Section 3 Human Resources Policies Subject 3.1 Discipline and Discharge **Policy 3.1.9 Discipline, Dismissal and Appeal for Classified Employees**	04/01/90 –Originated 06/09/09 -Reviewed w/ changes Reviewed w/o changes Human Resources -Author

Discipline, Dismissal and Appeal for Classified Employees

Policy

It is the policy of The University of Texas Medical Branch at Galveston (UTMB) to encourage fair and efficient processes to resolve disputes arising out of the employment relationship and to meet the requirements of State and federal law.

The purpose of this policy is to provide a procedure for the discipline and dismissal of classified employees who are subject to its provisions and to outline the procedure for appeal of that action. Classified employees are at-will employees who serve without tenure. No provision of the policy and procedures that follows shall confer rights to employees that are contrary to the employment-at-will doctrine.

The University of Texas Medical Branch, in compliance with applicable federal laws and regulations, strives to maintain an environment free from discrimination against individuals on the basis of race, color, national origin, sex, age, religion, disability, sexual orientation, genetic information, or veteran status.

Applicability

These policies and procedures are applicable to conduct or job performance of a classified employee that results in a decision to impose a disciplinary penalty of demotion, suspension without pay, or dismissal. It does not apply to:

1. Institutional police or faculty who are subject to other approved discipline or dismissal procedures;

2. Suspension with pay pending investigation of allegations relating to an employee;

3. Decisions not to offer reappointment to persons whose appointment for a stated period of one year or less expires at the end of such period without the necessity of notice of non-renewal as provided in the Regents' Rules and Regulations or the policies of UTMB;

4. Administrative and professional employees who are appointed to positions without fixed term and serve at the pleasure of a specific administrative officer;

5. Persons who are employed in positions that require student status as a

Applicability, continued

condition of employment; or

6. Dismissal of employees:

   (a) who occupy positions that are dependent upon funding from a specific source and such funding is not received,

   (b) as a result of reduction in force,

   (c) due to financial exigency,

   (d) during any probationary period of employment,

   (e) who are appointed for a stated period that is less than 180 days,

   (f) who are appointed at a per diem or hourly rate and work on an as needed basis,

   (g) who have not attained or maintained the necessary clearance, certification or licensure for their position,

   (h) who have exhausted applicable leave entitlements

   (i) UTMB employees assigned to work in a Texas Department of Criminal Justice facility whose entry access has been revoked by the Texas Department of Criminal Justice.

Discipline Procedure

Employee Standard of Conduct

Each employee is expected to become familiar with the performance criteria for his or her particular job and with all rules, procedures, and standards of conduct established by the Board of Regents, UTMB, and the employee's department or unit. An employee who does not fulfill the responsibilities set out by such performance criteria, rules, procedures, and standards of conduct may be subject to adverse personnel action.

Conduct Subject to Disciplinary Action

Work Performance

Discipline Procedure, continued

Work performance is to be judged by the supervisor's evaluation of the quality and quantity of work performed by each employee. Failure of an employee to maintain satisfactory work performance standards or to meet a reasonable and objective measure of efficiency and productivity may constitute grounds for disciplinary action including dismissal.

Unacceptable Conduct

All employees are expected to maintain standards of conduct suitable and acceptable to the work environment. Disciplinary action, including dismissal, may be imposed for unacceptable conduct. Examples of unacceptable conduct include, but are not limited to:

1. falsification of time sheets, personnel records, or other institutional records;

2. neglect of duties;

3. smoking anywhere except in designated smoking areas;

4. gambling or participating in lotteries or any other games of chance on the premises at any time;

5. soliciting or collecting money or circulating petitions on the premises other than within the rules and regulations of the institution;

6. bringing intoxicants or illegal drugs onto the premises of the institution, using intoxicants or illegal drugs on the premises at any time, having intoxicants or illegal drugs in one's possession on the premises at any time, or being under the influence of intoxicants or illegal drugs on the premises at any time;

7. abuse or waste of tools, equipment, fixtures, property, supplies, time, or goods of the institution;

8. creating or contributing to unhealthy or unsanitary conditions;

Discipline Procedure, continued

9. violation of safety rules or accepted safety practices;

10. failure to cooperate with supervisor or co-worker, impairment of function of work unit, or disruptive conduct;

11. disorderly conduct, harassment of other employees (including sexual harassment), or use of abusive language on the premises;

12. fighting, encouraging a fight, or threatening, attempting or causing injury to another person on the premises;

13. theft, dishonesty, or unauthorized use of institutional property, including records and confidential information;

14. creating a condition hazardous to another person on the premises;

15. destroying or defacing institutional property or records or the property of a student, patient, or employee;

16. refusal of an employee to follow instructions or to perform designated work that may be required of an employee, or refusal to adhere to established rules and regulations;

17. repeated tardiness or absence, absence without proper notification to the supervisor, or absence without satisfactory reason or unavailability for work.

