

**LEHIGH VALLEY HOSPITAL  
GRADUATE TRAINING AGREEMENT  
APPENDIX II : FAIR HEARING PLAN FOR RESIDENTS**

**I. Purpose**

The purpose of this Policy is to establish a procedure for the discipline of Residents which follows an orderly and fair process. Probation, suspension or termination of the Resident in the training program shall be guided by the objectives of the training program and supervised by the program director in the appropriate clinical department. This Policy is designed for use by those involved with the residency training programs and any Resident who is aggrieved by any action taken by the institution which results in probation, suspension or termination in the training program.

**II. Definitions**

**CMO** - Chief Medical Officer

**Graduate Medical Education Committee (GMEC)** - The GMEC has the responsibility for monitoring and advising on all aspects of residency education, establishment and implementation of policies that affect all residency programs and the regular review of all residency programs to assess their compliance with both the Institutional Requirements and Program Requirements of the relevant Accreditation Council for Graduate Medical Education review committees. Membership on the committee shall include Residents, appropriate program directors, other members of the faculty and the institutional official. Graduate Medical Education Policies are located in Appendix III.

**Resident** - Any post graduate M.D., D.O., D.D.S., or D.M.D. under contract to participate in one of the Lehigh Valley Hospital and Health Network's Residency Programs.

**Hearing Committee** - The committee appointed under this Plan to hear a request for an evidentiary hearing properly filed and pursued by a Resident.

**Special Notice** - Written notification by certified or registered mail, return receipt requested or delivered in person.

**III. Procedure**

**A. Causes for Disciplinary Action**

The institution reserves the right to suspend a Resident with or without pay, upon notice. Therefore, as determined by the program director, and/or department chair, proper cause for probation, suspension, or termination includes, but is not limited to:

- Failure to meet the standards of patient care and advance in the program.
- Failure to complete medical records in accordance with institutional and/or Accreditation Board requirements.
- Inappropriate or illegal use of medication, drugs, or alcohol.
- Incapacitation rendering the Resident unable to perform his/her duties for a period of greater than 60 days.
- Failure to take and pass USMLE Step III/COMLEX Step III as set forth by program and institutional requirements. See Policy No. 2005.39 and 2005340.
- Failure to possess a valid Graduate Training License from the Pennsylvania State Board of Medicine and Licensure in accordance with existing statutes and regulations.
- Failure to comply with any applicable bylaws, policies, procedures, rules or regulations of the institution and/or Accreditation Boards.
- Violation of the Graduate Training Agreement.
- Inability to interact constructively with patients, staff or fellow Residents.

B. Due Process

Any Resident who is aggrieved with regard to issues of areas of the Resident training program has the right to seek redress within his/her training program. Therefore, this Policy provides the due process through a defined sequence of steps as follows:

1. Documentation of questionable performance: The program director must document occurrences, events, incidents, or lack of certificates which reflect questionable performance, or lack of qualification as defined above. The program director in consultation with the department chair will confer with the Resident regarding items of questionable performance or lack of qualification. At the conclusion of this conference the program director can:
  - Conclude that the Resident is not deficient and dismiss the incident(s) or alleged deficiencies. If an incident or deficiency has been brought to the attention of the program director by a third party, the program director should communicate his/her decision to the complainant and a record of the communication should be kept in the Resident's file.
  - Place the Resident on probation. It is the responsibility of the program director to specify the conditions of the probation in writing. Probationary time is to be not less than two months nor exceed six months. The Resident will be re-evaluated monthly and at the end of the specified probationary period. At the conclusion of the probationary period, the program director will discuss the Resident's performance with him/her and either remove the probation, continue the probation for another two to six months or suspend or terminate the Resident.
  - Recommend that the Resident be placed on suspension with or without pay for not more than four weeks. It is the responsibility of the program director in consultation with the CMO to specify the conditions of the suspension in writing. At the end of the suspension period, the Resident shall be reinstated in the graduate medical education program with restriction, shall be placed in a probationary status for a minimum of two months or a maximum of six months with appropriate restrictions, or shall be terminated.
  - Termination of the Resident from the graduate medical education program.

