



DONT LET A MOLE HILL TURN
INTO A MOUNTAIN

Managing Conduct and Performance *at*
Upstate Medical University



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Don't Let A Mole Hill Turn Into A Mountain



**Managing Discrimination and Harassment
Complaints at SUNY Upstate**



On behalf of the Office of Diversity & Inclusion

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Current Landscape

- “Me Too” movement
- Use of social media has sent harassment claims viral
- Ongoing changes to anti-discrimination laws in NYS
- At Upstate: Increase in number of internal complaints





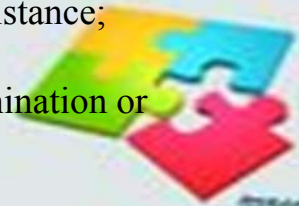
Office of Diversity and Inclusion Affirmative Action & Title IX

- Investigates claims of discrimination and harassment in employment and under Title IX in order to:
 - Ensure a respectful, harassment and discrimination-free work environment and educational setting
 - Ensure compliance with the law
 - Ensure anti-discrimination policies are followed



Federal and State Anti-Discrimination Laws, including Title IX

- Federal and State Anti-Discrimination laws prohibit:
 - Discrimination and harassment in employment based on membership in a protected class;
 - Sex discrimination, including sexual harassment, in any education program or activity receiving Federal financial assistance;
 - Retaliation against individuals who oppose discrimination or harassment.



Discrimination

- Different treatment of or taking adverse action against someone because of a personal characteristic protected by law including:
 - Race
 - Gender, including Pregnancy
 - Creed
 - Color
 - Religion
 - National Origin
 - Age
 - Disability
 - Physical or Mental
 - Actual or Perceived
 - Military Status
 - Familial Status
 - Marital Status
 - Domestic Violence Victim Status
 - Arrest record
 - Conviction record
 - Pre-Disposing Genetic Characteristics
 - Gender Identity
 - Transgender Status
 - Gender Dysphoria
 - Sexual Orientation



Harassment

- Harassment, including sexual harassment, is a form of discrimination.
- Two Types:

Quid Pro Quo:

Employee's submission to unwelcome sexual advances is used as a basis for making an employment or educational decision, including as a condition of continued employment or education.

Hostile Work Environment:

Offensive and unwanted actions, communication, or behavior that is severe and pervasive enough to create a work environment that a reasonable individual would find intimidating, hostile, or abusive.

Examples of Sexual Harassment

- Physical:
 - Any unwelcome touching
 - Massaging
 - Stalking
- Verbal:
 - Telling sexually explicit jokes
 - Discussing sexual thoughts, fantasies or activities
 - Repeated requests for a date with someone who is not interested
- Non-Verbal:
 - Displaying sexually explicit pictures;
 - Emailing, tweeting, texting, instant messaging sexually explicit materials, comments, propositions
 - Leering or making cat-calls or sexual gestures at someone



Retaliation

- Adverse action against or harassment of an individual because:
 - He/she complained of discrimination or harassment
 - He/she filed a charge of discrimination or harassment
 - Testified or participated in an investigation, proceeding, or lawsuit alleging claims of discrimination or harassment
 - Opposed employment practices that they reasonably believe discriminate against individuals in violation of these laws



Institutional Liability: Supervisor Discrimination/ Harassment

- The actions of supervisors, managers, and chairs are considered actions of our organization
- Tangible employment action → automatic liability – no defense.
- No tangible employment action → can only avoid liability if we:
 - 1) Reasonably tried to prevent and promptly correct the harassing behavior; and
 - 2) Complainant unreasonably failed to take advantage of any preventive or corrective opportunities provided.



Institutional Liability: Co-worker or Non-Employee Discrimination/Harassment

- Liable for harassment by:
 - non-supervisory employees
 - non-employees over whom it has control
 - (e.g., independent contractors, temporary employees, or vendors on the premises)
- Liability if university:
 - knew or should have known about the harassment; and
 - failed to take prompt and appropriate corrective action.



Supervisor's Personal Liability

- Supervisors can be held personally liable for unlawful harassment as an “aider and abettor” where:
 - Informed about offensive conduct
 - but failed to take appropriate investigative or remedial measures.



Upstate's Anti-Discrimination Policies

- **Zero tolerance:**
 - We do not tolerate any form of harassment or discrimination.
 - Our policy is more strict than the law
 - Conduct that may not rise to the level of illegal harassment may not be appropriate
 - Goal: To create a culture that is free from harassment and/or discrimination – not simply to avoid unlawful behavior

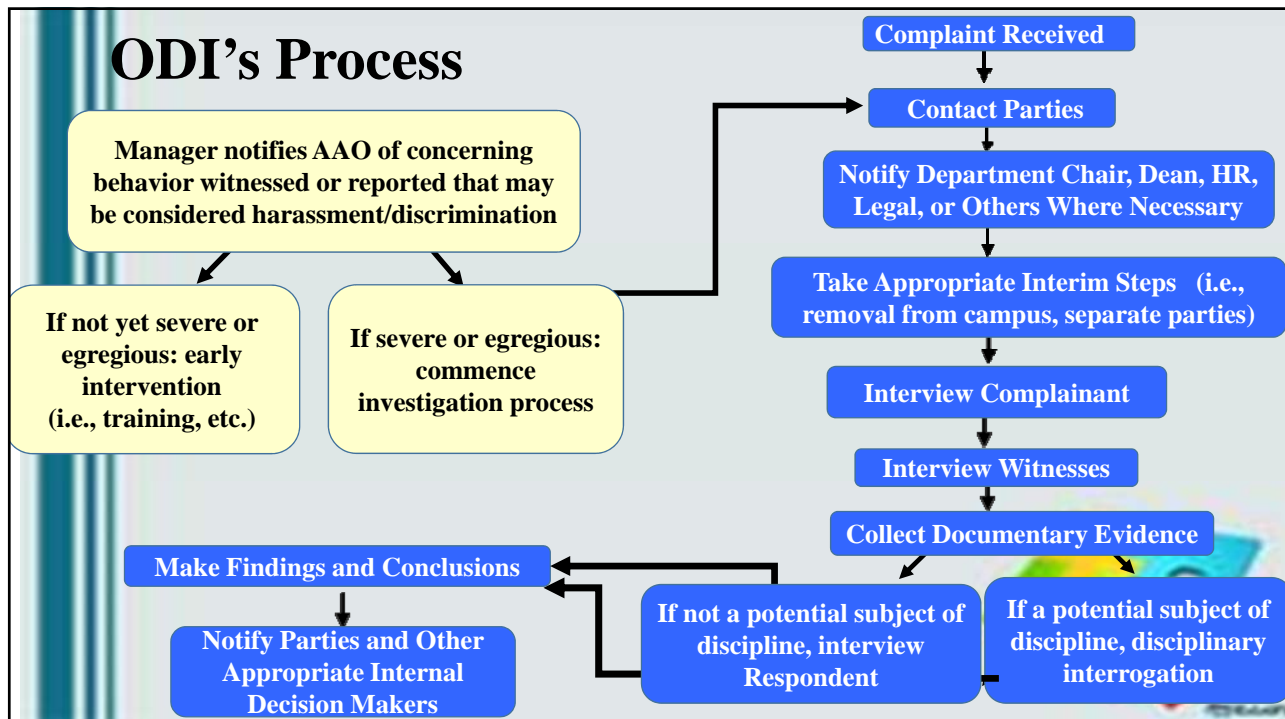


Your Role As Supervisors



- As a supervisor, you have a heightened obligation to help address and eliminate discrimination and harassment.
- Keep complainant's complaint confidential, except to inform the appropriate persons who can address the matter.
- Elevate harassment/discrimination that you have witnessed or have received complaints about to appropriate persons (i.e., AAO or CDO)
- Work with ODI and ELR to take prompt corrective measures as necessary

ODI's Process



Your Role As Supervisors

- Remember to refer the employee and report the complaint to Title IX Coordinator/AAO rather than:
 - Handling them yourself
 - Promising confidentiality to the complainant
- After a complaint has been made, stay neutral and allow the process to play out
 - Avoid joking about the incident with others, judging, taking sides, or treating the complainant differently
 - Avoid sending emails regarding what you believe may have happened.
- Maintain the status quo during an investigation.
 - If you absolutely feel that adverse action needs to be taken, fully review the matter with ELR and Legal to determine the best/least risky course of action.



