

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DR. LATIKA GIRI,

Plaintiff,

v.

Case No. 1:24-cv-00410

THE NATIONAL BOARD OF
MEDICAL EXAMINERS,

Defendant.

DECLARATION OF ALEX J. MECHABER, MD, MACP

1. My name is Alex Mechaber. I am Vice President of the United States Medical Licensing Examination (“USMLE”) at the National Board of Medical Examiners (“NBME”). Unless otherwise stated, I have personal knowledge of the facts stated below, based on my work at NBME and my review of company records maintained in the ordinary course of business, as referenced below.

2. I joined the staff of NBME in July 2020 as Associate Vice President, Physician Licensure Program. In November 2021, I was named Vice President, USMLE. In my role as Vice President, USMLE, I oversee policy, operations, strategy, and the research agenda for the USMLE program.

3. Prior to joining NBME, I was a Professor of Medicine and the Bernard J. Fogel Chair in Medical Education at the University of Miami, Miller School of Medicine. I also served as Senior Associate Dean for Undergraduate Medical Education, and in that role I oversaw medical student education at the school—including admissions, student affairs, curriculum, and competency assessments—in addition to providing counseling and guidance to senior medical students on medical residency applications. During this time, I also served as a volunteer on multiple

USMLE committees including test development committees and the USMLE Management Committee. I am now Professor Emeritus at the Miller School of Medicine.

4. NBME is a not-for-profit corporation located in Philadelphia, Pennsylvania that provides assessment services for physicians and other health professionals. Its mission is to protect the public through state-of-the-art assessments of the knowledge and skills of health professionals. NBME co-sponsors the USMLE program together with the Federation of State Medical Boards (“FSMB”). The USMLE is a standardized examination used to evaluate applicants’ knowledge and their competence for medical licensure in the United States and its territories. The USMLE is designed to assess an examinee’s ability to apply knowledge, concepts, and principles, and to demonstrate fundamental patient-centered skills, that constitute the basis of safe and effective patient care.

5. Medical licensing authorities across the country rely upon the USMLE to help evaluate the qualifications of individuals seeking an initial license to practice medicine and to determine their eligibility for medical licensure.

6. There are three “Steps” to the USMLE, all of which must be passed before an individual with an M.D. degree is eligible to apply for an unrestricted license to practice medicine in the United States.

7. Step 1 is a one-day, multiple-choice examination. It assesses whether a candidate understands and can apply important concepts of the foundational sciences basic to the practice of medicine, with special emphasis on principles and mechanisms underlying health, disease, and modes of therapy. It ensures knowledge of not only the sciences that provide a foundation for the safe and competent practice of medicine in the present, but also the scientific principles required for maintenance of competence through lifelong learning.

8. Step 2 CK is a one-day, multiple-choice examination that assesses the application of medical knowledge, skills, and understanding of clinical science essential for the provision of patient care under supervision and includes emphasis on initial clinical management, health promotion and disease prevention. Step 2 CK ensures that due attention is devoted to principles of clinical sciences and basic patient-centered skills that provide the foundation for the safe and competent practice of medicine under supervision.¹

9. Step 3 is a two-day, multiple-choice examination that assesses whether the examinee can apply medical knowledge and understanding of biomedical and clinical science essential for the unsupervised practice of medicine, with emphasis on patient management in ambulatory settings. Step 3 content reflects a data-driven model of generalist medical practice in the United States. The test items and cases reflect the clinical situations that a general, as-yet undifferentiated, physician might encounter within the context of a specific setting. It is the final examination in the USMLE sequence leading to a license to practice medicine without supervision. As such, it provides a final assessment of physicians assuming independent responsibility for delivering general medical care.

10. Steps 1, 2 CK, and 3 are administered by computer at test centers run by a third-party vendor known as Prometric or its franchisees. Steps 1 and 2 CK are administered at test centers around the world. Step 3 is only administered in the United States and its territories. More than 100,000 Step examinations are administered each year.

11. Developing items for the USMLE is time-consuming and expensive. The process requires input from subject matter experts across the country who devote a significant number of

¹ The USMLE previously included a Step 2 CS (Clinical Skills) component, which was suspended in May 2020 due to the COVID-19 pandemic and was subsequently discontinued.

hours developing items, numerous committee meetings to review and refine items, as well as support from NBME editors and other technical staff to ensure consistency and standardization of items created. It costs thousands of dollars to develop a single exam item and hundreds of thousands of dollars to create a single multiple-choice USMLE exam form. On average, it takes two years to develop each multiple-choice item on a Step exam, from inception to its first administration as a scored item on the USMLE.

