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[Home](#) > [Education](#) > [Medical Residency Program](#) > [Program Information](#) > [Training Program Policies](#) > [Discipline Dismissal](#)

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## Discipline Dismissal

### Training Program Policies ? Discipline Dismissal

The UCSF Radiation Oncology Residency Training Program abides by the grievance, administrative and academic actions policies as set forth in the UCSF, GME housestaff manual/policies. Definitions in this policy are defined in the Grievance Policy (Administrative and Academic Actions: Non Dismissal).

#### I Dismissal

##### A. Grounds for Action

Trainees may request the Dean of the School of Medicine to review the following actions after review at the department level:

1. Non-Renewal of an Annual Contract; or
2. Dismissal from the GME Training Program, including termination of appointment at any time for an academic deficiency and/or a medical disciplinary cause or reason.

##### Dismissal from GME Training Program

Based on the program director's discretion as approved by the chair, a trainee may be dismissed from a GME training program for academic deficiencies. This action is appealable to the dean of the School of Medicine after review by the departmental Clinical Competence Committee. Reasons for dismissal may include but are not limited to the following:

1. A failure to achieve or maintain programmatic standards in the GME training

- program;
2. A serious or repeated act or omission compromising acceptable standards of patient care, including but not limited to an act which constitutes a medical disciplinary cause or reason;
  3. Unprofessional, unethical or other behavior that is otherwise considered unacceptable by the GME training program;
  4. A material omission or falsification of a GME training program application, medical record, or university or medical document, including billing records. Any allegation regarding failure to comply with UCSF's billing rules shall be forwarded to UCSF's Corporate Compliance Officer and/or the Office of General Counsel for resolution in accordance with UCSF's Corporate Compliance Program.

## **B. No Duplicate Hearings**

If a trainee's participation in the GME Training Program is denied, terminated or limited for academic or disciplinary reasons, the trainee shall be entitled to request notice and, as appropriate, review and/or a hearing in accordance with the procedures set forth herein; provided, however, that in no event shall trainee be entitled to more than one review or hearing of the same action based on the same set of facts under these procedures or pursuant to the UCSF Medical Staff Bylaws.

## **C. Notice of Reasons for Non-Renewal or Dismissal**

The trainee shall receive in writing the reasons for non-renewal or dismissal. Such notice shall include whether any action or recommended action, if adopted, shall be taken and reported to the Medical Board of California and/or the National Practitioner Data Bank.

## **D. Non-Renewal and Dismissal Procedures**

The procedures contained in Part III.D of these guidelines apply only to the actions reviewable by the dean, as listed in Part III.A of these guidelines. Failure to grieve within 30 days will be deemed an acceptance by the trainee of the academic action and s/he will lose the opportunity to appeal.

### **Level One ? Informal Review**

If the program director, with approval of the chair, determines that grounds exist to non-renew or dismiss a trainee from the training program, the program director will provide the trainee with a written notice of the intent to non-renew or dismiss. This notice will include a statement of the reason(s) for the intended non-renewal or dismissal, a copy of the materials upon which the intended non-renewal or dismissal is based, and a statement that the trainee has a right to respond in writing to the Chair within 10 calendar days of receipt of the notice. If the trainee submits a written response within the 10-day period, the chair will review it. After reviewing the trainee's written response (if any), the chair will decide whether non-renewal or dismissal is appropriate. Within 10 days thereafter, the program director will notify the trainee of the chair's decision by letter which shall also be copied to the vice dean. If the decision is to uphold the proposed dismissal, the letter should include the reasons for upholding the proposed non-renewal or dismissal, provide the effective date of the non-renewal or dismissal, and include a copy of these guidelines. Attempts at informal resolution shall not extend the

time limits for filing a formal grievance unless the trainee and the program director so agree, or upon the approval of the vice dean. The trainee will continue to receive regular stipends until the effective date of the non-renewal or dismissal.

## **Level Two ? Formal Review**

If the trainee wishes to appeal the decision to non-renew or dismiss, the trainee (?Complainant?) must file a written appeal with the vice dean no later than 20 days after the chair?s decision is received by the trainee. The written complaint should explain concisely why the complainant believes the chair?s decision was unfounded or arbitrary and capricious, and should address each specific reason for the dismissal set forth in the program director?s notice of intent to dismiss.

The complainant may be assisted or represented by another person at his or her own expense. The university may also be represented. If the complainant is represented by an attorney, he/she shall notify the university 10 days prior to the prehearing conference or 20 days prior to the hearing. The complainant must appear in person at the hearing, for the full duration of the hearing, even when represented. Except for good cause, as determined by the Ad Hoc Formal Review Committee, the failure of the trainee to appear in person at the hearing will be deemed a voluntary dismissal of his/her complaint.

Within 10 days of receipt of the appeal, or as soon thereafter as is practicable Committee to hear the complaint. The committee will consist of the vice dean, who will appoint an Ad Hoc Formal Review 3 to 5 members (at least 1 of whom shall be a member of the full-time faculty), 1 senior trainee (PGYIII or higher), and 1 member of the Graduate Medical Education Committee. The vice dean will designate one of the committee members to be the committee chair. If possible, one of the committee members should be from the same department as the complainant. In addition, individuals who were substantially involved in any earlier review of the issues raised in the complaint, or who were substantially involved in any incident underlying the grievance should generally not sit as a member of the committee. The committee may, at its discretion, request that an attorney from the Office of the General Counsel be appointed to provide independent legal counsel to the committee. This attorney shall not vote in the committee?s deliberation process. The committee will handle all procedural matters during the pendency of the hearing. At all other times, the vice dean will make all such decisions. Until the appointment of a committee chair, the vice dean will resolve all issues related to these procedures.