In the event suspension or termination from the program is the action taken, the Resident has the right to a hearing as articulated below:

C. Hearing Process

1. The CMO or his designee shall promptly provide the Resident with special notice of the suspension or termination. The notice to the Resident shall provide:
  - Suspension or termination has been proposed to be taken against the Resident.
  - Summary of reasons for the action.
  - Resident has the right to request a hearing on the proposed action.
  - Resident has five days after receiving the notice within which to submit a request for a hearing and that the request must satisfy the conditions set forth in Section C.2.
  - A copy of the Fair Hearing Plan for Residents shall be included in this notice.
2. Request for Hearing
  - A Resident has five days after receiving notice under Section C.1. to file a written request for a hearing. The request must be delivered to the CMO either in person or by certified or registered mail. If the Resident intends to be represented by an attorney at the hearing, the request for a hearing must state that intent and the name of the Resident's attorney.
  - A Resident who fails to request a hearing within the time and in the manner specified in Section C.2 waives his or her right to any hearing to which he or she might otherwise have been entitled.

a. *Parties' Rights and Duties*

During a hearing, each party shall:

- Call, examine, and cross examine witnesses.
- Present evidence determined to be relevant by the presiding Officer (as herein defined).
- Request that the record of the hearing be made by the use of a court reporter.
- Request that copies of said proceedings be available upon payment of any reasonable charges associated with the presentation thereof.
- Submit a written statement at the close of the hearing.

b. *Additional Rights and Duties of Resident*

- Subject to Section C.2, the Resident may be accompanied and represented at the hearing by an individual of his or her choice, who may be an attorney. The Program Director whose recommendation or action prompted the right to a hearing (as well as other interested committee or components of the Hospital, Board or Medical Staff) may be represented by an attorney at the hearing if and only if the Resident is represented by an attorney. The foregoing provision shall not be deemed to deprive the Resident or the Program Director of the right of legal counsel in preparation for the hearing.
- Upon completion of the hearing, the Resident has the right to receive the written decision of the Hearing Committee (as hereinafter defined).
- At least five day prior to a hearing, the Resident shall provide the Program Director with a list of witnesses. The parties shall also exchange exhibits at that time and provide copies to the Hearing Committee.

c. *Failure to Appear*

- If the Resident fails, without good cause, to appear at the hearing, the right to a hearing shall be forfeited.

D. Notice Of Hearing

The CMO shall upon receipt of a request for a hearing, schedule and arrange for a hearing which shall be not later than 21 days from the receipt of the request for the hearing. At least 15 days prior to the hearing date the CMO shall send the Resident special notice of the time, place and date of the hearing and of the composition of the hearing panel. The notice of the hearing shall include a list of the witnesses (if any) expected to testify at the hearing on behalf of the Program Director whose recommendation or action prompted the right to a hearing.

E. Hearing Procedure

1. The Hearing Committee

The Hearing Committee is appointed by the CMO and is composed of at least three members of the Graduate Medical Education Committee. The CMO shall designate one of the appointees as Chairperson of the Hearing Committee.

2. Service on Hearing Committee

A member of the Graduate Medical Education Committee is not disqualified from serving on a Hearing Committee merely because he or she participated in investigating the underlying matter at issue or because he or she has heard of the case or has knowledge of the facts involved or what he or she supposes the facts to be. If the Resident has any objection to the composition of the hearing panel, the same must be raised in writing and delivered to the CMO, at least 10 days prior to the scheduled date of the hearing. The Resident's objection must state in sufficient detail the reasons and the basis for the objection so made. The CMO, in his or her sole discretion, will take action upon the objection. Action on the objection shall consist of the following:

- Overruling the objection and proceeding with the hearing on the scheduled date;
- Sustaining the objection, replacing one or more of the Hearing Committee members and proceeding with the hearing on the scheduled date; or
- Sustaining the objection, replacing one or more members of the Hearing Committee and rescheduling the hearing for a date no later than 10 days from the date originally scheduled for the hearing.

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3. Hearing Officer/Presiding Officer

a. *Use of Hearing Officer*

The use of a Hearing Officer to assist the Hearing Committee at the hearing is optional and is to be determined by CMO. A Hearing Officer shall or shall not be an attorney at law, but must be experienced in

conducting hearings.