12. The USMLE is a “secure” exam, which means that the exam items are kept confidential before and after an exam is administered. Strict security measures are in place in NBME’s offices that limit who can access USMLE items. NBME also holds examinees to strict confidentiality obligations. As a condition of taking any Step examination, examinees must agree not to duplicate or disclose any examination materials before, during or after taking the examination, by any means or in any format whatsoever. This includes not disclosing or discussing any questions or answers that they see when taking a Step exam, in whole or in part, through in-person discussions or on any internet-based platforms, and not accessing content that has been improperly disclosed. Exam rules of conduct and prohibited behavior are set forth in the USMLE Bulletin of Information, and examinees must certify that they have read and agree to abide by the Bulletin of Information and the policies and procedures described therein as a condition to applying for the exam.

13. NBME goes to great lengths to maintain the confidentiality of its USMLE items because, as is common with standardized tests, NBME reuses items from prior exams to “equate” scores (that is, to adjust for variation in the difficulty of exam forms so that the reported scaled scores reflect the same level of performance exam-to-exam).

14. When live USMLE items are disclosed outside of the secure testing environment, it jeopardizes the validity of future exam results. The risk is that questions will be answered correctly not because a given examinee knows the applicable content but because of prior access to the questions and answers. That harms not only other examinees and the USMLE program, but also the licensing boards and members of the general public that rely on USMLE outcomes to help ensure that only those with the skill and knowledge needed to practice medicine unsupervised are licensed as doctors. It also harms the medical residency programs that rely on USMLE scores when evaluating and selecting applicants.

15. The performance of USMLE examinees is monitored regularly and may be analyzed to detect aberrancies or other variations that raise questions about the validity of their exam results.

16. The USMLE program expressly reserves the right to cancel exam results that are at or above the passing level if the USMLE program has a good faith basis for questioning whether the exam result(s) represent a valid measure of knowledge or competence as assessed by the examination. Questions about score validity may result from irregular behavior, improper access to exam questions, or other factors.

17. The USMLE program has different policies and procedures in place to address instances of suspected irregular behavior versus instances of questioned score validity, although certain types of conduct might fall under more than one policy. A true and correct copy of the *United States Medical Licensing Examination (USMLE) Policies and Procedures Regarding the Validity of Passing Level Scores* is attached at Exhibit A, and a true and correct copy of the *United States Medical Licensing Examination (USMLE) Policies and Procedures Regarding Irregular Behavior* is attached at Exhibit B.

18. As recognized in the *Policies and Procedures Regarding the Validity of Passing Level Scores* (shown at Exhibit A), special procedures may also be appropriate in some circumstances in which the validity of a passing USMLE score is questioned, particularly in circumstances involving multiple examinees. In accordance with the *Policies and Procedures Regarding the Validity of Passing Level Scores*, the USMLE program is expressly authorized to take any actions it deems appropriate in response to concerns regarding score validity if the USMLE Committee for Individualized Review (“CIR”) or the USMLE Composite Committee concludes that alternative or supplemental procedures are warranted in response to a given set of facts or circumstances.

19. Following a months-long investigation and analysis by the USMLE program that was precipitated by anonymous tips, anomalous performance data, and other information related to a Prometric test center in Nepal at which the USMLE exam was being administered, the USMLE program identified 832 examinees who had passing level performance results on one or more Step exams as to which the USMLE program had significant concerns about the validity of the passing results. A true and correct copy of the USMLE Program Statement on Notification of Invalidated Exam Scores, which was posted online on January 31, 2024, is attached at Exhibit C.

20. In the interest of providing a process that is timely, efficient, effective, and fair, and given the large number of examinees involved in this investigation, the USMLE program concluded that alternative procedures were warranted to address the score invalidity concerns identified through this investigation and analysis. Those alternative procedures are set out in a document entitled the *United States Medical Licensing Examination (USMLE) Policies and Procedures Regarding the Validity of Passing Level Scores Achieved by a Subset of USMLE Examinees*. A true and correct copy of this document is attached at Exhibit D.

21. As set out in the *Policies and Procedures* document found at Exhibit D at pages 4-5, examinees were provided three options in response to the USMLE program's findings, and they were required to choose how they wished to proceed within fifteen calendar days of receiving notice. In setting this deadline, the USMLE program was mindful of providing sufficient time for examinees to respond, while also allowing the process to move forward expeditiously and facilitate exam retake planning and scheduling.

22. The USMLE program was aware that hundreds of the examinees identified through the USMLE program's investigation and analysis with passing-level scores of questionable validity were registered to participate in the 2024 National Resident Matching Program ("NRMP"). Program leadership (which includes academic medical center faculty who are intimately familiar with the medical residency training process as well as representatives of state medical licensing boards) was deeply concerned about the risks of allowing this group of individuals to move forward in the Match and potentially enter into a residency program where they would be directly involved in patient care.

23. The USMLE program is continuing to investigate information relating to exam security, in Nepal and in other countries. To the extent that issues have been or are identified reflecting similar conduct by large numbers of examinees in other countries, I expect that those examinees will be subject to the same policies and procedures that have been applied to the examinees at issue in the captioned lawsuit, including the immediate non-reporting or suspension of test results whose validity is subject to question by the USMLE program.