18. privacy violations such as improper use, disclosure, or disposal of patient information, education records, or other personally identifiable information (such as social security numbers, credit card numbers, or protected health information).

19. failure to comply with federal healthcare program requirements

20. intentional misrepresentation of services on claims submitted to any third-party payer and/ or patient

21. failure to report non compliance with federal healthcare program requirements or failure to report possible wrongdoing or suspected

Discipline Procedure, continued

violations of applicable federal and state law regulations.

22. being listed as excluded, debarred, suspended, or
23. ineligible to participate in federal or state programs
24. failure to follow UTMB Professionalism standards.
25. violation of institutional information resources security procedures including the unauthorized sharing of system passwords.
26. violation of any federal or state law or regulation or UT System or UTMB policy or procedure.

Discipline Procedures

Employees subject to this policy whose performance or conduct does not meet acceptable standards but is not to the severity for suspension, demotion, or dismissal should receive one or more of the following:

(a) Verbal reminder
(b) Written reminder
(c) Paid decision day to develop an action plan for performance improvement

While progressive discipline is encouraged, disciplinary action will be based on the seriousness of the unsatisfactory performance or misconduct and is not required to follow any established sequence of disciplinary actions. UTMB Performance Management Tools.doc

The following procedures will be followed when an employee who is subject to this policy is demoted for disciplinary reasons, suspended without pay, or dismissed.

(a) The supervisor will review the evidence and the proposed disciplinary action with the chief human resources officer or his or her designee.

(b) Once the supervisor has sought and obtained the concurrence of the chief human resources officer or his or her designee,

Discipline Procedure, continued

he or she must then obtain the concurrence of the department head or administrative equivalent to whom he or she reports before proceeding with the proposed disciplinary action.

(c) The supervisor shall inform the employee in writing of the reasons for the proposed disciplinary action and the facts upon which the supervisor relies. The employee shall be provided with an opportunity to respond to the charges either verbally or in writing within a reasonable time not to exceed two (2) working days and to persuade the supervisor that the grounds for the disciplinary action are mistaken or incorrect before a final decision is made to take disciplinary action. This pre-disciplinary notification serves as an opportunity to avoid mistaken decisions to impose discipline and is not intended to definitively resolve the propriety of the disciplinary action being considered.

(d) If the supervisor is not persuaded by the employee's response that the decision to take disciplinary action is incorrect or mistaken, the supervisor will proceed to impose the disciplinary action. The supervisor shall inform the employee in writing of the following:

(1) whether the disciplinary action is a demotion, suspension without pay or dismissal and its effective date;

(2) a specific period for a suspension without pay, not to exceed one (1) month;

(3) the specific incident, conduct, course of conduct, unsatisfactory work performance, or other basis for the disciplinary action;

(4) any previous efforts to make the employee aware of the need to change or improve work performance or conduct; and

(5) reference to any relevant rule, regulation, or policy.

Effect Upon Employee Benefits

Discipline Procedure, continued

An employee who is demoted or suspended without pay continues to accrue vacation and sick leave, to be covered by group insurance, and to be entitled to other employee benefit programs. If a demotion or suspension without pay is appealed and the appeal of the demotion or suspension is successful, the employee shall be entitled to payment for wages lost as a result of the demotion or suspension. If an appeal of dismissal is successful, the employee shall be reinstated to the same or similar position and shall be entitled to payment of back wages less any unemployment compensation insurance benefits received by the employee after the date of dismissal. Employee benefits such as vacation and sick leave shall be credited back to the date of dismissal.

Appeal Procedure

Disciplinary actions resulting in dismissal, suspension without pay, or demotion may be appealed by the affected employee pursuant to the process set out below by submitting a written request for a hearing to Employee Relations in Human Resources. The request must be made timely within ten (10) working days following the date of the disciplinary action. The failure of the employee to submit the appeal in a timely manner irrevocably waives the employee's appeal rights. Employee Relations staff will assist the executive vice president for the area in which the appellant is/was employed with coordination of the appeal hearing. The executive vice president shall, at his or her discretion, either hear the appeal in person or appoint a delegate(s) to hear the appeal. The hearing shall be conducted within 30 business days of the appeal being filed. Absent showing good cause, a maximum of one 15 day extension may be given either party who requests an extension.

