**Request for Adverse Action and Notice**

**Required elements, format and suggestions**

1. This Due Process is for non-promotion, non-reappointment and termination but NOT probation.
2. **IMPORTANT** - This Due Process consists of 2 parts:
   1. The **Request for Adverse Action** – described below. The Request for Adverse Action is sent to the DEPARTMENT HEAD, not resident. After the department head has reviewed, if they agree, they create a short letter called the **Notice**
   2. The **Notice** – a short letter from the department head saying he/she supports the proposed action of XXXXX.

THIS NOTICE IS ATTACHED to The Request for Adverse Action and **BOTH** are sent to the house officer by mail or hand delivered **AND** sent by email with a read receipt notice.

1. LSU GME Due Process is complex and has a very tight timeline. Print out a copy of the relevant section and place on your desk for frequent reference. It is vital that you follow the Due Process as outlined exactly including content, required times, etc. Not following the Due Process is one of the major reasons cases are overturned when legal action occurs.
2. Doing work up front saves time later.
   1. We recommend The Request for Adverse Action be detailed with specific examples, specific dates, specific witnesses, etc. Not only does this strengthen your case but, 3 years from now when the case comes to trial, whoever the program director / coordinator is will have a much easier time putting it together.
   2. When a lawyer is presented with a detailed, well thought out Request for Adverse Action by a prospective client, they are much less eager to pursue as their time may never be compensated.
3. The required **FOUR** components of The Request for Adverse Action are:
   1. The **proposed disciplinary action** - if possible have the CCC decide it and say the CCC met on XX/XX/XXXX and recommended you not be reappointed or whatever it is. It is always better to have a committee decision.
   2. **A list of deficiencies / Reasons for Action** (usually by competency and usually fairly detailed) – see examples below.
   3. List of **all known documentary materials** that you would use at a hearing - this may just say “resident file” but that means you will have to give the whole file to the resident which we do not routinely allow except in appeal cases where the whole file is listed as the materials to be used.
      1. Most Requests have a long list of deficiencies and documents such as letters, test scores, evaluations, emails, incident reports and other documents are appended that refer to each allegation .
   4. **List of witnesses** to be called and **brief summary of their expected testimony**. In cases where the documentary evidence is the resident record the summary for the witness may be “will attest to accuracy of information in the file or an incident in the file.” Or you may list the deficiency, then list a witness that will attest to that deficiency or incident. Example – Incident 4 - Dr. XXXXX was late for OR on XX/XX/XXXX. In the list of witnesses say “Dr Jones will attest to his arriving late for OR as described in number 4 above.”
4. A great way to collect and list deficiencies is by competency. Most will be for patient care, medical knowledge, professionalism, communication. For example:
   1. Patient Care
      1. List specific occurrences in OR / wards, etc and dates
      2. Include residents statement about not being safe in OR
      3. Other specific instances in the past – always put specifics including dates and even who will testify about it
      4. Inability to make decisions
      5. Lack of integrity
      6. Poor judgment
      7. Specific things they can’t do that they should be able to do – start IV, induce anesthesia, etc etc
   2. Professionalism – listing specific examples
      1. Unexcused absences
      2. Unprofessional behavior with staff or families or other docs
      3. Repeated tardiness
      4. Lying
      5. Email, Facebook , HIPAA violations, etc
      6. Other unprofessional behavior –
      7. Failure to keep CAP contract in effect
      8. Failure to meet terms of probation
      9. Failure to comply with rules, regulations, resident contract, resident manual
      10. Noncompliance with program or school policies – eg moonlighting
   3. Medical knowledge
      1. Failure to provide care equivalent to peers
      2. Milestone issues
      3. Evaluation issues – may include other competencies
      4. Failure to meet program requirement – certain score on in service exams, failure to meet program time line – eg pass USMLE by some specific date
      5. Not complying with terms of probation – eg reading certain things
5. The most unique and perhaps best way of setting up a request for Adverse Action was done in table form as follows:

A useful template for this is very similar to the example in the Probation Policy. Please also see the examples above for other reasons for the action.

June 23, 20XX

John Doe, M.D.

1 Audubon Place

New Orleans, LA 70XXX

**Re: Request for Adverse Action**

Dear Dr :

**Proposed Action:**

After carefully reviewing your nurse, resident, and student evaluations and discussing your portfolio with a committee of XXXXXX faculty , the XXX Program is non-renewal of your contract (or termination or non-promotion as the case may be) effective July 1, 20XX.