24. We have not invalidated any exam scores because of an examinee's nationality or citizenship; instead, we acted on the basis of examinee performance data and other information relevant to the validity of the USMLE results that we report. In all instances, the actions that we

take are intended to protect the validity of reported USMLE scores and thus to help protect the health and well-being of the general public.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 18, 2024.

DocuSigned by:



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Alex J. Mechaber, MD, MACP

EXHIBIT A

***United States Medical Licensing Examination (USMLE)
Policies and Procedures Regarding the Validity of Passing Level Scores***

Introduction

The USMLE program is designed to produce high quality, reliable examinations. To that end, the USMLE program endeavors to ensure that test scores are comparable over administrations and support valid inferences, and to report and stand behind only those scores in which the program has confidence.

The following policies and procedures are intended to address situations in which the USMLE program has a good faith basis for questioning the validity of a passing level score¹. These policies and procedures do not apply to technical or administrative events or errors, to which other USMLE policies/procedures may apply. Policies and procedures regarding suspected irregular behavior, which may or may not affect score validity, are described in another document, entitled *USMLE Policies and Procedures Regarding Irregular Behavior*.

A. Policies

1. These policies and procedures address passing level examination results that might not represent a valid measure of an examinee's competence in the domains assessed by the examination. Aberrancies in performance below the passing level are addressed in the *USMLE Policies and Procedures Regarding Anomalous Performance*.
2. The fact that a question arises concerning the validity of a score does not necessarily imply that an examinee engaged in inappropriate behavior; irregular behavior is not the only basis upon which scores may be invalidated or reported with a qualification.
3. An examinee's passing level score will not be reported if staff and/or the Committee for Individualized Review (CIR) has a good faith basis for questioning whether it represents a valid measure of the examinee's competence in the domains assessed by the examination.
4. If otherwise eligible to test, an examinee whose scores have been determined by staff and/or the CIR to be invalid may retake an examination, unless the examinee's access to future administrations of the USMLE is restricted on the basis of another policy/procedure, such as a referral to CIR for possible irregular behavior.

¹ As used herein, "score" includes a passing level outcome on an examination for which a result but no score is reported.

5. These policies and procedures are intended to address most situations in which the validity of the passing score of an individual examinee is questioned. There may be circumstances, however, particularly involving multiple examinees, that are more appropriately addressed under other procedures. The USMLE program reserves the right to take whatever actions it deems appropriate if the CIR or USMLE Composite Committee concludes that alternative or supplemental procedures are warranted in response to a given set of facts or circumstances.

B. Procedures

1. These procedures are applicable to instances in which:
 - a) a good faith basis exists for questioning whether a passing level score represents a valid measure of an examinee's competence in the domains assessed by the examination; and
 - b) there is no evidence of errors in scoring; and
 - c) there is no reasonable basis for concluding that the examinee's scores were distorted by factors under the control of the test administration entities.
2. In such instances, staff will evaluate the concerns regarding score validity, will review any additional information available from examination records that may be relevant and may conduct further investigation as staff deem appropriate.
3. **If a question about score validity arises prior to the release of the score,** staff will notify the examinee and any other party to which scores would normally be reported that the reporting of the scores is being delayed pending further review, and ask the examinee to provide a response within 20 days. If the examinee fails to respond or otherwise does not provide an adequate explanation, staff may decide that the score should be canceled. Unless the examinee's access to the USMLE is restricted (see Paragraph A.4 above), the examinee will be given the option to retest or to ask that the CIR review the staff decision. If the examinee requests CIR review, the CIR will consider the matter based on all pertinent information, including the examinee's written submission and the information on which staff relied in deciding that the score should be canceled. The examinee shall not appear in person. If the CIR concludes that the questioned score should not be canceled, it will direct staff to report the examinee's scores. If the CIR determines that a good faith basis exists for questioning whether the score represents a valid measure, it shall direct staff to cancel the examinee's score. The examinee will have the option to retest and receive the score achieved on the retest. The decision of the CIR is final.

