

UNIFORM HEARING, GRIEVANCE AND ADMINISTRATIVE PROCEDURES
HAWAII RESIDENCY PROGRAMS, INC.

I. PREFACE

This Appendix and its Attachments supplement the Resident's Handbook by providing the uniform hearing, grievance, and administrative procedures referenced in Institutional Requirements, the Resident Appointment Agreement, and the Handbook.

II. DEFINITIONS

- A. "Probation" is a status that results from demonstrated deficiencies in a Resident's knowledge, behavior, or performance. Probation may be for a specified or indeterminate time. Failure to correct deficiencies in a prescribed time may result in dismissal from the Program. Probation will normally be reported to outside agencies and requesters if properly requested and accompanied with a properly executed HRP Consent form.
- B. "Academic Probation" means that significant or repetitive deficiencies have been noted in a Resident's academic performance, including patient care activities and supervision of assigned residents and patients.
- C. "Academic Notice" or "Academic Warning" means that performance is unsatisfactory, remediation is required, and failure to improve or correct deficiencies may result in probation if there is no significant improvement in the time prescribed. "Academic Warning" is the more serious of these two options, but neither Academic Warning nor Academic Notice are reportable to outside agencies or requesters absent unusual circumstances.
- D. "Disciplinary Probation" means that significant or repetitive breaches of the Resident Employment Agreement, or infractions of the Program's rules, policies, and/or procedures have been noted in a Resident's behavior or performance.
- E. "The Agreement" means the entire contents of the Resident Employment Agreement and Exhibits thereto into which the Program and Resident last entered.
- F. "Major violation" or "major deficiency" means conduct which may result in suspension or dismissal, and for which notice and hearing are required by Paragraph 13(c) of the Agreement where practicable.
- G. "Other violation" or "other deficiency" means any other conduct for which neither suspension nor dismissal has been imposed, and for which neither notice nor hearing is required by Paragraph 13(b) & (c) of the Agreement.
- H. "Sanction" means a written warning or counseling, academic probation, disciplinary probation, suspension, and/or dismissal.

- I. “Residency Evaluation Review Committee” is advisory to the Program Director and provides information to the Curriculum Committee on resident performance. In the context of this Uniform Hearing and Grievance Procedures memorandum, the RERC identifies deficiencies in the performance of a resident, recommends to the Program Director a remediation plan for correcting these deficiencies is established, recommends to the Program Director when to place a resident on academic probation and develop a remediation plan, and when a resident should be suspended or dismissed from the Program. Because these functions are not controlled by the paragraph 13 of the Residency Employment Agreement, the procedures required herein do not apply to RERC proceedings.

III. LIMITATIONS

Nothing herein shall limit the inherent right of the Program Director to immediately suspend or dismiss a Resident for gross incompetence, fraudulent or dishonest conduct, insubordination, unapproved moonlighting, unauthorized practice of medicine, unexcused absences, unethical conduct, or risk to patient safety due to gross negligence or willful disregard of medical center policies or directives from a supervisor, gross negligence or willful disregard of accepted medical practices, or intent to harm. Such immediate action is subject only to compliance thereafter with Paragraph 13(b) and (c) of the Resident Employment Agreement (which requires that the resident be given written notice of the intent to suspend without pay or dismiss that resident and be given the opportunity to discuss the matter with the Program Director before his/her final decision). If the resident cannot reasonably be notified in writing due to unavailability, or patient safety concerns so require, the Program Director may take action to suspend or dismiss without providing prior written notice.

IV. PROCEDURES FOR IMPOSITION OF PROBATION AND OTHER ACTIONS

- A. Academic Probation or Disciplinary Probation may be recommended to the Program Director by the Residency Evaluation Review Committee (“RERC”), subject to such procedures as the Program Director may from time to time prescribe. Proceedings of the RERC are not otherwise subject to the hearing procedures set forth in the Attachment. The RERC may recommend to the Program Director one or more of the following actions:
 1. No Probation, Academic Notice, Academic Warning, or any further action in this regard.
 2. Academic Warning or Academic Notice that performance is unsatisfactory, remediation is required, and failure to improve or correct deficiencies may result in probation if there is no significant improvement in the time prescribed.
 3. Probation and other remedial action.
 4. Suspension with or without pay.
 5. Probation and suspension.