Potential Consequences of Not Reporting Harassment/Discrimination

- Biased or no investigation
- Placing students and other employees at risk of retaliation or further discrimination/harassment
- Violation of the Law
- Personal liability



How to Prevent a Mole Hill From Becoming A Mountain?

- Cultivate a harassment-free culture from the top down by setting the tone for the department
- Conduct should be addressed before it reaches the level of severe and pervasive.
- Make training a priority
- Be a Bystander:
“If you see something, say something”
- When in doubt, contact ODI for guidance



Policy Number: **UW E-01**

Approved by: **CEO Cabinet &
University Executive Committee**

Issue Date: **04/30/1989**
Value(s): *Drive Innovation & Discovery, Respect
People, Value Integrity, Serve Community,
Embrace Diversity and Inclusion*

Applies to: **Upstate Medical University**
Page(s): 1 of 4

Non-Discrimination and Equal Opportunity Policy

Review Date:	Change Description:
12/20/2017	
Revised Date:	Change Description:
12/20/2017	Removed much of the content related to harassment and created separate, University-Wide Harassment Prevention Policy which defines harassment in detail and provides examples of prohibited harassment. Removed much of the content related to harassment and created separate, University-Wide Harassment Prevention Policy. Revised sections addressing which persons the policies applies to, responsibilities for reporting conduct in violation of this policy, and prohibition against retaliation.

Applies to:

All members of the SUNY Upstate Medical University community, including but not limited to faculty, medical providers, staff, students, applicants, volunteers, vendors, visitors, guests, and all other individuals present on SUNY Upstate Medical University’s campus or participating in SUNY Upstate Medical University’s programs or activities, whether on or off campus, including overseas programs (hereinafter referred to as “SUNY Upstate Community Members”).

Policy:

SUNY Upstate Medical University and its affiliates (“SUNY Upstate”) are committed to fostering a diverse community of outstanding medical providers, faculty, staff, and students, as well as ensuring equal educational opportunity, employment opportunity, and access to programs, activities and medical services, without regard to an individual’s race, religion, color, gender, age, national origin or ancestry, disability, sexual orientation, gender identity and expression, marital status, familial status, predisposing genetic characteristics, criminal conviction, domestic violence victim status, veteran status, or other protected category under federal, State and/or local law (“protected categories”). SUNY Upstate prohibits any form of discrimination, including harassment, within its community or in its programs on the basis of these protected categories.

This policy applies to all aspects of employment, education, programs and activities sponsored by SUNY Upstate, including but not limited to recruitment, hiring, examination and testing, training, grading, disciplinary actions, rates of pay or other compensation, advancement, classification, transfer and reassignment, layoffs, return from layoffs, discharge, educational opportunity, tuition assistance, and participation and administration of social and recreational programs.

This policy also applies to all aspects of medical care provided to the public by or on behalf of SUNY Upstate. All medical care and services will be provided to existing or prospective patients without regard to their membership in the above protected categories, or their chosen source of payment for services.

In furtherance of this policy, SUNY Upstate aims to promote the full realization of equal employment opportunity by maintaining an Affirmative Action Program and monitors affirmative action-related employment decisions and statistics in accordance with state and federal law and executive orders.

Reporting Conduct in Violation of This Policy:

A. Reporting Process For SUNY Upstate Community Members.

If SUNY Upstate Community Members believe that they or any other Upstate Community Member have been subjected discrimination based on their protected category, they may address the situation directly and immediately to the offender, when it is safe to do so. If the inappropriate conduct does not cease, or if the Community Members are unable to or are uncomfortable addressing the offender directly, they should promptly report the incident or conduct through one or more of the following channels depending on their role:

1. **Employees, including Faculty, Residents, Fellows, and Medical Staff:** Report to their Supervisor, Employee/Labor Relations, Graduate Medical Education, and/or the Office of Diversity and Inclusion.
2. **Students:** Report to Student Affairs, the Dean of their College, and/or the Office of Diversity and Inclusion.
3. **Volunteers:** Promptly report to their Supervisor, Volunteer Services, and/or the Office of Diversity and Inclusion.
4. **Employees of SUNY Upstate Affiliates, such as MedBest, Research Foundation, Temp Agencies:** Promptly report to their Supervisor, Employee/Labor Relations, and/or the Office of Diversity and Inclusion. Employees of affiliates should also report discrimination to their own employer even though the conduct took place on SUNY Upstate campus or within its programs.
5. **Interns and Participants in SUNY Upstate-Sponsored Programs Or Activities:** Promptly report complaints to their Supervisor, Program Coordinator, Employee/Labor Relations, and/or the Office of Diversity and Inclusion.

SUNY Upstate Community Members may also file a written complaint using the form located at: <http://www.upstate.edu/diversityinclusion/complaint/>

B. Reporting Requirements For Managers, Supervisors, Administrators, Faculty, and Leadership Who Become Aware Of Potential Discrimination.

Managers, supervisors, administrators, faculty and any other person in a position of leadership at SUNY Upstate must deal expeditiously and fairly with allegations of discrimination within their departments or colleges whether or not there has been a written or formal complaint. They must:

- Take all complaints or concerns of alleged or possible discrimination seriously no matter how minor or who is involved;
- Ensure that discriminatory conduct is immediately reported to Employee Labor Relations and/or the Office of Diversity and Inclusion so that a prompt investigation can occur; and
- Take any appropriate action to prevent retaliation or prohibited conduct from reoccurring during and after any investigations of complaints.

Managers, supervisors, or any other person in a leadership position at SUNY Upstate who knowingly allow or tolerate discrimination or retaliation, including the failure to immediately report such misconduct to Employee/Labor Relations or the Office of Diversity and Inclusion, are in violation of this policy and may be subject to discipline.

Prohibition Against Retaliation:

SUNY Upstate prohibits retaliation against any individual who files a complaint with the Office of Diversity and Inclusion, opposes or complains of discrimination, including harassment, or assists or participates in any manner in a discrimination investigation, proceeding, or hearing (such as an internal investigation or lawsuit), including as a witness. Retaliation against these protected individuals will result in appropriate sanctions or other disciplinary action under relevant collective bargaining agreements and/or SUNY Upstate policies.