4. **If a question about score validity arises after a score has been released but less than one year from the date of the test administration**, staff will suspend further distribution of the questioned score, inform the examinee about the question, and request a response within 20 days. If the examinee fails to respond or otherwise does not provide an adequate explanation, staff may decide that the score should be canceled. Unless the examinee's access to USMLE is restricted (see Paragraph A.4 above), the examinee will be given the option to retest or to ask that the CIR review the staff decision. If the examinee requests CIR review, the CIR will consider the matter based on all pertinent information, including the examinee's written submission and the information on which staff relied in deciding that the score should be canceled. The examinee shall not appear in person. If the CIR concludes that the questioned score should not be canceled, it will direct staff to report the examinee's scores. If the CIR determines that a good faith basis exists for questioning whether the score represents a valid measure, it shall direct staff to cancel the examinee's score. The examinee will have the option to retest and receive the score achieved on the retest, or to appeal to the USMLE Composite Committee pursuant to Paragraph B.9 below.
5. **If the question about the validity of a score arises after the score has been released and more than one year after the date of the test administration**, staff shall follow the procedure set out in Paragraph B.4 above. In addition, before sending the initial notice of inquiry, staff shall consider the individual's status in USMLE sequence as well as educational and career progression with particular attention to beginning residency and obtaining licensure in light of the nature of the question about score validity and the role of the examination in protecting the health of the public.
6. In each instance described above, if investigation, including, e.g., communication with the examinee, discloses an explanation that staff concludes is reasonable and satisfactory, staff will report the examinee's scores and no further action will be taken pursuant to these policies and procedures.
7. If there is evidence of irregular behavior involving the examinee, *USMLE Policies and Procedures Regarding Irregular Behavior* will also apply. In instances involving suspected irregular behavior which raise concerns about the validity of scores, the CIR may review the evidence concerning either issue (score validity or irregular behavior) first and may proceed under either or both sets of policies and procedures, as the CIR deems appropriate and without requiring the CIR to conduct separate proceedings. If a score is canceled in connection with a finding of irregular behavior, and the examinee is permitted to retest, the examinee will be charged for the retest.
8. When an examinee's score is canceled pursuant to these policies and

procedures, the examinee and any other party that has received or would normally receive a report of the scores in question will be notified. The examinee's record and transcript will be annotated to show that the score is unavailable.

9. Provided that the examinee has not chosen to retest, a decision of the CIR made pursuant to Paragraph B.4 or B.5, above, may be appealed to the USMLE Composite Committee if the examinee involved has a reasonable basis to believe that the CIR did not act in compliance with applicable USMLE policies and/or procedures or that the decision of the CIR was clearly contrary to the weight of the evidence before it. The request for such an appeal must be received within 30 days of the date on which the notification advising the examinee of the CIR's decision was mailed to the examinee. Notice that the challenged score is under review will be included with USMLE transcripts issued during the pendency of such an appeal. The Composite Committee shall review the written record, consisting of all information available to the CIR, and the basis for appeal set forth by the examinee. The examinee shall not appear in person. If the Composite Committee finds that the CIR did not act in compliance with applicable USMLE policies and procedures or that the decision of the CIR was clearly contrary to the weight of the evidence, the Composite Committee may reverse the decision of the CIR or remand the matter to the CIR or to staff for further consideration. Otherwise, the determination of the CIR will stand, and, unless the examinee's access to the USMLE is restricted (see Paragraph A.4 above), the examinee will be allowed to retest. If the Composite Committee reverses the decision of the CIR, all entities having received USMLE transcripts showing that the score was unavailable will be notified of the decision of the Composite Committee and provided with updated transcripts.
10. If an examinee's score is canceled under these procedures, and the examinee retests, the examinee will not be charged for the retest,² unless the score was canceled in connection with a finding of irregular behavior.

² Only one retest without charge will be given. If the examinee does not pass the retest, they will be charged for subsequent attempts at the exam.

EXHIBIT B

***United States Medical Licensing Examination (USMLE)
Policies and Procedures Regarding Irregular Behavior***

Introduction

The following policies and procedures regarding irregular behavior are intended to protect the integrity of the USMLE examination program. If the irregular behavior creates a good faith basis for questioning the validity of an examinee's scores, the policies and procedures described in another document, entitled *USMLE Policies and Procedures Regarding the Validity of Passing Level Scores*, may also be applicable.

A. Policies

1. *Irregular behavior* includes all actions or attempted actions on the part of applicants, examinees, potential applicants, or others that could subvert the examination process. Examples of irregular behavior include, but are not limited to: failing to comply with any USMLE policy, procedure, and/or rule; seeking and/or obtaining unauthorized access to examination materials; providing false information; impersonating an examinee or having someone else test in one's place; giving assistance to or receiving assistance from another individual in answering test items; possessing unauthorized items, equipment or materials during an examination; altering or misrepresenting examination scores; engaging in disruptive or unprofessional behavior at a test center; theft of examination materials; unauthorized reproduction by any means and/or dissemination of examination content or other copyrighted materials; posting or discussing examination content on any website, or asking others to do so; and taking any other action that could give an inappropriate advantage to individuals who might be taking the examination.
2. If the USMLE Committee for Individualized Review ("CIR") determines that irregular behavior has occurred, an annotation to that effect will be entered in the USMLE record of the examinee, and this annotation will appear on applicable score reports (if scores are reported) and on transcripts for that examinee. Information regarding the decision of the CIR and the basis for such decision may also be provided to legitimately interested entities, including the Federation of State Medical Boards' Physician Data Center.
3. If the CIR determines, in its discretion, that an individual engaged in irregular behavior that is sufficiently serious to warrant such action, the individual may be barred from future administrations of USMLE or subjected to special procedures for taking future USMLE examinations, in addition to being subject to the actions described in Paragraph A.2, above.

