

UB Graduate Medical Education Policy & Procedure against Discrimination and Harassment

May, 2008

The State University of New York (SUNY), the University Medical Resident Services, P.C. (UMRS) and the University Dental Resident Services, P.C. (UDRS) are committed to ensuring that no discrimination against or harassment of individuals will occur based on any factor protected by federal or state laws, regulations or executive orders. SUNY, UMRS and UDRS recognize the adverse effect of discrimination and harassment on medical education and patient care. Therefore, the following policy and procedure has been adopted to ensure a working and learning environment free of discrimination and harassment.

Policy

It is the express policy of SUNY, UMRS and UDRS to:

- Comply with all federal and state laws, as well as executive orders;
- Prohibit discrimination and harassment on the bases of race, color, national origin/ethnicity, sex, age, religion, sexual orientation, disability, marital status, genetic predisposition or veteran/military status;
- Provide an educational, training and work environment free from discrimination or harassment on the bases listed above.

A violation of this policy will result in appropriate action (see section below, *Corrective Measures*).

Definitions

Sexual Harassment – Unwelcome sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when (1) submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment; (2) submission or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of substantially interfering with the individual's work performance or creating an intimidating, hostile or offensive working environment.

The framework for determining sexual harassment is broad and often fact-specific, which makes it difficult to know at times whether conduct is acceptable or prohibited. In some instances, the prohibited conduct is overt and easily recognizable, while in other instances it is subtle. *If conduct is sexual in nature and is offensive, objectionable or unwelcome by the recipient, the conduct is generally considered to be sexual harassment.*

Harassment on the Basis of Other Protected Characteristics – harassment based on race, color, age, religion, sex, national origin, disability, sexual orientation or other protected characteristics is oral, written, graphic or physical conduct relating to an individual's protected characteristics that is sufficiently severe, pervasive or persistent so as to interfere with the individual's work performance or create an intimidating, hostile or offensive work or educational environment.

Other Forms of Discrimination include adverse treatment based upon a protected factor, including but not limited to the following areas: hiring, dismissal and non-renewal; assignment, compensation, or benefits; performance evaluation; transfer or promotion; recruitment; testing; use of facilities; training opportunities; or other terms and conditions of employment.

Complaint Procedure

Reporting

An individual who believes he or she has been subject to discrimination or harassment (hereinafter referred to as "the complainant") should take the following steps:

1. In the event of harassment, directly inform the offending party that the conduct is unwelcome and should stop; and/or
2. In the event of harassment or other forms of discrimination, report to the Program Director of his or her residency, the resident's Department Chair, the Office of Graduate Medical Education (117 Cary Hall, Buffalo, 14214, 829-2012), or the University at Buffalo's Office of Equity, Diversity and Affirmative Action Administration (406 Capen Hall, Buffalo, 14260, 645-2266).

Individuals observing harassment should report this conduct to one or more of the parties listed above.

Investigation

Complaints of harassment and discrimination must be investigated by individuals with experience and knowledge in handling such matters. In the event that a Program Director and/or Department Chair receives notice of a harassment or discrimination complaint, he or she must promptly notify the Office of Graduate Medical Education (117 Cary Hall, Buffalo, 14214, 829-2012), and forward any supporting statements or documentation to the GME office. Information about complaints must be kept in strict confidence. (See section below, *Confidentiality*.)

Due to the nature of resident assignments, it is a common occurrence that the complaining party, the party against whom the complaint is made, and/or third-party witnesses are not employees of UB/UMRS/UDRS or share dual appointments with an affiliated hospital. In the event that parties or witnesses to a complaint are employed by

an affiliated hospital, the Office of Graduate Medical Education shall coordinate with the Human Resources Department of the affiliated hospital and the Office of Equity, Diversity and Affirmative Action Administration to determine the assignment of responsibility for complaint investigation. A joint investigation may be conducted by EDAAA and the affiliated hospital if appropriate. Additionally, a complaining party may choose to pursue a complaint through the sexual harassment policy and procedure of an affiliated hospital. In this event, the Office of Graduate Medical Education shall maintain contact with the individual(s) investigating the complaint to ensure that an appropriate investigation is conducted and that all parties are afforded the rights and protections specified below (See section, *Rights and Protections*).

The GME Office will monitor the outcome and progress of the investigation. If the GME Office determines that the investigation or outcome of the investigation is inadequate, unacceptable, inconsistent with UB policy or insufficient to establish an acceptable working environment, the Senior Associate Dean for Graduate Medical Education is authorized to promptly appoint a Special Investigation Committee ("the Committee"). The Committee must include an individual who is experienced in handling sexual harassment investigations and who has not previously been involved with the case, a residency program director or Department Chair, and a faculty representative. The Committee will review the case, conduct additional investigation as necessary, and report its findings and recommendations to the Senior Associate Dean within thirty days of the Committee's appointment, unless exceptional circumstances warrant an extension of time.

Rights and Protections

Parties to an investigation have the following rights and protections:

1. *Confidentiality.* It is expected that individuals handling complaints, as well as Program Directors, Department Chairs and other individuals who have knowledge about a complaint situation, will not disclose or discuss the subject of a complaint or information about an investigation, except under limited circumstances which may include: (1) necessary interactions with the administration of UB or affiliated hospitals; (2) mandatory reporting in accordance with the medical staff bylaws of the affiliated hospital, the New York State Office of Professional Medical Conduct, or other ethical requirements; (3) otherwise as required by law or court order. Individuals who have been designated to investigate complaints may also be required, in the course of the investigatory process, to notify third-party witnesses that they are being questioned in connection with a discrimination complaint. In this event, third-party witnesses will be provided information only as necessary.
2. *Due Process.* Parties against whom claims are raised have the right to be notified of the specific charges against them, to answer to such charges, and to provide the names of witnesses or other evidence in support of their defense.
3. *Retaliation.* It is unlawful and against University policy to take action in retaliation for any complaint filed or reported, or against any witness who testifies or provides

evidence in support of or against a person who has been charged with harassment or discrimination. Claims of retaliation will be investigated as separate charges.

Record Maintenance

Records of claims or allegations which, after investigation, are not substantiated will be retained in a confidential file in the Office of Graduate Medical Education. Records of substantiated harassment claims will be retained in the charged resident's personnel file in the Office of Graduate Medical Education as well as in the resident's file maintained by his/her program director. Records of an investigation may also be maintained, as necessary and appropriate, by the University's Office of Equity, Diversity and Affirmative Action Administration and/or the Human Resources Department of the University or affiliated hospitals. Such records will be kept strictly confidential and will not be released except as mandated by law.

Corrective Measures

If, after investigation, it is found that a complainant's charge is substantiated, necessary corrective action will be taken to remedy any discrimination or harassment. Disciplinary measures, including counseling, reassignment or change in duties, probation, suspension, with or without compensation, or termination may be appropriate following investigation of complaints. Such actions must be taken in accordance with policies and procedures established by UB. The residency program director will receive notice of the outcome of the investigation and, if appropriate, any recommendations to remedy or resolve the situation.

Appeal of Findings

If an individual is not satisfied with the actions taken pursuant to this policy, the individual may file a grievance under GME's Grievance Procedures Policy.

A complainant may file a charge of discrimination with the appropriate State or Federal enforcement agencies at any point in the process, subject to applicable time limitations. These agencies include:

New York State Division of Human Rights
The Walter J. Mahoney State Office Bldg.
65 Court Street, Suite 506
Buffalo, New York 14202
Telephone No. (716) 847-7632

Equal Employment Opportunity Commission
6 Fountain Plaza, Suite 350
Buffalo, NY 14202
Telephone No. (800) 669-4000