The hearing will ordinarily be held within 45 days of receipt of the appeal by the vice dean. Unless otherwise agreed by the parties and the chair of the committee, the complainant and his/her advocate(s), if any, will meet at least 15 days prior to the hearing at a prehearing conference with the committee chair and the university representative and university advocate(s) (if any) to agree upon the specific issues to be decided by the committee. Absent a showing of good cause, these issues will be limited to the reasons stated in the written notice of intent to dismiss (III.C) and the trainee?s written and timely submitted response to the notice of intent to dismiss (III.D.2). If the parties are unable to reach an agreement on the issues to be decided, the committee chair will determine the issues to be reviewed. At this conference, the parties may raise other procedural and substantive issues for decision by the chair.

At least 7 days prior to the hearing, or at another date agreed to by the parties and the chair of the committee, all documents to be introduced as evidence at the hearing and names of all

witnesses shall be exchanged. With the exception of rebuttal witnesses and documents used in rebuttal, any witnesses not named and documents not exchanged seven days before the hearing may, at the committee chair's discretion, be excluded from the hearing.

The hearing will provide an opportunity for each party to present evidence and to cross examine witnesses. The committee chair has broad discretion regarding the admissibility and weight of evidence and is not bound by federal or state rules of evidence. The committee chair will rule on all questions of procedure and evidence. The hearing will be recorded on audio tape by the university unless both parties agree to share the cost of a court reporter, or one party elects to pay the entire cost for the court reporter in order to have a transcript for its own use, in which case the other side may purchase a copy of the transcript for half the cost of the court reporter and transcription, plus any copy costs. The complainant may listen to the audio tape and may purchase a copy of the audio tape. The vice dean, or his/her designee, will be the custodian of the audio tape and/or any stenographic records, and will retain the recording for 5 years from the time the vice dean's decision becomes final. Unless both the complainant and the university agree to an open hearing, the hearing will be closed. All materials, reports and other evidence introduced and recorded during the course of a closed proceeding may not be disclosed until the final resolution of the complaint under these procedures except as may be required by applicable law. At the request of either party or the committee chair, only the witness testifying may be present and other potential witnesses will be excluded temporarily. However, the complainant, his/her advocate(s) and the university's representative(s) and its advocate(s) will at all times have the right to attend the hearing.

The complainant has the burden to prove by a preponderance of evidence that the dismissal was not reasonable, nor based upon all the facts and circumstances of the case, (i.e., arbitrary and capricious) through documentary and testimonial evidence. The University will present evidence in support of the program director's decision. Thereafter, the complainant will present his/her evidence. The parties shall have the opportunity to present rebuttal evidence. The committee chair has the right to limit rebuttal evidence in his/her discretion. At the discretion of the committee, briefs may be submitted. The committee chair will determine the appropriate briefing schedule (if any). If briefs are not requested, each party shall have the opportunity to present a closing statement. Following the close of the hearing, including receipt of any briefs, the committee will present its written recommendation(s) to the complainant, the chair, program director, vice dean, associate dean for Graduate Medical Education, and the dean of the School of Medicine. The recommendation(s) should occur, absent unusual circumstances, within 15 days of the hearing's conclusion, or if briefs are submitted, within 15 days of the date the briefs are submitted.

The committee will evaluate the evidence presented and shall prepare a recommended decision which shall contain written findings of fact and conclusions. The action of the program director, as approved by the chair, will be upheld if the committee finds that the trainee has not met his/her burden and established by a preponderance of the evidence that the chair's decision was arbitrary and capricious. The recommended decision shall become final after 15 days unless appealed pursuant to part III. E.

## **E. Appeal**

Within 15 days of receipt of the committee's recommendation(s), either party may submit a final written appeal of the committee's decision to the dean of the School of Medicine. Any such response submitted to the dean must be limited to:

1. Whether the record presented to the committee contained sufficient evidence to support the committee's recommendation; or
2. Whether there is new evidence that could not reasonably have been introduced at the hearing and would be likely to change the result.

After receipt of the committee's recommended decision, the parties' written response (if any), and the record, the dean within 60 days, or as soon as reasonable thereafter, will take any action deemed appropriate, including upholding the committee's recommended decision, rejecting the committee's recommendation or remanding the matter back to the committee with instruction for further review and recommendation. The dean's ultimate decision will be final and will be in writing and shall be sent to the Program Director, the Chair, the complainant, the committee chair, the vice dean for Education, the associate dean for Graduate Medical Education and, if the action was taken for medical disciplinary cause or reason, to the Medical Board of California

## **F. Remedy**

If the complainant is reinstated, the remedy will not exceed restoring the complainant's stipend payment, benefits, or any rights lost as a result of the action, less any mitigating income earned from other sources.

[Back to Training Program Policies](#) <sup>[1]</sup>

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