6. Dismissal.
 7. Conditions on any of the above recommendations.
- B. Probation, Warning and Notice may consist of the following actions:
1. Academic Notice: Academic remediation is mandated, but the deficiencies are not of such magnitude that later reports to outside agencies or requesters would be required. Such a Notice is appropriate for many first incidents, situations which are unlikely to recur, and deficiencies which appear to be readily remediable. The Resident will be notified in writing that Academic Notice has been imposed.
 2. Academic Warning: Academic remediation is mandated and a letter of Warning is appropriate regarding substandard performance. Such a Warning is appropriate when there has been a previous Notice, the situation is recurring, remediation has been unsuccessful, and/or the deficiency appears to be significant. The Resident will be notified in writing that Academic Warning has been imposed.
 3. Probation: Remediation is mandated and reports to outside agencies and requesters will be required upon proper inquiry. Probation is appropriate when the RERC has serious and substantial concerns concerning the Resident's performance but believes that the deficiencies may still be remediated in a reasonable time by appropriate measures if the Resident cooperates fully. The Resident will be informed in writing that probation has been imposed.
- C. Progressive Actions Not Required: The Program is not required to provide Academic Notice, Academic Warning or Probation before taking other academic or disciplinary actions, nor is it required to provide graduated measures in dealing with Resident performance issues. In appropriate circumstances, the Program Director may take any of these actions without benefit of RERC action or recommendation, but will normally do so based upon RERC recommendations.
- D. If the Program Director determines to impose suspension without pay or dismissal, the Program Director shall provide notice and hearing as required by Paragraph 13(b) and (c) of the Agreement. A decision of the Program Director to impose either suspension without pay or dismissal of a resident need not be first recommended by the RERC, but that preliminary step should normally be taken in academic matters.

- E. Disciplinary Probation may be recommended by the RERC and/or imposed by the Program Director for other non-academic violations listed in Paragraph 12 of the Agreement. If the Program Director determines thereafter to impose suspension without pay or dismissal, the Program Director shall provide notice and hearing as required by the Paragraph 13(b) and (c) of the Agreement.

V. IMPOSITION OF SANCTIONS

The Program Director may impose appropriate sanctions for conduct or misconduct as the Program Director shall determine in his/her sole discretion. Subject to the provisions of Paragraph 13(b) and (c) of the Agreement, the decision of the Program Director in all cases shall be final.

VI. TIME LIMITATIONS UPON REQUEST FOR RECONSIDERATION OF IMPOSED SANCTIONS, REQUEST FOR A HEARING CONCERNING SUSPENSION, AND REQUEST FOR A HEARING CONCERNING DISMISSAL

Any request that the Program Director reconsider any proposed sanction, including any request for a hearing concerning suspension without pay or dismissal, must be made in writing and delivered to the Program Director or his/her representative within 14 calendar days of the actual imposition of the sanction or the notice of suspension or discharge, whichever first occurs. Failure to request reconsideration or hearing within this 14 day period shall constitute a waiver of any and all rights to complain about, or seek further review of, such sanction.

VII. HEARING PROCEDURE IN THE EVENT OF SUSPENSION OR DISMISSAL

A hearing will be provided to a Resident who has received a written notice of proposed suspension without pay or dismissal, or who has been suspended without pay or dismissed, only upon timely written request to the Program Director, as defined by Paragraph VI above, i.e., within 14 calendar days of actual imposition of suspension or dismissal, or written notice that the Program intends to do so. Procedures and requirements for such a hearing are set forth in Attachment I hereto.

VIII. ACTION BY THE PROGRAM DIRECTOR

- A. The Program Director shall review and act upon the recommendation of the Hearing Committee within 14 calendar days of receipt of its written report. The Program Director may determine to approve the Hearing Committee recommendation in whole or part, disapprove the recommendation in whole or part, return the matter to the Hearing Committee for further proceedings or impose any other conditions or lesser sanctions.
- B. The Program Director shall inform the Resident in writing of his/her final decision, either in person or by certified mail, return receipt requested.

IX. GRIEVANCE PROCEDURES

A. Claims of Harassment, Discrimination, Breach of Contract, and other Non-Academic Matters

1. If the Resident believes that he or she has been subjected to harassment, discrimination based upon membership in any protected class, or treatment in violation of the Resident Employment Agreement, and/or other non-academic policies, rules, or procedures, the Resident shall contact the designated Program Representative, which is either the Program Director or Deputy Program Director.
2. The Resident shall inform that Program Representative within 14 calendar days of the discovery of the alleged improper action. The Resident shall submit to the Representative a written complaint in the form attached as Attachment II, describing the event or incident, stating the relief sought, and requesting assistance to resolve the complaint if the Resident so desires. Failure of the Resident to notify the Program Representative in a timely manner of the complaint shall constitute a waiver of the grievance.
3. The Program Representative shall then have fourteen calendar days in which to investigate the allegation, determine the facts, and inform the Resident of his or her decision as to the disposition of the grievance. The Program Representative shall consult with such persons as he or she deems appropriate, but shall act at all times with due regard for the privacy of the Resident and any person(s) against whom the grievance is alleged.
4. If the Resident is not satisfied with the action or recommendation of the Program Representative, the Resident may request in writing that the Program Director review that determination. Such request must be made within 14 calendar days of notification of the Program Representative's determination. The Program Director shall meet personally with the Resident prior to making his or her final decision regarding the grievance of the Resident if the Resident so requests.
5. If the person against whom the complaint is made is the Program Director or a faculty member senior to the Program Director, the Resident shall contact the Chief Executive Officer, HRP of the complaint who may decide the grievance or forward it to the Dean, John A. Burns School of Medicine, for resolution. If forwarded to the Dean, the Dean may decide the claim and inform the Resident in writing of the Decision, or appoint an inquiry officer to do so.