Education/Related Resources:

**University-Wide Policy UW H-01, Harassment Prevention Policy
University-Wide Policy UW D-04, Disability and Workplace Reasonable Accommodation Policy
University-Wide Policy UW V-01, Domestic Violence and the Workplace Policy
University-Wide Policy UW C-05 , Consensual Relationship Policy
Hospital Compliance Plan Policy HCP C-12, Fair Treatment of Personnel
Hospital Compliance Plan Policy HCP G-03, Non-Retaliation
Administration Policy A-05, Admission to University Hospital
The Upstate Code of Conduct UW C-02
Medical Staff Bylaws
Equal Opportunity: Access, Employment and Fair Treatment in the State University of New York
SUNY Discrimination Complaint Procedure
SUNY Discrimination Complaint Procedure
SUNY Diversity, Equity, and Inclusion Policy
RF Nondiscrimination and Nonharassment Policy
RF Solving Problems in the Workplace Policy
Students Equal Opportunity, Non-Discrimination, Sexual Harassment and Title IX Policy
Student Handbook Policy, Equal Opportunity, Non-Discrimination, Sexual Harassment and Title IX**

Form Name(s) and Number(s):

None

Originating Department: Office of the President
Contributing Department(s): Patient Relations Department
Community Campus Quality Services Department
Office of Diversity and Inclusion
Office of General Counsel
Human Resources
Student Affairs
College of Medicine
Upstate University Hospital TCU at Community Campus #122236-C

References:

- Title VI of the Civil Rights Act of 1964, as amended
- Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e
- Regulations of the U.S. Health and Human Services
- SUNY Upstate University Hospital Affirmative Action Program
- Age Discrimination in Employment Act of 1967
- Americans with Disabilities Act of 1990, as amended
- Equal Pay Act of 1963
- New York State Human Rights Law, N.Y. Executive Law §296, et seq.
- Section 504 of the Rehabilitation Act of 1973, as amended
- Title IX of the Education Amendments Act of 1972
- Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended
- New York State Corrections Law Sections 752 & 753
- Genetic Information Nondiscrimination Act of 2008
- Pregnancy Discrimination Act
- New York State Executive Order No. 161
- Executive Order 11246

Policy Number: **UW H-01**

Approved by: **CEO Cabinet &
University Executive Committee**

Issue Date: **11/29/2017**

Applies to: **Upstate Medical University**

Value(s): *(Drive Innovation & Discovery, Respect
People, Serve Community, Value Integrity,
Embrace Diversity and Inclusion)*

Page(s): **1 of 7**

Harassment Prevention Policy

Review Date:	Change Description:
11/29/2017	
Revised Date:	Change Description:
11/29/2017	This is a NEW policy. Formerly a part of the Non-Discrimination and Equal Opportunity Policy (# UW E-01) and the Upstate Code of Conduct (# UW C-02) and is now a new separate, stand-alone policy. Policy has been expanded to include examples of prohibited harassment, including sexual harassment, avenues and requirements for reporting harassment, and prohibition against retaliation.

Applies to:

All members of the SUNY Upstate Medical University community, including but not limited to faculty, medical providers, supervisors, managers, staff, students, applicants, volunteers, vendors, visitors, guests, and all other individuals present on SUNY Upstate Medical University’s campus or participating in SUNY Upstate Medical University’s programs or activities, whether on or off campus, including overseas programs (hereinafter referred to as “SUNY Upstate Community Members”).

Policy:

SUNY Upstate Medical University and its affiliates (“SUNY Upstate”) are committed to maintaining a work, educational, and clinical care environment that is free from harassment, including sexual harassment, intimidation, and violence. Harassment based on a person’s race, color, national origin, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, domestic violence victim status, criminal conviction record, or any other category protected under state or federal law is unlawful and undermines the character and purpose of SUNY Upstate.

All SUNY Upstate CommunityMembers are covered by and expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur. Individuals who violate this policy will be subject to discipline up to and including termination, expulsion, removal and/or other appropriate sanctions or actions pursuant to federal, state, local law and/or relevant collective bargaining agreements.

Prohibited Conduct:**A. Harassment.**

Harassment is unwelcome conduct targeted toward an individual or group because of their race, color, national origin, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, domestic violence victim status, criminal conviction record, or any other category protected under state or federal law (“protected category”) that interferes with an individual’s employment, education, or other access to university programs and activities. Harassment is a form of discrimination.

Determining what constitutes harassment depends on the specific facts and context in which the conduct occurs. Harassment may take many forms. Harassment may be subtle and indirect or may be blatant and overt. The harasser can be an individual’s supervisor, faculty member, a supervisor in another area, a co-worker/colleague, or someone who is not an employee of the University, such as a vendor or guest or employee of an affiliate such as the Research Foundation, MedBest, etc. The harasser can be of the same or different gender as the victim. Harassment may consist of repeated actions or may arise from a single incident if sufficiently egregious.

Examples of harassment that is prohibited under this policy include, but are not limited to:

- Offensive or degrading remarks, verbal abuse, or other hostile behavior such as insulting, teasing, mocking, degrading or ridiculing another person on the basis of a person’s protected category;**
- Slurs, derogatory remarks about a person’s accent, or display of offensive symbols directed toward a person’s membership in a protected category;**
- Unwelcome or inappropriate physical contact, comments, questions, advances, jokes, epithets or demands because of a person’s protected category;**
- Displays or electronic transmission of derogatory, demeaning or hostile materials based on a person’s protected category; and**
- Unwillingness to train, evaluate, assist, or work with a person because of their membership in a protected category.**

B. Sexual Harassment.

Sexual harassment is a form of unlawful discrimination and harassment under Title VII of the Civil Rights Act of 1964 and under Title IX of the Education Amendments Act of 1972, and is prohibited. Sexual harassment can be physical and/or psychological in nature. An aggregation of a series of incidents can constitute sexual harassment even if one of the incidents considered on its own would not be harassing.

Sexual harassment in the employment setting is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- **submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment (quid pro quo),**
- **submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual (quid pro quo), or**
- **such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment (hostile work environment).**

Sexual harassment in the educational setting is defined as unwelcome conduct of a sexual nature, and can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student, resident, or fellow denies or limits, on the basis of sex, the student, resident, or fellow's ability to participate in or receive benefits, services, or opportunities in the educational institution's program.

The following are examples of sexual harassment that violates this policy:

- **Physical sexual harassment including but not limited to: unwelcome, unwanted physical contact, including touching, tickling, pinching, patting, grabbing, brushing up against, hugging, cornering, kissing and fondling and forced sexual intercourse or assault.**
- **Verbal sexual harassment including but not limited to: unwelcome sexual advances, sexual innuendoes, propositions or other sexual comments such as sexually oriented remarks, jokes or comments about a person's sexuality or experience, jokes of a sexual nature, lewd remarks and threats, requests for any type of sexual favor (this includes repeated, unwelcome requests for dates).**

- **Non-verbal sexual harassment including but not limited to: the distribution, display or discussion of any written or graphic material, including calendars, posters and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex; suggestive or insulting sounds; leering; staring; whistling; obscene gestures; content in letters and notes, facsimiles, e-mail, photos, text messages, tweets and Internet postings; or other forms of communication that are sexual in nature and offensive.**
- **Preferential treatment or promises of preferential treatment in exchange for submitting to sexual conduct, including soliciting or attempting to solicit any individual to engage in sexual activity for compensation or reward.**
- **Subjecting, or threats of subjecting, an individual to unwelcome sexual attention or conduct or intentionally making performance of a person's job, engagement in an Upstate-sponsored activity or program, or learning environment more difficult because of that person's sex.**
- **Sexual or discriminatory displays or publications anywhere on SUNY Upstate's campus.**

When a person subject to this policy is notified that their behavior is unwanted or unwelcome, the behavior should stop immediately.