Naming of Delegate

If the executive vice president elects to appoint a delegate(s) to hear the appeal, the name or names will be furnished to the employee as soon as practical after the selection is made. If more than one person is appointed, one of them shall be designated in the notice to the employee to serve as chair.

Challenges as to Fairness

An employee may challenge the fairness and impartiality of the executive vice president or administrative equivalent or an appointed

delegate(s). The challenge must be in writing and must clearly state the factual basis for the challenge. A challenge of the executive vice president must be made within five (5) days of the date of the request for a hearing and a challenge of a delegate(s) must be made within five

Appeal Procedure, continued

(5) days after the date of the notice appointing the delegate(s). It shall be up to the person challenged to determine whether he or she can serve with fairness and impartiality. If the challenged executive vice president determines that he or she cannot be fair and impartial in the consideration of the appeal, he or she shall appoint a delegate(s) to hear the appeal. If a challenged delegate(s) determines that he or she cannot be fair and impartial in the consideration of the appeal, the executive vice president shall appoint another delegate(s).

Exchange of Information

At least five (5) working days prior to the time set for the hearing, the institutional representative for the appeal and the employee shall furnish each other with the names of the witnesses to be called, a summary of their expected testimony, and a copy of each document, record or exhibit to be introduced at the hearing. Failure by either party to provide the above information within the time set forth may waive that party's ability to present such evidence at the hearing.

Chair

The executive vice president or the delegate designated as chair shall preside at the hearing and ensure the order of presentation as well as decide on questions of relevancy and admissibility of evidence. The chair shall also have the discretion to determine the length of the hearing and the form and scope of cross-examination allowed during the hearing. Upon request, the chair may consult with and be advised by legal counsel before, during, and after the hearing.

Right to Representation

The employee has the right to be represented at the hearing by an attorney or other individual representative. If the employee is represented by an attorney or an individual from an employee organization, the institution may be represented by an attorney from the institution or the Office of General Counsel of The University of Texas

System Administration.

Record of the Hearing

Appeal Procedure, continued

In all appeal hearings, the institution shall make a tape recording of the hearing and make a copy of the tape available to the employee on request. The tape recording of the proceedings shall be the official record of the hearing.

Burden of Proof

The institution shall demonstrate by the greater weight of the credible evidence that the supervisor's disciplinary action was neither inappropriate nor illegal. The institution shall present its case first after which the employee shall present his or her case.

Evidence

The hearing shall consist of testimony by witnesses called by the institution and the employee, with both parties having the right to cross-examine witnesses. Relevant exhibits may be introduced byeither party and the chair shall take notice of the employee's personnel record.

Witnesses

Any employee may be asked to appear as a witness for either party. It shall be the duty of an employee requested to testify to do so as to any facts which may be relevant to the appeal. It is the responsibility of each party to assure attendance by its witnesses.

Notification to Executive Vice President

The delegate(s) shall deliberate, prepare, and forward written findings and recommendations to the executive vice president within ten (10) working days after the close of the hearing.

Employee Notification

The executive vice president shall mail his or her decision to the

Appeal Procedure, continued

employee within ten (10) working days following the receipt of the findings and recommendations from the delegate(s).

If the executive vice president has heard the appeal, he or she shall mail a written decision to the employee within ten (10) working days after the close of the hearing.

The decision of the executive vice-president is final.

TDCJ/CMC

In order to comply with security requirements, UTMB employees assigned to Correctional Managed Care (CMC) are subject to the same standards of conduct as TDCJ employees as well as UTMB policies when working in a correctional facility. Specific examples of unacceptable conduct in TDCJ correctional facilities may be obtained from the Director of Human Resources for Correctional Managed Care or designee.

Investigation by Employee Relations

Reports of illegal discrimination, sexual harassment, or retaliation will be investigated by the Employee Relations staff. Corrective action will be recommended with any findings of illegal action.

Records of Disciplinary Actions

Copies of all documents pertaining to disciplinary actions shall be filed in the employee's personnel file.

References

Authority/Related Policies

Regents' *Rules and Regulations*, Series 30601
IHOP Policy 3.2.3 Non-discrimination
IHOP Policy 3.2.4 Sexual Harassment and Misconduct