4. A CIR finding of irregular behavior may be appealed by the affected individual to the USMLE Composite Committee in accordance with Paragraph B.8, below. The pendency of an appeal, however, will not stay or delay implementation of the CIR's decision.

B. Procedures

1. After acquiring information suggesting irregular behavior on the part of an individual from third-party reports, statistical analysis, fact investigation, or otherwise, staff will assess whether there is sufficient evidence to conclude that irregular behavior may have occurred. Staff will conduct a follow-up investigation to gather additional information when necessary.
2. If the staff analysis and/or follow-up investigation will not be concluded until after the typical period for the reporting of scores, the examinee and the entity to which scores would normally be reported will be notified that the reporting of the scores in question is being delayed pending further review.
3. If, at the conclusion of its investigation and analysis, staff finds that there is a reasonable basis to conclude that an individual has engaged in irregular behavior, the matter will be referred to the CIR. If the individual is an examinee, his/her scores will be withheld if not already released, and the individual might not be permitted to sit for subsequent examinations, nor will Step applications be processed, pending a decision by the CIR.
4. If a potential irregular behavior incident is referred to the CIR, the individual involved will be notified using the individual's last known email and postal address and provided with a copy of the applicable USMLE policies and procedures. The individual will be advised of the information which initiated the investigation and relevant findings of the investigation. The individual will be given an opportunity to provide an explanation for the facts described in the findings and to present other relevant information. The individual may request the opportunity to appear personally before the CIR. If the individual involved appears personally before the CIR, the oral presentation will be made under oath and a stenographic or audio recording may be made at the election of the CIR.
5. The CIR will consider all available pertinent information in deciding whether an individual engaged in irregular behavior, including the record assembled by staff, statistical analyses employed by staff (if any), and any explanation or other information that the individual may provide. If the CIR determines that there is a good faith basis for concluding that irregular behavior has occurred, the affected individual will be notified and informed of the right to appeal the CIR decision in accordance with Paragraph B.8, below. Regardless of whether an appeal is taken, an annotation indicating the nature of the irregular behavior will be entered immediately in the individual's USMLE record. This annotation will appear on the applicable score report (if scores are released) and on transcripts for the

individual. At the discretion of the CIR, information regarding a CIR finding of irregular behavior may also be provided to legitimately interested entities, including but not limited to the entity that certified the individual's eligibility for the examination in question, a medical education or training program in which the individual has participated or is participating at the time of the CIR's decision, and/or the FSMB's Physician Data Center. All medical licensing authorities that have received a score report or transcript for this individual in the past will receive an updated transcript and/or score report which reflects the CIR's decision.

6. If suspected irregular behavior raises concerns about the validity of a USMLE score, staff and/or the CIR may elect to review the matter and to proceed under these policies and procedures and/or under the *USMLE Policies and Procedures Regarding the Validity of Passing Level Scores*, as staff and/or the CIR deem appropriate and without requiring staff and/or the CIR to conduct separate proceedings.
7. In the event of irregular behavior that the CIR deems, in its discretion, to be sufficiently serious to warrant such action, the CIR may bar the individual from future examinations and/or implement special procedures for administering future examinations to the affected individual. If an individual is barred from future examinations, the CIR may allow for testing after a specified minimum time, upon petition of a medical licensing authority.
8. A decision of the CIR may be appealed to the USMLE Composite Committee if the individual involved has a reasonable basis to believe the CIR did not act in compliance with applicable USMLE policies and/or procedures or that the CIR's decision was clearly contrary to the weight of the evidence before it. The appeal must be received within 30 days of the date on which the notice of the CIR's decision was mailed to the individual. If the score for the examinee and CIR findings are reported during the pendency of the appeal, the recipient of the report will be informed that the individual is appealing the decision. The Composite Committee will decide appeals based upon a written record, including all information available to the CIR, a transcript of the recording made during the individual's appearance before the CIR (if there was such an appearance and it was transcribed), and the basis for appeal set forth by the individual. Neither the individual who is the subject of a CIR decision nor anyone representing that individual shall be entitled to appear in person before the Composite Committee. If the Composite Committee determines that the CIR did not act in compliance with applicable USMLE policies and procedures and/or that the decision of the CIR was clearly contrary to the weight of the evidence, the Composite Committee may reverse the decision of the CIR or remand the matter to the CIR or staff for further consideration. If the Composite Committee reverses the decision of the CIR to annotate the individual's USMLE record, all entities that received USMLE transcripts or score reports showing irregular behavior will be notified of the decision of the Composite Committee and provided with an updated transcript and/or score report. Otherwise, the determination of the CIR will stand.

EXHIBIT C



[Home](#)

USMLE Program Statement on Notification of Invalidated Exam Scores

Posted: January 31, 2024

For more than 30 years, the United States Medical Licensing Examination (USMLE) has helped to ensure that physicians licensed to practice medicine in the United States have the knowledge and clinical skills necessary to care for patients safely and effectively. Consequently, ensuring the integrity and validity of the USMLE is paramount. Examinees who take the USMLE agree to uphold the integrity of the testing process, and security measures are in place to detect exam practices or performances that may raise questions of score validity.