Reporting Conduct in Violation of this Policy:

A. Reporting Process For SUNY Upstate Community Members.

If SUNY Upstate Community Members believe that they or any other Upstate Community Member have been subjected to harassment or any unwelcome sexual conduct, they may address the situation directly and immediately to the harasser, if it is safe to do so. If the inappropriate conduct does not cease, or if the Community Member is unable to or is uncomfortable with addressing the alleged harasser directly, they should promptly report the incident or conduct to one or more of the following channels depending on their role at Upstate:

1. **Employees, including Faculty, Residents, Fellows, and Medical Staff: Report to their Supervisor, Employee/Labor Relations, Graduate Medical Education, and/or the Office of Diversity and Inclusion.**
2. **Students: Report to Student Affairs, the Dean of their College, and/or the Office of Diversity and Inclusion.**
3. **Volunteers: Promptly report to their Supervisor, Volunteer Services, and/or the Office of Diversity and Inclusion.**

4. **Employees of SUNY Upstate Affiliates, such as MedBest, Research Foundation, Temp Agencies:** Promptly report to their Supervisor, Employee/Labor Relations, and/or the Office of Diversity and Inclusion. Employees of affiliates should report harassment to their own employer even though the conduct took place on SUNY Upstate campus or within its programs.
5. **Interns and Participants in SUNY Upstate-Sponsored Programs Or Activities:** Promptly report complaints to their Supervisor, Program Coordinator, Employee/Labor Relations, and/or the Office of Diversity and Inclusion.

Upstate Community Members may also file a written complaint using the form located at: <http://www.upstate.edu/diversityinclusion/complaint/>

B. Reporting Requirements for Managers, Supervisors, Administrators, Faculty, and Leadership Who Become Aware of Potential Harassment.

Managers, supervisors, administrators, faculty and any other person in a position of leadership within SUNY Upstate must deal expeditiously and fairly with allegations of harassment within their departments or colleges whether or not there has been a written or formal complaint. They must:

- Take all complaints or concerns of alleged or possible harassment or discrimination seriously no matter how minor or who is involved;
- Ensure that harassment or inappropriate sexually-oriented conduct is immediately reported to the Office of Diversity and Inclusion so that a prompt investigation can occur; and
- Take any appropriate action to prevent retaliation or prohibited conduct from reoccurring during and after any investigations of complaints.

Managers, supervisors, or any other person in a leadership position at SUNY Upstate who knowingly allow or tolerate harassment or retaliation, including the failure to immediately report such misconduct to the Office of Diversity and Inclusion, are in violation of this policy and may be subject to discipline.

In cases where an investigation confirms a violation of this policy, management or administration in the appropriate College or Department must ensure that the remedial action prescribed by the Office of Diversity and Inclusion is implemented. Managers or Administrators must provide confirmation to the Office of Diversity and Inclusion that appropriate remedial action has occurred unless a collective bargaining agreement requires the university to go through the disciplinary process. If, during the course of the investigation, it appears that disciplinary or other action may be warranted, Employee/Labor Relations and/or the Medical Executive Committee may additionally become involved. Management and Administration is also responsible for regular monitoring to ensure that all remedial and/or

disciplinary steps are completed and no further discrimination or harassment occurs in the work, educational, or clinical care environments.

Investigation and Confidentiality:

All reports and/or complaints of harassment, including sexual harassment, will be taken seriously and dealt with promptly. The specific action taken in any particular case will depend on the nature and gravity of the conduct reported and may include intervention, mediation, investigation, and discipline, up to and including termination, expulsion or removal.

The University will maintain the confidentiality of the complaint and the privacy of the persons involved to the greatest extent possible, consistent with its goal of conducting a thorough and complete investigation and to the extent permitted by law. However, the identity of the complainant may be revealed to the respondent and witnesses if necessary during the investigation or proceedings.

Prohibition Against Retaliation:

Retaliation is any adverse action taken against an individual because s/he filed a charge of discrimination or harassment, complained to the University or a government agency about discrimination or harassment on the job or in the educational setting, or participated in a discrimination or harassment proceeding (such as an internal investigation or lawsuit), including as a witness. Retaliation also includes adverse action taken against someone who is associated with the individual opposing the perceived discrimination or harassment, such as a family member.

Examples of retaliation include termination, demotion, refusal to promote, changing a grade, denying access to a program, or any other adverse action that would discourage a reasonable person from opposing perceived discrimination.

SUNY Upstate will not tolerate retaliation by or against any protected individual described above. Retaliation is a serious violation of this policy, as well as federal, state, and local law. Anyone who believes they are a victim of retaliation should report the matter immediately according to the same procedure provided in this policy for making complaints of harassment. Any person found to have retaliated against another individual will be subject to the same disciplinary action provided under this policy for other violations.

Education/Related Resources:

- University-Wide Policy UW E-01, Non-Discrimination and Equal Opportunity Policy**
- University-Wide Policy UW D-04, Disability and Workplace Reasonable Accommodation Policy**
- University-Wide Policy UW V-01, Domestic Violence and the Workplace Policy**
- University-Wide Policy UW C-05 , Consensual Relationship Policy**
- Hospital Compliance Plan Policy HCP C-12, Fair Treatment of Personnel**
- Hospital Compliance Plan Policy HCP G-03, Non-Retaliation**
- Administration Policy A-05, Admission to University Hospital**
- The Upstate Code of Conduct UW C-02**
- Medical Staff Bylaws**
- Equal Opportunity: Access, Employment and Fair Treatment in the State University of New York**
- SUNY Discrimination Complaint Procedure**
- SUNY Discrimination Complaint Procedure**
- SUNY Diversity, Equity, and Inclusion Policy**
- RF Nondiscrimination and Nonharassment Policy**
 - RF Solving Problems in the Workplace Policy**
 - Students Equal Opportunity, Non-Discrimination, Sexual Harassment and Title IX Policy**
- Student Handbook Policy, Equal Opportunity, Non-Discrimination, Sexual Harassment and Title IX**

Form Name(s) and Number(s):

None

- Originating Department: Office of the President**
- Contributing Department(s): Office of Diversity & Inclusion**
 - Office of General Counsel**
 - Human Resources**

Reference(s):

- **Title VI of the Civil Rights Act of 1964, as amended**
- **Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e**
- **Age Discrimination in Employment Act of 1967**
- **Americans with Disabilities Act of 1990, as amended**
- **New York State Human Rights Law, N.Y. Executive Law §296, et seq.**
- **Section 504 of the Rehabilitation Act of 1973, as amended**
- **Title VI of the Civil Rights Act of 1964, as amended**
- **Title IX of the Education Amendments Act of 1972**
- **Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended**
- **New York State Corrections Law Sections 752 & 753**
- **Genetic Information Nondiscrimination Act of 2008**
- **Pregnancy Discrimination Act**
- **New York State Executive Order No. 161**

Don't Let a Mole Hill Turn into a Mountain



March 2018



Presented by

Lisa Tesorio

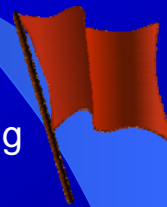
*Employee/Labor Relations Manager
Human Resources Department
SUNY Upstate Medical University*

How do you stop an employment mole hill from getting started?



Hire the RIGHT person!

- It's one of the most important and critical steps.
- Were there "red flags" prior to hire
- Give careful thought when considering bringing someone in with tenure
- Employment Application, Resume & References



Faculty (employees) at SUNY Upstate Medical University

State Employment

Types of Appointments

- Temporary
- Term
- Continuing



Research Foundation Employment

- *At will employment*



***Once the mole hill has started,
how do you stop it from
becoming a mountain?***



If the Wrong person may have been hired...