*b. Presiding Officer*

The Chairperson of the Hearing Committee or, in the Chairperson's discretion, the Hearing Officer, if any, shall be the Presiding Officer. The Presiding Officer maintains decorum and assures that all participants have a reasonable opportunity to present relevant oral and documentary evidence. The Presiding Officer shall determine the order of procedure during the hearing and shall make all rulings on procedure and the admissibility of evidence. The Presiding Officer shall conduct pre-hearing conferences with the parties and is specifically empowered to impose reasonable limitations, including time limitations, upon the parties and the presentation of their cases.

4. Personal Presence

*a. Failure to Appear*

The personal presence of the Resident is required. A Resident who fails, without good cause, to appear and proceed at the hearing waives his or her rights in the same manner as provided in Section C.2.a.

*b. Testimony*

If the Resident does not testify in his or her own behalf, he or she can be called and examined as if under cross examination.

5. Procedure And Evidence

The hearing need not be conducted strictly in accordance with the rules of law relating to the examination of witnesses or presentation of evidence. During a hearing, each party shall present evidence determined to be relevant by the Presiding Officer, regardless of its admissibility in a court of law. Furthermore, any relevant matter upon which reasonable persons customarily rely in the conduct of serious affairs shall be considered, regardless of the admissibility of such evidence in a court of law. Each party is entitled, prior to or during the hearing, to submit memoranda concerning any issue of law or fact, and such memoranda shall become part of the hearing record. The Presiding Officer shall, but is not required to, order that oral evidence be taken only on oath or affirmation administered by any person designated by him or her and entitled to notarize documents in the state where the hearing is held or, if the witness is unavailable, by affidavit.

6. Official Notice

In reaching a decision, the Hearing Committee shall take official notice, either before or after submission of the matter for decision, of any generally accepted technical or scientific matter relating to the issues under consideration and of any facts that shall be judicially noted by the courts of the state where the hearing is held. Parties present at the hearing must be informed of the matters to be noticed, and those matters must be noted in the hearing record. Any party shall be given opportunity, on timely request, to request that a matter be officially noticed and to refute any officially noticed matter by evidence or by written or oral presentation of authority, in a manner to be determined by the Hearing Committee.

7. Burden of Proof

The Program Director whose adverse action or recommendation prompted the right to a hearing has the burden of proof by clear and convincing evidence, in support thereof.

8. Hearing Record

A court reporter shall be utilized to prepare a record of the hearing.

9. Postponement

Request for postponement of a hearing shall be granted by the Hearing Committee only upon a showing of good cause and only if the request is made as soon as reasonably practicable.

10. Presence of Hearing Committee Members

A majority of the Hearing Committee, but not less than three members, must be present for each hearing and during deliberations on the decision.

11. Recesses and Adjournment

The Hearing Committee shall recess and reconvene the hearing without additional notice for the convenience of the participants or for any other purpose. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The Hearing Committee, shall at a time convenient to itself, conduct its deliberations outside the presence of the parties. Upon conclusion of its deliberations, the hearing shall be adjourned.

12. Hearing Committee Report

Within seven days after final adjournment of the hearing, the Hearing Committee shall make a written report of its findings and recommendations and forward the report along with the record and other documentation to the CMO, to the Resident involved, and to the Program Director. The Hearing Committee Report shall include a statement of the basis for the recommendations or action.

E. Effect of Hearing Committee Report

The decision of the Hearing Committee shall be considered final.

F. Miscellaneous

1. Number of Hearings and Reviews

Notwithstanding any other provision of the Resident ' s contract or this Policy, no Resident is entitled as a right to request more than one evidentiary hearing with respect to the subject matter that is the basis of the adverse recommendation or action which prompted such right.

2. Compliance With Policy

The failure by the Hospital or any of its committees or components to meet the conditions described in this Policy shall not, in itself, constitute a violation of any state or federal law or a deprivation of the Resident ' s due process rights.

3. Exhaustion of Remedies

If an adverse recommendation is made or action taken pursuant to this Policy, the Resident must first exhaust the remedies afforded by this Policy before resorting to legal action. The fact that a Resident has exhausted the remedies afforded by this Policy shall not in any way suggest that any subsequent legal action is proper or appropriate.