**List of Deficiencies / Reasons for Action:**

This recommendation for non-renewal is based on the recommendations of the XXXX committee and is due to your substandard performances in the following competencies:

1. Patient Care:
   1. Weak XXXXX (specialty) knowledge as demonstrated by your substandard in service exam scores both in July 20XX and February 20XX compromising patient care,
   2. Inability to apply your knowledge for both teaching students and interns, and for providing sound patient care. Examples of this include:
      1. XXXX
      2. XXXX
      3. XXXX
   3. Lack of attention to detail compromising patient care. Examples of this include:
      1. XXXX
      2. XXXX
      3. XXXX
   4. Poor organizational and time-management skills reflected in:
      1. Inability to write timely and accurate orders. Examples of this include:
         1. XXXX
         2. XXXX
      2. Execute the staff and resident’s therapeutic plans causing the supervisory residents to do much of your work. Examples of this include:
         1. XXXX
         2. XXXX
      3. Inability to work effectively as a team player. Examples of this include:
         1. XXXX
         2. XXXX
   5. Failure to consistently follow through on orders that you were specifically instructed to complete on your patients. Examples of this include:
      1. Failure to look up the doses. This was seen :
         1. XXXX
         2. XXXX
   6. Use of incorrect or deliberately approximate dosing in critical situations. Examples of this include:
      1. XXXX
      2. XXXX
   7. Failure to follow a specific order on a medicine. Examples of this include:
      1. XXXX Rocephin
2. Medical Knowledge:
   1. Weak XXSPECIALTYXX medical knowledge evidenced by
      1. Poor performance on xxxxx in-service exams in July 2009 and February 2010
      2. Overall clinical performance on XXXX ward month in October 2009 and the XXXX team wards in June 2010.
      3. Lack of insight into areas of weakness as evidenced by comments made about your performance by peers and supervisory residents on “check out “rounds and other rounds where you are directly observed. Specific examples of this include:
         1. XXXX
         2. XXXX
         3. XXXX
3. Interpersonal Skills/Communication Skills:
   1. Disrespectful, condescending behavior with fellows, residents, and students. Examples include
      1. XXXX
      2. XXXX
      3. XXXX
   2. When questioned about the behavior you rationalized this behavior as a defense mechanism used for survival. Specific examples of this include:
      1. XXXX
      2. XXXX
      3. XXXX
   3. Continued disrespectful behavior after counseling by myself and others. This was specifically sees:
      1. XXXX
   4. Lack of insight into your behaviors and performance level as reflected above as reflected in the following examples:
      1. XXXX
      2. XXXX
   5. Rude and abrasive behavior with patients, families and peers as evidenced by
   6. Several peers strongly dislike working with you because of your failure to adequately and consistently complete the tasks assigned to you. Examples of this include:
      1. XXXX
      2. XXXX
      3. XXXX
4. Professionalism:
   1. Rude and disrespectful behavior. Examples include
      1. XXXX
      2. XXXX
      3. XXXX
   2. Inability of your peers to trust you. Examples include
      1. XXXX
      2. XXXX
      3. XXXX
   3. Untruthful behavior. Examples include:
      1. XXXX
      2. XXXX
      3. XXXX
   4. Your cavalier, overconfident behavior without the essential knowledge base is a dangerous combination that many residents feel will result in poor outcome for patients if you are not heavily supervised at all times.
   5. Failure to arrive on time.
   6. Unauthorized absences.
5. Practice-Based Learning:
   1. Failure to read assigned materials as seen:
      1. XXXX
      2. XXXX Web MD, XXXXX etc
   2. Failure to recognize, reflect on and correct mistakes despite being specifically counseled. Examples of this include
      1. xxxx
      2. xxxx

**List of all known documentary materials to be used in a hearing**

1. The above listing assumes there would be attached documentation supporting each or many of the listed deficiencies. If so you would say see attached documentation.
2. You may add letters, evaluations, or anything collected to prove your point, but they would be added as an addendum if not already in the above mentioned documentation.
3. If you do not plan to list and attach a lot of documentation (a mistake!) then you can simply refer to the “resident file” which means you need to introduce the whole thing or select parts and attach to the request.

**List of Witnesses and Expected Testimony**

1. It is assumed that in many of the above specific instances a specific person will be named as making the complaint or turning in the evaluation etc that led to the item being included. If so you can simply state something like “The witnesses who may testify are included in the charges listed under reasons and will testify to the validity of the information listed in that charge.”
2. Otherwise list them and say something brief like “they will attest to the evaluations in the file”, or “they will attest the resident didn’t show up” or “they will attest the resident lied” or whatever they will attest to.

Sincerely,

Jane Doe

Program Director

THIS GOES TO THE DEPARTMENT HEAD WHO TYPES THE NOTICE AND BOTH ITEMS THEN GO TO THE RESIDENT AND ASSOCIATE DEAN FOR ACADEMIC AFFAIRS BY CAMPUS EMAIL. You can also give it to the resident in person.