- Address issues/concerns quickly
- Avoiding them doesn't make them go away
- If coaching/mentoring isn't working, progress quickly to counseling.
- If State and on a term appointment, consider recommending non-renewal.
- If RF, consider termination of employment.

Faculty Counseling & Discipline



Counseling

- Counseling is not discipline
- Counseling attempts to correct behavior and/or performance through face-to-face communication and problem solving
- Counseling session/meeting occurs at the department level, between the employee and supervisor
- Employee has no contractual right for union representation
- Verbal or Written Counseling

Counseling

Verbal Counseling

- Supervisor meets with employee
- Reviews issue/concern and reinforces expectations going forward
- Supervisor documents meeting for his/her own record
- No written document to employee, official personnel file or Employee/Labor Relations

Counseling

Written Counseling

- Supervisor meets with employee
- Reminds employee of verbal counseling session
- Reviews new issue/concern and reinforces expectations going forward
- Supervisor then summarizes meeting in a memo to the employee.
- Memo is copied to employee's official personnel file, Employee/Labor Relations and Supervisor's supervisor

Discipline

- Discipline attempts to correct behavior and performance through the imposition of a penalty.
- Discipline should be sought after counseling sessions have proven ineffective, or
- When the action(s) of an employee is severe or egregious, such as workplace violence, violating patient confidentiality, patient abuse, theft, sexual harassment, discrimination, use/sale of drugs, etc.

Possible Disciplinary Penalties

- Written Reprimand
- Fine
- Suspension without pay
- Loss of Accruals
- Demotion
- Termination

Factors to be Considered When Determining Appropriate Disciplinary Penalty

- Length of service
- Seriousness of behavior
- Work rules and standards
- Commendations
- Previous discipline/ counseling
- Mitigating Factors
- Action taken with other employees regarding similar incidents

Disciplinary Process

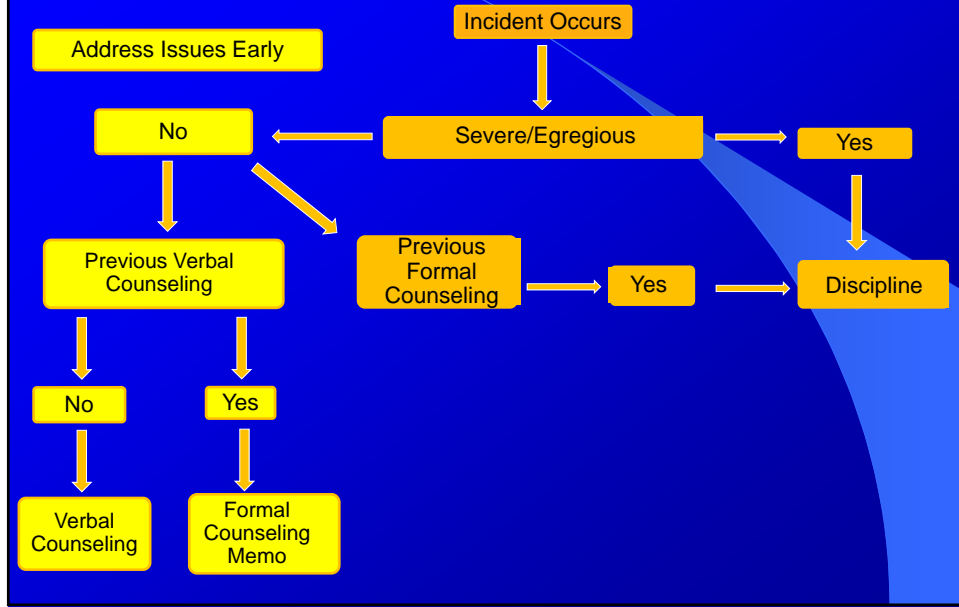
- Involves the Employee/Labor Relations Office, as the President's designee for formal discipline.
- Disciplinary "Interrogation" Meeting
- Employee has right to be represented by union representative, private counsel or to represent themselves.
- Issuance of Notice of Discipline with Proposed Penalty
- Arbitration

REMINDERS

- Hire the right person
- Address issues early
- If issues continue, progress to the next step
- End employment when appropriate



General Guideline/flowsheet



SUNY Upstate University Hospital

DONT LET A MOLE HILL TURN INTO A MOUNTAIN

Medical Staff Peer Review and Other Concerns

Beth Erwin, CPCS, CPMSM
Director, Medical Staff Services

Peer Review

Types

- Quality assurance/utilization review
- Review of medical staff applications and requests for reappointment
- Disciplinary actions involving physicians
- Immunity

Laws/ Protection

- New York Public Health Law 2805-m
- New York State Medical Malpractice Prevention Program
 - Public health Law section 2805-j, and 2805-m.
- “Professional review body” as defined in federal Health Care Quality Improvement Act (HCQIA)

Initial Appointment

- Opportunities to address concerns:
 - Review of Credentials File (Flags)
 - Peer recommendation (from Chief of Service)
 - Focused evaluation plan (FEP)

FLAGS:

Typical

- Incomplete application
- Time gaps
- References
- Disciplinary action
- Failure to disclose
- Extra time needed
- Inability to verify
- Information not listed
- Professional misconduct or impairment.
- Liability insurance issues
- Loss of privileges, restriction, loss of license/DEA
- Malpractice lawsuits

/

Less Common

- Unexplained Resignations
- Extended provisional status
- Civil suits
- Clinical practice anomalies
- Health
- Frequent changes in location / malpractice

More Opportunities

- Reappointment
 - Peer recommendation (from Chief of Service)
 - Focused evaluation plan (FEP) - increases
- Between appointments
 - Exit evaluations
 - Note / memo to MSS*
 - Quality chart reviews
 - FPPE
 - Review of data / OPPE

Conduct versus Competence

- Conduct
 - Sexual harassment
 - Impairment (Physical, mental, chemical)
 - Workplace violence
 - U-Turn failure
 - Communication
- Competence
 - **Not appropriate for U-Turn**
 - Clinical
 - Cannot perform well / well enough
 - Patient safety
 - Communication

Competence – Additional Notes

- When a privilege is not recommended
- When a physician does not meet the criteria

Process for Conduct

U-Turn (if applicable) → Corrective Action Procedure (CAP)

OR

Chief of Service*



CMO/Medical Director *



Corrective Action Procedure (CAP)

** Copy of memo or letter summarizing the complaint, fact finding, and outcome to MSS regardless of outcome.*

Process for Competence

A. Clinical Competence concerns



Chief of Service*



Medical Director*



Request for review (MEC)/
Corrective Action Procedure (CAP)

OR

B. Clinical Competence concerns



Department M & M



Clinical Quality Improvement



Request for review (MEC)

OR

C. Chief of Service →
Credentials



Recommendation **OR** Request
for review (MEC)/Corrective
Action Procedure (CAP)

** Copy of memo or letter summarizing the meeting to MSS regardless of outcome.*

Pros and Cons

Pros

- Self-correction
- Less punitive measures
- Clinical concerns
- File support
- Improvement in performance
- Improved patient safety
- Oversight

Cons

- Corrective Action
- Consequences
- End result

Requests to Medical Executive Committee

- Action Requested by:
 - The Chief of Service/Division/Section at the relevant campus
 - Medical Director
 - President, Medical Staff
 - Chief Executive Officer
 - President, SUNY Upstate Medical University
 - Any physician member of the Medical Executive Committee
 - The Chair of any Medical Staff Committee
 - The Medical Executive Committee
 - Associate Director of Advanced Practice physicians

