deficiencies in a prior period of remediation or probation. The DIO must provide an initial review and approval of the non-renewal action prior to the Program Director notifying the Trainee of the action. When a Trainee's appointment is not renewed, the program must provide the Trainee with a written notice of the intent no later than four months prior to the end of the Trainee's current appointment except when there is a current

remediation or probation plan in place, in which case the notice should be provided as soon as the Trainee's progress is deemed by the Program Director to be insufficient to warrant a renewal for an additional contract term, or, in any event, no later than 60 days prior to the expiration of the Trainee's then-current contract term. Non-renewal of a contract may be appealed by the trainee.

Non-promotion is an action taken by the Program Director to not advance a Trainee to the next level of training based on inadequate performance. The Trainee may be required to repeat all or part of the year of training r, or the end date (i.e., graduation) of the training program may be extended based on requirements from either the program or the certification board. Non-promotion may be appealed by the trainee.

Dismissal is a formal action taken by the Program Director, advised by the CCC, and approved by the DIO at any time either due to unsuccessful remediation or probation, at the end of a suspension period, or as the result of but not limited to the following:

- A. a significant violation of Institutional or medical education policies.
- B. a significant violation of professional or ethical behavioral expectations.
- C. engaging in illegal or inappropriate activity that adversely affects the Trainee's position in the Program.
- D. an inability to demonstrate the professional competence or attributes necessary to advance in or complete the respective Program.

Dismissal may be appealed by the Trainee.

4. PROCEDURE:

Notification of Intent to Appeal:

The Trainee must provide written notification to the DIO of the intent to exercise his or her right to appeal within five (5) business days after his or her receipt of written notification of a disciplinary action subject to the appeal process.

Failure to provide proper written notification will be deemed a waiver of any right to appeal.

The process for appeal depends on the adverse action that is being appealed. Non-renewal of a contract, non-promotion, and probation are decided by an Appeal Subcommittee ("subcommittee"). Dismissal and Suspension are decided by a Panel of Chairs ("Panel").

Appeal Subcommittee:

An Appeal Subcommittee will be convened if the trainee chooses to appeal Non-Renewal of Contract, Non-Promotion, or Probation.

The members of the Appeal Subcommittee shall be appointed by the GME Director or designee and shall consist of:

- three (3) program faculty members from non-involved Programs, one of whom shall be assigned to Chair the Subcommittee,
- two (2) trainees from non-involved Programs.

The GME Director and DIO may assist the Subcommittee and may be present at all meetings of the Subcommittee.

The Subcommittee will convene to conduct an appeal hearing within ten (10) business days after receipt of the written intent to appeal unless there are extenuating circumstances.

The GME Director or designee shall provide written notification to the Trainee as to the date, time, and location of the appeal hearing at least five (5) business days prior to the hearing.

The Trainee's Program Director will present the course of events with documentation in support of the disciplinary action to the Subcommittee. The Program Director may ask other individuals to be present and speak during the hearing.

The Trainee will be provided an opportunity to present argument with documentation in support of his or her appeal of the disciplinary decision. The Trainee shall have the obligation to persuade the Subcommittee that the action lacks any factual basis or that it is arbitrary, unreasonable, or not in compliance with applicable medical education or Institutional policies. The Trainee may ask other individuals to be present and speak during the hearing.

Assistance by counsel:

The Trainee may be assisted by counsel of his or her own choosing and expense during an Appeal. Counsel may not actively participate in the proceeding but may be present for the purpose of advising and consulting.

The Trainee should notify the GME Director or designee in writing of his or her intent to be assisted by counsel at least three (3) business days prior to the hearing. The Trainee should retain counsel who is able to be present at the appeal hearing date and time set by the Subcommittee.

The Institution may also have counsel of its own choosing present for advice and consultation.

Documentation of the Appeal Hearing:

A confidential record of the hearing may be made by such method as shall be determined by the GME Director or designee.

Decision of the Subcommittee:

The Chair of the Subcommittee shall submit a written decision to the DIO within five (5) business days of the hearing.

- Non-renewal of Contract: the Subcommittee may accept or reject the non-renewal action.
- Non-promotion of Contract: the Subcommittee may accept, reject, or propose modifications to the non-promotion action.
- Probation: the Subcommittee may accept, reject, or modify the terms of probation.

The DIO will distribute written copies of the decision to the Trainee and the Program Director.

The decision of the Subcommittee will be final and binding upon all parties.

Appeal to a Panel of Department Chairs (Panel):

- A panel will be convened for the appeal of Dismissal or Suspension
- The DIO will notify the Chief Physician Executive (CPE) of the request for an appeal to the Panel within five (5) days of the request for an appeal. The Appeal Hearing must be convened within ten (10) business days of the CPE notification.
- The DIO will appoint a Panel of three Carilion Clinic Department chairs. The chair of the department which sponsors the resident's training program cannot serve on this panel. The CMO is to oversee the actions of the Panel but will not be a voting member.
- The Panel will convene to conduct an appeal hearing within ten (10) business days of notification of the CMO.

Assistance by counsel:

The Trainee may be assisted by counsel of his or her own choosing and expense during an Appeal. Counsel may not actively participate in the proceeding but may be present for the purpose of advising and consulting.

The Trainee should notify the ADME in writing of his or her intent to be assisted by counsel at least three (3) business days prior to the hearing. The Trainee should retain counsel who is able to be present at the appeal hearing date and time set by the Panel.

The Institution may also have counsel of its own choosing present for advice and consultation.

The Trainee’s Program Director will present the course of events with documentation in support of the disciplinary action to the Panel. The Program Director may ask other individuals to be present and speak during the hearing.

The Trainee will be provided an opportunity to present argument with documentation in support of his or her appeal of the disciplinary decision. The Trainee shall have the obligation to persuade the Panel that the action lacks any factual basis or that it is arbitrary, unreasonable, or not in compliance with applicable medical education or Institutional policies. The Trainee may ask other individuals to be present and speak during the hearing.

The Panel will complete its review and develop a written decision to accept or reject the Dismissal within five (5) business days after the appeal hearing. The written decision will be distributed to the DIO, the Trainee, the Program Director, and the department chair.

The decision of the Panel will be final and binding upon all parties.

Name	Title	Dept./Committee	Date
Daniel Harrington, MD	DIO	GMEC	July 21, 2009
Daniel Harrington, MD	DIO	GMEC	June 19, 2012
Donald Kees, MD	DIO	GMEC	July 16, 2013
Donald Kees, MD	DIO	GMEC	January 19, 2016
Donald Kees, MD	DIO	GMEC	April 18, 2017
Donald Kees, MD	DIO	GMEC	August 20, 2019
Arthur T. Ollendorff, MD	DIO	GMEC	September 17, 2024