The USMLE program regularly monitors and analyzes examinees' test performances for unusual score patterns or variations, and other information that could raise questions about the validity of an examinee's results. As part of an ongoing investigation, the USMLE program has identified a pattern of anomalous exam performance associated with Nepal, which challenges the validity of test results for a group of examinees. Highly irregular patterns can be indicative of prior unauthorized access to secure exam content. Examinees with results in question are being notified by the USMLE Secretariat's Office that their previous Step scores have been invalidated and that they will be required to take a validation exam(s). The USMLE program is working to notify examinees who need to schedule validation exam(s) and to support score users and other stakeholders impacted by the validation exam requirements.



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EXHIBIT D

United States Medical Licensing Examination (USMLE) Policies and Procedures Regarding the Validity of Passing Level Scores Achieved by a Subset of USMLE Examinees

A. Introduction

The USMLE program is designed to produce high quality, reliable examinations. To that end, the USMLE program endeavors to ensure that test scores support valid inferences, and to report and stand behind only those passing level outcomes in which the program has confidence. Jurisdictions across the country rely upon USMLE outcomes to help them determine whether individuals seeking to become licensed physicians have the minimum knowledge and skills needed to provide safe and effective patient care. It is therefore important to protect the integrity and reliability of reported USMLE outcomes.

The *United States Medical Licensing Examination (USMLE) Policies and Procedures Regarding the Validity of Passing Level Scores* address most situations in which the USMLE program has a good faith basis for questioning the validity of an individual’s passing level score.¹ Those *Policies and Procedures* also recognize, however, that different procedures might be warranted in certain circumstances, including situations “involving multiple examinees.” Under Section A.5 of the *Policies and Procedures*, the USMLE program “reserves the right to take whatever actions it deems appropriate if the [USMLE Committee for Individualized Review] or [the] USMLE Composite Committee concludes that alternative or supplemental procedures are warranted in response to a given set of facts or circumstances.”

An investigation by USMLE program staff raised concerns regarding the outcomes achieved by a subset of USMLE examinees. These individuals are collectively referred to in this document as the “Examinees” and individually as an “Examinee.” The USMLE Composite Committee has concluded that alternative procedures should be implemented in response to the score-validity concerns relating to these Examinees.

¹ As used here, “score” includes a passing level outcome on any of the USMLE Step examinations, regardless of whether a numeric score is reported. “Outcome” and “score” have the same meaning in this document.

This document sets forth the policies and procedures that will be applied to Examinees, all of whom achieved passing level outcomes on one or more exams whose validity the USMLE program has a good faith basis for questioning.

B. Policies

1. These policies and procedures address passing level examination outcomes for which there is a good faith basis for questioning whether the outcome represents a valid measure of an Examinee's competence in the domains assessed by the examination.

2. These policies and procedures apply to and govern all Examinees, as defined in this document. The review and appellate procedures set forth in the *United States Medical Licensing Examination (USMLE) Policies and Procedures Regarding the Validity of Passing Level Scores* do **not** apply to Examinees governed by this document.

3. The fact that a question arises concerning the validity of a score does not necessarily imply that an Examinee engaged in irregular behavior, or that an Examinee was aware that he or she was engaging in irregular behavior. Irregular behavior is not the only basis upon which scores may be invalidated or reported with a qualification. Examinees will be notified separately if they are being investigated for suspected irregular behavior under the *USMLE Policies and Procedures Regarding Irregular Behavior*.

4. Open registrations will be canceled, and no additional Step applications will be processed, for Examinees unless they are eligible to test under the policies and procedures in this document.

5. The scores of all Examinees will be set by the USMLE program to “Score Not Available” for any passing level outcome whose validity the USMLE program has concluded there is a good faith basis for questioning. This means that the original passing level outcome will not be reportable to any score recipient unless the invalidation determination is overturned under the policies and procedures in this document.

6. Regardless of whether the validity of an Examinee’s passing level Step 3 score has been questioned, all Step 3 scores of Examinees (reported or not) will be set to “Score Not Available” until a passing outcome has been achieved on the Step 1 and Step 2 CK examinations.

7. If an Examinee's questioned passing level outcome on a given Step exam has **not** already been reported, the Examinee will not receive a score report for that exam, and the attempt will appear as "Score Not Available" on the Examinee's USMLE transcript, unless the invalidation determination is overturned under the policies and procedures in this document.

8. If an Examinee's questioned passing level outcome on a given Step exam has already been reported, prior USMLE transcript recipients will receive a revised transcript which states "Score Not Available" for that exam.

9. If an Examinee's score on one or more Step exams is not reinstated pursuant to these policies and procedures, the Examinee's score on each such exam will remain permanently unavailable and designated on the Examinee's USMLE transcript as "Score Not Available."