Action by Medical Executive Committee

- Corrective action (CAP) may include, *but is not limited to*:
 - Professional counseling
 - Continuing professional education
 - Mandated supervision or consultation
 - Suspension, revocation or curtailment of the practitioner's privileges, in whole or in part
 - Termination of appointment or denial of reappointment
 - Letter of admonition, reprimand, or warning to be placed in the practitioner's credentials file
 - Retrospective or prospective review of records
 - Probation for a specified period

Due Process for Physicians*

- Triggered by adverse review action
- Process includes:
 - Notice
 - Statement
 - Right to counsel
 - Witnesses
 - Recorded by court reporter
 - Review of written decision by Governing Body

Confidentiality

- Intended to encourage discourse and candor among peer review participants
- Protects records and proceedings from
 - Discovery
 - Subpoenas (civil litigation v. NYS DOH)
 - Public Freedom of Information Law (FOIL requests; open records requests)
 - Open Meetings Act*
- Limitations
 - Does not apply to records made or maintained in the regular course of business
 - May be waived
 - Permissive disclosures*
 - Defense of committee or members*
 - Some reporting is required and does not constitute a waiver

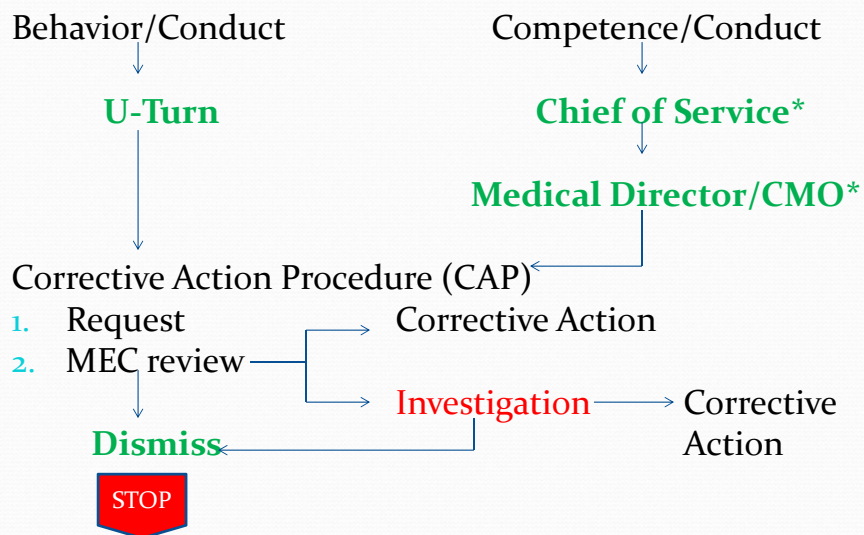
Immunity

- Participants in the peer review process are protected from civil liability and discipline or discrimination
 - Committee members and employees
 - Witnesses
 - Reporting parties
- Limitations
 - Good faith
 - Without malice or knowledge of falsity
 - Reasonable belief that action or recommendation is warranted by the facts
 - Does not apply to some actions
 - Civil rights suits or actions by the United States or a state's attorney general

Reporting Requirements

- To the NYS DOH
 - Denial, suspension, restriction, termination, or curtailment of the training, employment, association or professional privileges, or denial of the certification of completion of training for reasons related in any way to alleged:
 - mental or physical impairment;
 - incompetence;
 - malpractice;
 - misconduct;
 - impairment or endangerment of patient safety or welfare;
 - Voluntary or involuntary resignation or withdrawal of association or privileges to avoid disciplinary measures;
 - Receipt of information concerning a conviction of a misdemeanor or felony;
 - Denial of privileges to a physician if the reasons stated for such denial are related to alleged mental or physical impairment, incompetence, malpractice, misconduct, or impairment or endangerment of patient safety or welfare.
- NYS DOH reports to the Data Bank
- To the NPDB
 - Professional review action adversely affecting privileges for more than 30 days
 - Surrender of clinical privileges
 - Any restriction of privileges
 - While the physician is under investigation relating to possible incompetence or improper professional conduct
 - Can only be undertaken by the MEC
 - Professional review actions based on competence or conduct that adversely affects or could adversely affect the health and welfare of a patient
 - Determined by the facility
 - Defined by NPDB Guidebook
- **Must also be reported to the NYS DOH OPMC**

Medical Staff Process



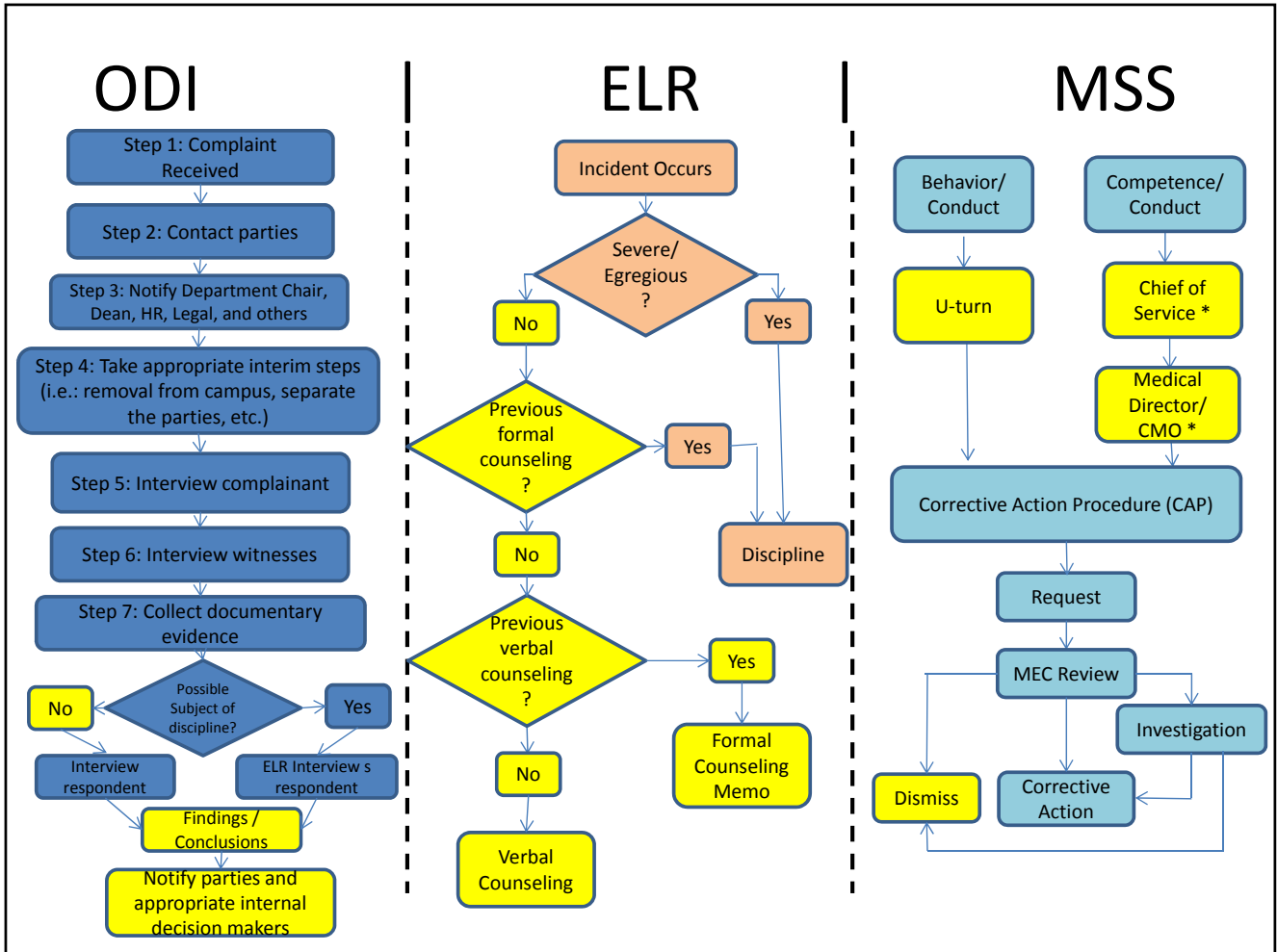


Contact Information

- Community
 - Room 1501
 - 315-492-5102
- Cell phone
 - 315-399-9200
- Downtown
 - 1100A UH
 - 315-464-8521
- Email
 - erwine@upstate.edu