B. Grievances Concerning the Imposition of Major Sanctions

In the event of imposition of the sanctions of suspension or dismissal, the Resident shall be accorded the procedures set forth in Attachment I above, and shall comply fully with the requirements therein.

C. Grievances Concerning the Imposition of Minor Sanctions

In the event of imposition of lesser sanctions than suspension or dismissal, the Resident may file a written grievance with his or her designated Program Representative. The Program Representative shall hear the Resident's complaint, make such inquiry as he/she deems fair and appropriate, and then summarily determine the matter by written statement to the Resident with copy to the Program Director. If the minor sanctions were imposed by the Program Representative or Program Director, the procedures of Part IX. A. (4) shall apply.

D. Grievances Concerning Decision Not to Offer Residency Employment Agreement for Next Level of Training

If the Program Director determines not to offer a Resident an Agreement for the next level of Residency Training, the Resident shall be so informed in writing. In that event, the Resident may submit a grievance concerning that decision. Such a grievance must be submitted in writing to the Program Director within 14 calendar days of the date of receipt of the written notice not to renew. The grievance must state the specific reasons why the Resident believes the decision to be wrong or unfair, and the specific relief the Resident seeks. Failure of the Resident to file a written grievance within this 14 calendar day period constitutes a waiver of any and all claims concerning this decision.

In the event of such a grievance, the Resident will thereafter be permitted to meet personally with the Program Director to resolve the grievance. The Resident may be accompanied at that meeting by his or her Faculty Advisor or other faculty representative of the Resident's choice. At that meeting, the Resident may submit written or oral information in support of the grievance, including matters from other faculty members or attending physicians.

The Program Director shall consider the grievance and provide a final decision in writing within 14 calendar days of the grievance meeting with the Resident.

E. Anonymous Grievances

When utilizing these grievance processes, Residents are encouraged to self-identify in order to permit full inquiry and resolution followed by a report to appropriate persons who need to know the resolution, including the Resident making the grievance. However, there may be situations in which a Resident wishes to submit a grievance anonymously, which is the Resident's right. The Resident should bear in mind that if a grievance is submitted anonymously, it may make it more difficult to investigate and resolve the claim, and may also make it difficult to inform all persons who need to know the resolution of the claim.

F. Sensitivity in the Use of Information Provided in the Grievance Process

There can be no guarantee of absolute confidentiality in the utilization of the grievance process since such absolute confidentiality may prohibit full and proper inquiry and resolution, and prohibit the provision of information to those who need to respond to the grievance and know of the resolution. However, all persons involved in the grievance process will treat the information received with sensitivity, informing only those who need to know to fully and fairly inquire into the matter and obtain a prompt and fair resolution.

G. ACGME Processes and Procedures Not Restricted or Limited

Nothing in these Procedures is intended to restrict or limit Resident's full and candid participation in ACGME processes and procedures, e.g., ACGME Surveys, Site Visits, etc.

H. Limitations on Use of Grievance Procedures

1. These grievance procedures are not intended to replace or duplicate the suspension and dismissal proceedings described herein. If the issue(s) raised by a proposed grievance could be, has been, or will be, fully addressed and resolved by such suspension or hearing procedures, the Program may on that grounds decline to entertain the grievance.
2. These grievance procedures are not applicable after a Resident's dismissal is final. A Resident may not file a grievance after that date, and the Program may on that ground alone decline to entertain the grievance. If a grievance has been filed prior to the Resident's final dismissal, the Program shall complete the inquiry and response required at that level and notify the Resident of the recommendation or decision concerning the grievance. There is no further right to grievance procedures following dismissal.

Effective: March 12, 1997; Revised February 13, 2007; August 21, 2008

ATTACHMENT I
PROCEDURES FOR HEARINGS: SUSPENSION WITHOUT PAY AND DISMISSAL

A. A hearing shall normally be held within 30 calendar days of receipt of written request therefore. This time may be extended by the Program Director for a period not to exceed an additional 30 days if circumstances so require.

B. The Hearing Committee and Hearing Chairperson shall be appointed by the Program Director who may also provide a Charter for the Committee's deliberations.