10. An Examinee whose score on a given Step exam has not been reinstated following the conclusion of any review procedures set forth in this document may retake that examination, unless the Examinee's access to future administrations of the USMLE has been suspended under these policies/procedures or is restricted on the basis of another policy/procedure, such as the *Policies and Procedures Regarding Irregular Behavior*.

11. If an Examinee's passing level scores on more than one Step exam have been questioned, the Examinee must achieve a valid score on each such Step exam in order to have his/her USMLE transcript reflect successful completion of that Step in the USMLE sequence. Examinees can achieve a valid score either by having the questioned score upheld as valid under the review procedures set forth in this document or by re-taking the exam (if eligible to do so) and achieving a passing score on the re-test.

12. Examinees who attempt to achieve valid Step 1 and Step 2 CK scores by retaking those exams may retake the exams in whichever order they prefer. To be eligible to retake the Step 3 exam, an Examinee must first have valid, reportable passing scores in place for both the Step 1 and Step 2 CK exams.

13. If an Examinee does not achieve a passing level outcome on a Step exam that is retaken under the policies and procedures set forth in this document, the Examinee will automatically be suspended from taking or re-taking any Step examination for three (3) years, following which the Examinee may take or retake any Step exam that the Examinee is otherwise eligible to take. If an Examinee fails

to achieve a passing level outcome on any Step exam that is taken or retaken after the end of a 3-year suspension period, the Examinee will be permanently barred from subsequently taking any Step examination.

14. Under current USMLE policies, candidates are not allowed more than four (4) attempts on each Step exam, unless a state medical board sponsors the candidate for a fifth attempt on a given Step exam. Any Step examination administration for which the resulting outcome has been questioned under the policies and procedures set forth in this document will count as an attempt on that Step examination, as will any Step examination administration that occurs pursuant to the re-test procedure provided for in this document.

15. A state medical board may not sponsor an Examinee for an additional attempt at a given Step exam beyond the four-attempt limit if the additional attempt would be an exam that the Examinee is retaking in an effort to achieve a valid passing score under the policies and procedures set forth in this document.

C. Procedures

Notice and Opportunity to Provide a Response

1. The USMLE program will provide written notice to each Examinee that the validity of his/her passing level outcome on one or more USMLE Step examinations has been questioned (the “Notice”). The Notice will identify the applicable Step examination(s) and state why the validity of the passing level outcome has been questioned.

2. Notice will be provided by sending an email message to the Examinee at the last known email address found in the Examinee’s USMLE-related records.

3. The Notice will include a copy of these *United States Medical Licensing Examination (USMLE) Policies and Procedures Regarding the Validity of Passing Level Scores Achieved by a Subset of USMLE Examinees*.

4. Examinees will have **fifteen (15) calendar days** from the date on which the Notice has been provided to submit a written response via the link provided in the Notice. The Notice will inform Examinees how to submit a response, if they elect to provide one, and will include a link to a form to be used for this purpose.

5. Examinees who receive a Notice will have three options, the details of which will be further described in the Notice:

United States Medical Licensing Examination (USMLE) Policies and Procedures Regarding the Validity of Passing Level Scores Achieved by a Subset of USMLE Examinees

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- a) **Option 1: Exam Retake**: Submit a timely response that informs the USMLE program that the Examinee does not wish to challenge the score invalidation and instead wishes to re-take the applicable examination(s) if otherwise eligible to do so; or
- b) **Option 2: Reconsideration of an Invalidated Outcome**: Submit a timely response with an explanation as to why the score(s) at issue should be deemed valid, using the form that will be available for this purpose and providing (with the response) additional documents that the Examinee believes to be relevant regarding the validity of the applicable score(s) (the response and any documents will be subject to applicable size limits, as stated on the form); or
- c) **Option 3: Take No Action**: Do not submit a response, or submit a response form stating that the Examinee does not wish to re-test or to seek reconsideration.

6. If an Examinee does not submit a response to the Notice, submits a response form stating that he/she does not wish to take a re-test or to seek reconsideration, or submits a response that is not **received** by the USMLE program within the 15-day response period, the Step score(s) at issue will remain permanently unavailable and the Examinee will not be given an opportunity to pursue further review of the score invalidation or to take a free re-test. In addition, the Examinee will be suspended from taking or re-taking any Step examination for three (3) years, following which he/she may re-test if otherwise eligible to do so. If an Examinee fails to achieve a passing level outcome on any Step exam that is taken or retaken after the end of a 3-year suspension period, the Examinee will be permanently barred from subsequently taking any Step examination.

Review of Responses by an Initial Review Committee

7. If an Examinee submits a timely response to the Notice with an explanation as to why the score(s) at issue should be deemed valid, the response and any supporting documentation will be reviewed by a committee made up of staff members from the USMLE program's sponsoring organizations (the "Initial Review Committee"). The Initial Review Committee will not consider responses that are not received within the 15-day period for submitting a reconsideration request.