Contact Information

<u>Name/Title</u>	<u>Area</u>	<u>Email</u>	<u>Phone</u>
Gloria Lopez Chief Diversity Officer	Managing Discrimination & Harassment Complaints	lopezg@upstate.edu	464-5234
Dawn Norcross Affirmative Action Officer & Title IX Coordinator	Managing Discrimination & Harassment Complaints	norcrosd@upstate.edu	464-5234
Anne B. Dotzler Assistant Counsel Labor and Employment	Managing Discrimination & Harassment Complaints	dotzlera@upstate.edu	464-4700
Lisa Tesorio Employee Labor Relations Manager	Faculty Counseling & Discipline	tesoriol@upstate.edu	464-5872
Beth Erwin Director, Medical Staff Services	Medical Staff/ Peer Review	erwine@upstate.edu	464-8521
Ann S. Botash, MD Senior Associate Dean for Faculty Affairs and Development	Faculty Term Renewal and Non- Renewal for State Faculty	botasha@upstate.edu	464-1681
Danielle A. Katz, MD Associate Dean, Graduate Medical Ed. Associate Professor, Department of Orthopedic Surgery	Resident Due Process	katzd@upstate.edu	464-5136



Policy Number: W-07
Issue Date: 10/2015
Values: *Respect People*

Approved by: Executive Leadership Team
Applies to: Downtown & Community
Page(s): 1 of 3

Healthy Workplace Environment Policy

<i>Review Date:</i>	<i>Change Description:</i>
01/29/2018	Policy reviewed, no changes required
<i>Revised Date:</i>	<i>Change Description:</i>
10/2015	New policy

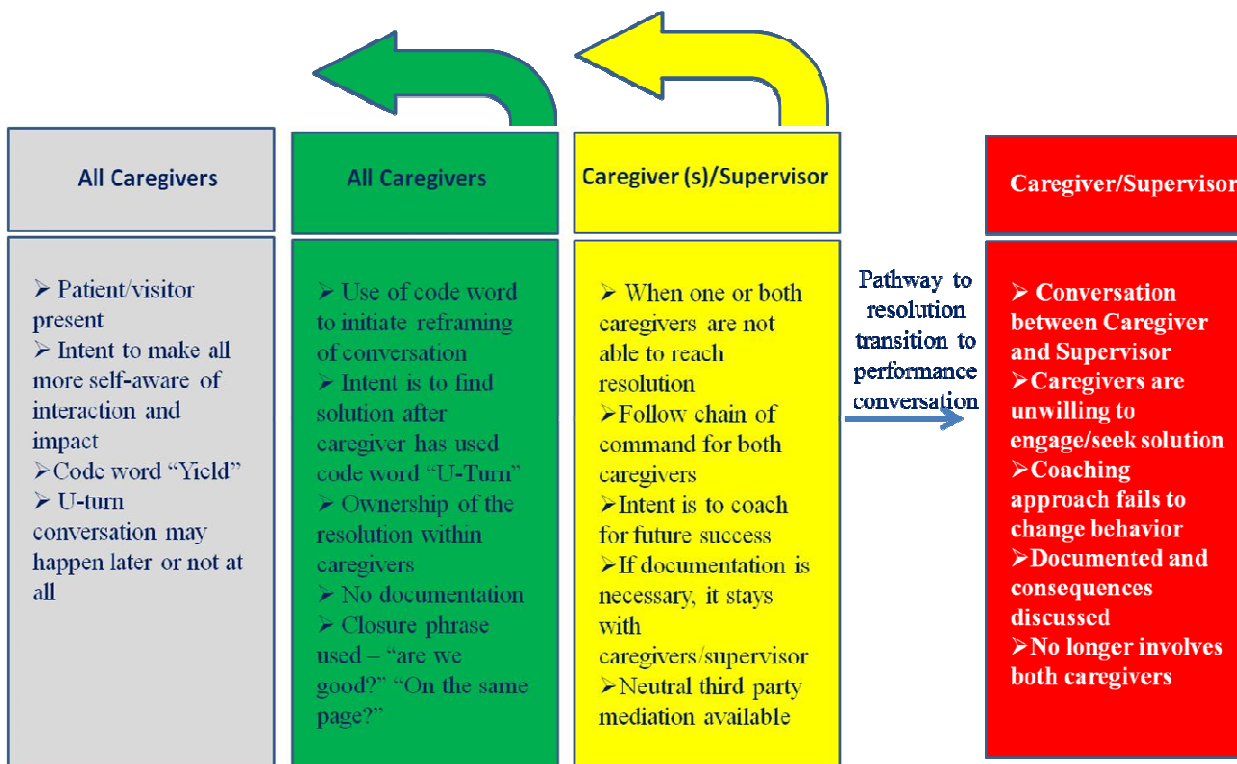
Applies to: All Staff

Policy: At Upstate University Hospital, we are committed to creating and maintaining a healthy work environment. On the path to sustaining a healthy work environment, we recognize that conflict will happen, and it is the position of the University that employees attempt to resolve conflict themselves.

Conflict that arises regarding compliance or legal matters is exempt from this policy. It is the responsibility of all employees to immediately notify the appropriate parties in these cases.

Procedure:

A. Process for Conflict Resolution



The Caregiver Pathway to Resolution (U-Turn Model) provides a process to facilitate appropriate steps to alleviate conflict. The U-Turn model is a well-defined process of conflict mediation to:

1. Decrease interpersonal conflict that occurs in patient care areas
2. Understand what creates tension and identify ways to remove barriers to success
3. Identify and educate caregivers on appropriate steps to alleviate conflict
4. Through a well-defined process of conflict mediation, improve the spirit of teamwork

Grey Zone: the intent is to make all parties aware that a patient or family member is present, and the conversation is not appropriate to have take place in that moment. Employees are asked to use the language, “can we yield this conversation”? At this time, all parties should redirect the conversation. No documentation exists of the conversation.

Green Zone: the intent is by using the language, “can we please u-turn that conversation?”, employees are given the opportunity to identify uncomfortable conversations or interactions and through this wording, be able to:

1. Describe the event/perception to your peer
2. Take the time to reach a solution
3. End the conversations with a closure phrase; “are we good?”, or “are we on the same page?”

No documentation exists of the conversation.

Yellow Zone: the intent is for employees who are not able to resolve disagreement through a U-Turn conversation to have the opportunity for third-party mediation, ideally being a supervisor. Staff may also engage a third-party mediator in cases where repeat behaviors exist or commitments in the U-Turn conversation are not met.

