

# **HEARING, GRIEVANCE, AND ADMINISTRATIVE PROCEDURES UH JABSOM & HAWAII RESIDENCY PROGRAMS, INC.**

## **I. PREFACE**

These Procedures and Attachments supplement the Hawaii Residency Programs, Inc. Resident Handbook by providing the hearing, grievance, and administrative procedures referenced in the Institutional Requirements, the Resident Appointment Agreement, and the HRP Resident Handbook.

Nothing herein shall limit the inherent right of the Program Director or the Chief Executive Officer (CEO) of HRP to immediately suspend or dismiss a Resident because of suspected violations of state or federal law, violations of limitations on licensure or practice (imposed by license, law or Resident Agreement), gross incompetence, fraudulent or dishonest conduct, insubordination, unapproved moonlighting, unauthorized practice of medicine, unexcused absences, unethical conduct, or unreasonable risk to patient safety, 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 the grievance procedures herein. 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.

Nothing herein shall limit the rights of the Program Director, and/or the exercise of academic discretion by such Program Director.

Nothing herein shall limit the actions, recommendations, or proceedings of any committee which makes recommendations and/or is advisory to a Program Director. Such committees are sometimes referred to as a Residency Evaluation Review Committee, a Promotion Committee, or a Clinical Competency Committee.

Nothing herein shall limit the rights or obligations relating to a Resident's complaint of discrimination or harassment, which shall be governed by the applicable provisions in the HRP Resident 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 or other sanctions.

"Academic Probation" is probation arising from a Resident's academic performance, including but not limited to patient care activities.

"Disciplinary Probation" is probation arising from a Resident's conduct in violation

of the Agreement for Appointment to Residency Training (“Resident Agreement”) and/or other applicable rules, policies, or procedures.

- B. “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.
- C. “Sanction” means academic notice, academic warning, probation (academic or disciplinary), non-award of credit, non-renewal/non-appointment (such as to a particular resident position or subsequent Resident Agreement), suspension (with or without pay), and/or dismissal. Where an outside agency/program has properly requested information from a Program and where the Resident has complied with the applicant consent procedures, the Program will provide a response, including disclosure of sanctions.
- D. “Resident” includes both Residents and Fellows who may be affected by these Procedures.

### **III. 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 grievance procedures herein, any such decision of the Program Director shall be final.

Concurrently and independently, the Chief Executive Officer of HRP (HRP CEO), in concurrence with the John A. Burns School of Medicine Designated Institutional Official (DIO) but otherwise in the HRP CEO’s sole discretion, may impose appropriate non-academic sanctions for conduct or misconduct. Subject to the grievance procedures herein, any such decision of the HRP CEO shall be final. In the event of a sanction imposed by the HRP CEO, the Resident may utilize the grievance procedures set forth herein as may be applicable to that sanction in the same manner as if the sanction had been imposed by the Program Director; provided that the HRP CEO shall assume the decisional and grievance responsibilities pertaining to that sanction as the Program Director would have, and any reference to “Program Director[s]” in these procedures (including Attachments) shall be deemed to be a reference to the HRP CEO as applicable.

### **IV. GRIEVANCE PROCEDURES**

- A. Suspension without pay or Dismissal

In the event of actual or prospective suspension without pay or dismissal, the Resident must submit a written grievance to the person who had decided upon the sanction (Program Director or HRP CEO) within 14 calendar days of the Resident receiving notice of the actual or prospective suspension without pay or dismissal. The grievance shall, at a minimum, identify the sanction being grieved and the relief sought, and explain why the sanction is objectionable. Failure to

submit a written grievance within this 14 day period shall constitute a waiver of the right to complain about, or to seek further review of, such sanction.

In the event a grievance is timely submitted, the Resident shall be accorded the procedures set forth in Attachment I hereto, and shall comply fully with the requirements therein.

Within 14 calendar days after receiving the written recommendation of the Hearing Committee (as described in Attachment I) or otherwise as soon as reasonably practicable, the Program Director shall review and act upon the recommendation, which may involve approving the Hearing Committee recommendation in whole or part, disapproving the recommendation in whole or part, returning the matter to the Hearing Committee for further proceedings, or taking other action. The Program Director shall then inform the Resident in writing of his/her final decision, either in person, e-mail, and/or certified mail, return receipt requested.

B. Sanctions Other than Suspension without Pay or Dismissal

In the event of any sanctions other than suspension without pay or dismissal (including non-renewal/non-appointment), the Resident must submit a written grievance to the person who had decided upon the sanction (Program Director or HRP CEO) within 14 calendar days of the Resident receiving notice of the sanction. The grievance shall, at a minimum, identify the sanction being grieved and the relief sought, and provide a detailed explanation (with supporting documents, if any) as to why the sanction is objectionable. Failure to submit such a written grievance within this 14 day period shall constitute a waiver of the right to complain about, or to seek further review of, such sanction.

In the event a grievance is timely submitted, the Resident shall be accorded the procedures set forth in Attachment II hereto, and shall comply fully with the requirements therein.