8. Based upon the submitted materials, the Examinee's performance data, and other information available to the Initial Review Committee, the Initial Review

Committee will decide whether there is still a good faith basis for questioning the validity of the outcome(s) at issue.

9. Documents or other information submitted outside of the 15-day response period will not be considered by the Initial Review Committee, unless the Committee requested the documents or other information after the Examinee had submitted a timely initial response and the documents/information were provided by the Examinee by any deadline given by the Committee.

10. Examinees may not appear in person before the Initial Review Committee.

11. If the Initial Review Committee concludes that the information submitted by or on behalf of an Examinee provides an adequate basis for treating the outcome(s) at issue as valid, the Committee will so notify the Examinee and the outcomes(s) will be reinstated as valid in the USMLE system. This notice will be provided by email.

12. If the Initial Review Committee concludes that the information submitted by or on behalf of an Examinee does **not** provide an adequate basis for overturning the decision to invalidate the score(s) at issue, the Committee will so notify the Examinee. This notice will be provided by email.

13. An Examinee who receives an adverse decision from the Initial Review Committee may elect to appeal that decision in accordance with the procedures set forth below. Alternatively, and if otherwise eligible to re-test, the Examinee may elect to take a free re-test by so informing the USMLE program within fifteen (15) calendar days of the date on which the Examinee is notified of the Initial Review Committee's decision. Instructions on how the Examinee may elect to take a re-test will be included with the notification of the Initial Review Committee's decision.

14. If an Examinee does not submit a timely appeal after receiving the Initial Review Committee's decision, or elect in a timely manner to take a re-test after receiving that decision, the Step outcome(s) at issue will remain permanently unavailable and the Examinee will not be given an opportunity to pursue further review of the score invalidation or to take a re-test. In addition, the Examinee will be suspended from taking or re-taking any Step examination for three (3) years, following which he/she may re-test if otherwise eligible to do so. If an Examinee fails to achieve a passing level outcome on any Step exam that is taken or retaken after the end of a 3-year suspension period, the Examinee will be permanently barred from subsequently taking any Step examination.

**Right to Appeal to an Ad Hoc Committee Established by the USMLE
Composite Committee**

15. An Examinee who receives an adverse decision from the Initial Review Committee may submit an appeal to an ad hoc committee that is established by the USMLE Composite Committee (the “Appeal Committee”). An appeal must be **received** by the USMLE program within **fifteen (15) calendar days** of the date on which the Examinee was notified of the decision reached by the Initial Review Committee. The Appeal Committee will not consider appeals that are not received within the 15-day period for submitting an appeal.

16. If the Examinee appeals, the Appeal Committee will consider the matter based upon the Examinee’s appeal document (see paragraph 17, below), and the record that was before the Initial Review Committee, including the written response and any supporting documents submitted in a timely manner by the Examinee, the Examinee’s performance data, and any other information considered by the Initial Review Committee. The Examinee may not appear in person before the Appeal Committee.

17. An Examinee’s appeal from the decision reached by the Initial Review Committee must be in writing and should explain why the decision should not be upheld. The appeal document may not be more than sixteen megabytes (16 MB), and no supporting documents may be submitted with the appeal document.

18. With respect to each timely appeal, the Appeal Committee will uphold the decision of the Initial Review Committee unless the Appeal Committee concludes that the Initial Review Committee’s decision was clearly contrary to the weight of the evidence contained in the record before the Initial Review Committee.

19. If the Appeal Committee concludes that the questioned outcome(s) should be reinstated, it shall direct USMLE staff to reinstate the Examinee's score(s) as valid and reportable.

20. If the Appeal Committee upholds the decision of the Initial Review Committee, the outcome(s) at issue will remain permanently designated as “Score Not Available” and the Examinee will be given the opportunity to take a free re-test if otherwise eligible to test.

21. Decisions made by the Appeal Committee under the procedures set forth in this document are final.

Opportunity to Take a Free Re-Test

22. Any Examinee who (a) elects to re-test within fifteen (15) days of receiving a Notice that his/her score has been questioned, or (b) does not have his/her score(s) reinstated by either the Initial Review Committee or the Appeal Committee after the submission of timely requests for review by one or both of those committees, will be given an opportunity to take a free re-test with respect to the applicable Step exam(s) if otherwise eligible to test. Examinees who take such a re-test will receive the score achieved on the re-test unless concerns also arise regarding the validity of that score.

23. The outcome achieved on a re-test will be reflected on the Examinee’s USMLE transcript unless concerns also arise regarding the validity of that outcome. The transcript will continue to state “No Score Available” for any Step exam for which the Examinee achieved an outcome that was invalidated.

24. If an Examinee retakes a Step examination pursuant to the re-test option provided in this document, the Examinee will not be charged for the re-test.

25. If the Examinee does not pass the re-test and is eligible to test again at a later date, he/she will be charged all applicable fees for subsequent attempts at the exam.