1. Supervisor(s) of parties involved are encouraged to mediate the conversation for staff members
2. Resolution is sought and may take more than one face-to-face conversation to reach an agreement
3. The parties may request a neutral third-party mediator
4. Documentation of agreement is maintained with the supervisor(s) and employees

Red Zone: While not part of the collaboration process, the intent is to address repeat or consistent behavior that is deemed counterproductive to creating and sustaining a healthy work environment. The supervisor has encouraged employees to have a U-Turn conversation and served as mediator in an attempt to resolve the conflict. If one or more parties isn’t able to reach a resolution and the behavior continues, it is the responsibility of the supervisor to notify Human Resources/Employee Labor Relations to identify the appropriate next steps.

For medical staff, where U-Turn conversations and mediation attempts have failed to resolve the conflict, the Chief of Service (or supervisor, as applicable) should refer to MSB X-03, Section 5, for next steps.

B. Mediation Resources

Upstate University Hospital is committed to facilitating conflict resolution and recognizes that there will be times when staff are not able to do so themselves. In this case, Upstate provides certified mediators to serve as a neutral third-party to facilitate a resolution conversation.

While mediation is available, it may not be the appropriate course of action. For example, if the mediation request involves staff who feel discrimination is present, retaliation, or for reasons that clearly violate Upstate policy, mediation is not an option.

Here is what can be expected:

The parties involved in the conflict must agree to mediation. Parties should make their supervisor aware of the request and be given the flexibility to work with the mediator.

Mediators will facilitate up to two 90-minute conversations between the parties. They may opt to increase this time if the mediator believes resolution will occur.

When resolution is reached, one of two steps (or both) will happen. First, the supervisor(s) of the parties is notified of the successful outcome. Second, any agreement between the two parties moving forward is documented and a copy given to the employees and supervisor(s). These agreements are for monitoring and coaching purpose only and not to be part of an employee file.

For information on the U-turn model and the mediator request visit the Upstate U-turn website:

<http://upstate.edu/uturn/index.php>

Staff Education/Related Resources: N/A

Form Name(s) and Number(s): N/A

Originating Department: Hospital Quality

Contributing Department(s): Human Resources
Nursing Department

References:

Rosenstein, AH et al: Disruptive behavior and clinical outcomes: Perception of nurses and physicians. American Journal of Nursing, 2005, 105, 1, 54-64

Hayes, S. (2009) The 5 Ps of conflict resolution: Designing systems to manage workplace disputes. North Carolina Employee Assistant Program Annual Spring Training, Winston-Salem, NC.

Hayes, S. (2009)

Porath, C., Pearson, C. (2009). How Toxic Colleagues Corrode Performance. Harvard Business Review. April, (#)35.



Faculty Term Renewal and Non- Renewal for **State Faculty**

Ann S. Botash, MD

Senior Associate Dean for Faculty
Affairs and Development

For more information, see:

http://www.upstate.edu/facultydev/intra/term_renewal.php

Board of Trustees Policies

- Term appointments are for a specified period of time, no greater than three years.
- Certain steps are required to maintain the appointment, and to monitor continuing (tenure) eligibility status, if applicable.



Renewal



- Chair receives a memo asking whether they intend to renew or non-renew--*at the appropriate time*
- If RENEW – a partially completed form is sent by the faculty appointment specialist (Stacy Mehlek) for appropriate future date
- Department completes form (home address) and assembles:
 - Updated CV
 - Teaching Evaluations
 - Most recent Agreement of Academic Expectations

Renewal: Next Steps



- Instructions on the form

You do this:

- A copy of the form **and required attachments** must be mailed to the faculty members home address
- **Wait 5 days before forwarding the original packet to the Deans office**

Deans office does this:

- Upon the Deans endorsement of the recommendation a (another) copy of the packet will be mailed to the faculty members home address
- The Deans office will wait 5 days before forwarding the form to the Faculty Appointment Specialist (FAS)
- The FAS will prepare for the President and mail the renewal notice letter

Non-renewal



- Specific notification requirements must be followed, in the event that a term appointment will not be renewed beyond its expiration date.
- Chairs must make a decision regarding the renewal of faculty appointments in accordance with the notification requirements so that the recommendation is on file well in advance of the non-renewal notification date.

<http://www.heritageins.net/cancellation-vs-non-renewal/> --JPB site

Non-Renewal Notification Requirements

- First year non-renewal (only appointed for one year term)?
 - Notify of non-renewal prior to three months prior to end of year (with nuances)
- Two year non-renewal (only appointed for two year term)?
 - Notify of non-renewal prior to 6 months prior to the end of the second year
- Three year non-renewal (appointed for three year term)?
 - Must notify with a twelve month notice prior to end of third year for non-renewal

Part-time faculty

- 45 day notice, at the end of their term



<https://www.westsoundworkforce.com/tips-for-managing-a-part-time-employee-workforce/>

Turning the Mountain into a Molehill

- Can always give more notification
- Can always rescind a non-renewal



<https://www.psychologytoday.com/blog/headshrinkers-guide-the-galaxy/201312/how-make-mountain-out-molehill>

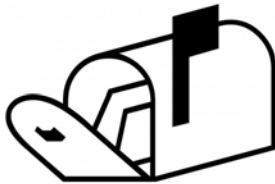
Non-Renewal

- Faculty Appointment Specialist will contact chair to review the process and send the form
- Instructions – **a copy of the form must be mailed to home address or handed to the faculty member. Wait 5 days before forwarding the original to the Dean's office**
- Letter is sent by FAS to faculty member, with opportunity to review the form in the FA office and/or provide a written response to the President within 5 business days.



Non-Renewal

- The FAS will send the form to the President as well as any response from the faculty member
- If the President agrees with the non-renewal recommendation, the notice of non-renewal letter is mailed to the faculty member's home address



Office of Faculty Affairs and Development
Stacy Mehlek, Faculty Appointments Specialist
315-464-5239
http://www.upstate.edu/facultydev/intra/term_renewal.php

Don't let a molehill become a mountain

Resident Due Process

Danielle A. Katz, MD

Associate Dean, Graduate Medical Education

Associate Professor, Department of Orthopedic Surgery

Disclosures/Disclaimers

- Stock in health care companies
- Travel reimbursed by ACS, AAOS

- Still new to job
- Revising handbooks
 - Resident, program director, chair
 - Not one process nationwide

Introduction

- Tension between residents as learners and residents as employees (UUP, ADA, etc)

- Evaluation processes
- Documentation
- Options and consequences
- Appeals

Evaluations

- Rotations
 - Accurate, honest, formative
 - Professional
 - Narrative
- Milestones
 - Evaluation of program
 - Progression over time
- In-training exams

Documentation

- Required
 - Rotation evaluations
 - Semi-annual feedback to residents
- Additional
 - Positive feedback
 - Concerns: academic, communication, professionalism, safety (patients, resident)

Options

- Not reportable
- Remediation
- (Letter of improvement)
- Resignation
- Reportable
- Probation
- Non-promotion
- Non-renewal
- Suspension
- Dismissal/termination

Appeal

- Currently
 - Probation, non-promotion, non-renewal, termination
 - Associate Dean, GME; Dean, College of Medicine
- Future
 - Panel?

Important take-home points

- Give feedback early
- Document, document, document
- Involve GME Office early
- Follow processes

- Will update when revision of manuals complete

Thank you

Questions??

ACT Early & Effectively



DOCUMENT, DOCUMENT,
DOCUMENT!