C. Non-Academic Matters

If a Resident believes that he or she has been subjected to treatment in violation of the Resident Agreement or any non-academic policies, rules, or procedures, the Resident shall submit a written grievance to the HRP CEO (with a copy to the DIO) within 14 calendar days of when the Resident discovered or reasonably should have discovered the alleged improper action. The grievance shall, at a minimum, identify the policy, rule, or procedure allegedly violated, how and when and by whom it was violated (with supporting documents, if any), and the relief sought. Failure to submit such a written grievance within this 14 day period shall constitute a waiver of the right to complain about, or to seek further review of, such alleged improper action. Notwithstanding the foregoing, nothing in this section shall preclude the Resident from submitting any complaint under any applicable policies including in the HRP Resident Handbook, available through the Program or via New Innovations.

In the event a grievance is timely submitted, it shall be investigated, which may include interview of the Resident. A determination on the grievance shall be made within 14 calendar days or otherwise as soon as reasonably practicable.

D. 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.

E. Program Director Recusal or Conflict

Notwithstanding any requirement above which permits or requires any action by a Program Director, the cognizant Program Director may elect (but is not required) to recuse him/herself from such action. For example, if the Program Director has an actual conflict of interest, an apparent conflict of interest, or believes that fundamental fairness suggests recusal or disposition by another authority, the Program Director shall forward the matter to the DIO who may either decide the grievance or forward it to either the cognizant Department Chair or 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 Associate Dean or Department Chair to do so. The time requirements and procedures specified above shall generally apply to matters referred to the DIO under this Paragraph.

In the event that the Program Director elects to forward a grievance for resolution in accordance with this Paragraph, the Program Director, the DIO, and the HRP CEO will be notified of the hearing and be permitted to attend the hearing as an observer or witness as appropriate in the opinion of the resolving official.

F. Limitations on Use of Grievance Procedures

These grievance procedures are not applicable after a Resident's dismissal is final. A Resident may not file a grievance after dismissal or after departure from the Program (for whatever reason), 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 22, 2008; March 2, 2009; July, 2009; August 1, 2009; March 25, 2014; July 24, 2015.*

## ATTACHMENT I

### **PROCEDURES FOR HEARINGS: SUSPENSION WITHOUT PAY AND/OR 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. The resident may also request such representation. The decision to include peer representation at the request of the resident is also within the sole discretion of the Program Director. 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 faculty or 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 DIO (or his/her designee), the HRP CEO (or his/her designee), 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, at all times, ensure 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 DIO and the HRP CEO 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; August 22, 2008; August 1, 2009; May 28, 2010; July 24, 2015.*

## ATTACHMENT II

### PROCEDURES FOR HEARINGS: SANCTIONS OTHER THAN SUSPENSION WITHOUT PAY OR DISMISSAL

The purpose of these procedures is to ensure that the Resident, having received written notice of the sanction, then has an opportunity to be heard. As long as those goals are met, these procedures are not mandatory and need not be strictly followed. Also, Attachment I (the “Procedures for Hearings: Suspension without Pay and/or Dismissal”) do not apply to these procedures for sanctions other than suspension without pay or dismissal. The procedures in this Attachment II do apply to any suspensions *with* pay.

Scheduling: It is suggested that the Executive Assistant to the HRP CEO arrange scheduling. That EA will inquire of the resident about any representation requested by the resident and then schedule the matter as promptly as is consistent with all parties’ schedules.

Hearing Officer: The Hearing Officer is normally the Program Director (or HRP CEO if the HRP CEO has imposed the non-academic sanction), unless that individual recuses him/herself. In that event, the Program Director or HRP CEO may designate another person to serve as the Hearing Officer who shall then issue a recommendation back to the Program Director or HRP CEO for his/her consideration.

Resident Representative: The resident may be accompanied by either a faculty representative or legal counsel. In either case, such individual may attend the hearing and privately confer with the Resident but may not address the hearing. If the resident has legal counsel, the Hearing Officer may request to be provided with legal counsel. Such a request should be made to the HRP CEO and the DIO.

Recording: Proceedings need not be recorded or result in minutes. The parties may take whatever notes they desire. If the resident wishes to tape record the proceeding, the Hearing Officer should do the same. The Hearing Officer should keep summary or brief notes.

Convening: Upon convening, the Hearing Officer should clearly state the issue(s) which are to be resolved and get confirmation from the resident that this is/these are the issues. The grievance must be limited to the issues in the written grievance and the relief requested by the resident. If there is any dispute about the scope of the hearing, that should be resolved before presentations commence.

Attendees: The DIO may attend such proceedings and act as academic advisor to the Hearing Officer if the Hearing Officer so requests. If the Program Director has recused him/herself, the Program Director may attend the proceedings as a witness. Other residents may not attend the Hearing unless, and only to the extent that, they are witnesses.

Presentations: At the outset, the grounds for the action should be noted, which may consist of reference to the written documentation stating those grounds.

At this point, the resident may present anything he/she wishes which is relevant and material to the grievance resolution. Any materials presented by the resident should be marked as exhibits and included in the file.

The Hearing Officer may ask for any additional documents, witnesses, or information considered relevant and helpful to the resolution of the issues.

Decision: The Hearing Officer does not have to announce his/her decision at the hearing, but should do so within 14 days of the hearing's conclusion or otherwise as soon as reasonably practicable. He/she may provide as much or as little information as he/she determines appropriate, but should at least address in summary fashion the contentions of the resident and the relief sought. He/she should also include a list of any documents considered.

*Effective August 1, 2009; Revised March 25, 2014; July 24, 2015.*