C. The Hearing Committee shall consist of at least 3 faculty members and/or peers. If more than 3 persons are appointed, 3 persons shall constitute a quorum. The Program Director may, in his or her sole discretion, include peer representation if appropriate under the circumstances of the case. Should the Resident believe that an appointed member is not qualified to serve on the Committee, the resident shall so inform the Program Director in writing before the hearing commences. The Program Director shall decide the matter and take appropriate action to remove or confirm the questioned member. If the hearing has commenced, the matter shall be brought to the attention of the Committee who shall decide the matter by majority vote. The challenged member may respond to the issue but shall not thereafter participate in the discussion or voting on the issue.

D. The Program Director may designate a Program Representative to represent the interests of the Program at the Hearing.

E. At least 14 calendar days prior to the hearing, the Resident shall be provided with a written Statement of Particulars stating the grounds for the suspension without pay or dismissal if such grounds are not stated in the notice of intended suspension or dismissal.

F. At least 10 calendar days prior to the hearing, the Resident shall provide to the Program Director a written statement of the grounds for objection to the suspension or dismissal.

G. No person shall be appointed to the Hearing Committee if it is reasonably anticipated that such person will be a witness for either side. If, during the Hearing a Committee Member is determined to be a necessary witness for either side, the Chairperson shall determine whether to a) excuse the member in order that he or she may give testimony, b) permit the member to remain as a member despite testimony, and/or c) seek an additional new member to replace the testifying member.

H. The resident may be accompanied at the Hearing by a physician who is a member in good standing of any hospital which participates in the residency training program.

I. The Resident and the Program may be accompanied at the hearing by an attorney or other advocate, but such advocate may not address the Hearing.

J. Failure of the Resident to appear at the requested hearing shall constitute a waiver of the right to hearing and to make further objections concerning the decision of the Program Director to suspend or dismiss.

K. The Hearing shall be recorded to the extent practicable, but the failure to fully record the proceedings shall not constitute an error in the Hearing.

L. The Hearing Chairperson shall determine the order of proceeding and shall allot equal time to the Resident and the Program Representative. The Chairperson may permit either side to present rebuttal information.

M. Testimony may be given by any competent person with relevant knowledge. The Chairperson and Committee Members may question any witness, as may the Resident and the Program Representative.

N. The Resident and Program Representative may present witnesses, documents, or other evidence that are material to the issues to be considered, and may submit oral or written statements concerning any such issues.

O. Unless the Charge or notice makes reference to a patient name or other personal identifier, the Resident may not access or copy medical records of patients for the purpose of the hearing without the consent of such patients. If medical or hospital records are referenced or considered during the hearing, the Chairperson shall provide a method to protect the privacy and confidentiality of the patients involved.

P. The Hearing shall be confidential. It shall be closed to all persons other than the Program Director or his/her designee, the Executive Director, Hawaii Residency Programs, the parties, and their respective representative and/or advocate. Witnesses shall normally be excluded except while testifying but the Chairperson of the committee may determine to permit witnesses who have testified or will testify to remain in the hearing if the Resident, the Program Representative, or a Committee member so requests.

Q. Hearing need not be conducted strictly according to the rules of evidence or other similar procedural rules of law. Any relevant matter upon which responsible persons customarily rely in the conduct of important matters may be considered by the Committee, regardless of any rule which might make the matter inadmissible or objectionable in a court of law.

R. In its conduct of the Hearing, the Chairperson and Members shall be at all times insure that the proceeding is fair to the Resident and the Program, and that appropriate safeguards are imposed to ensure such fairness. Such fairness does not require, however, that the Committee follow or utilize rules of law, procedure, or evidence that are customary in courts of law.

S. In the event that the Committee determines that it requires legal advice or guidance in the conduct of the Hearing or thereafter, the Chairperson should notify the Executive Director, Hawaii Residency Programs who will ensure that such advice is provided to the Committee.

T. The Committee may, in rendering its recommendation, consider all matters placed before it by the Resident, the Program Representative, or its own members. It may also consider, on its own initiative, the Resident's complete personnel record and any pertinent medical or

patient records. It may also call such witnesses as it deems appropriate. Each side shall be offered the opportunity to examine and respond to such additional evidence if the Committee determines that fundamental fairness so requires.

U. The Committee shall make its recommendation in writing to the Program Director within 14 calendar days of the adjournment of the Hearing.

Effective March 12, 1997; Revised February 23, 2007;

ATTACHMENT II
GRIEVANCE REPORT BY

Statement of grievance:

Date(s) of alleged grievance:

Full name(s) of party or parties committing alleged grievance:

Full name(s) of witnesses to the alleged grievance:

Brief description of the alleged grievous event:

Relief or remedies you seek regarding alleged grievance:

Signature

Date

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