

LEHIGH VALLEY HEALTH NETWORK
GME Policy and Procedures

Effective Date: June 23rd, 2015

Originating Department/Committee: Division of Education/Graduate Medical Education Committee

GRADUATE TRAINING AGREEMENT
Appendix III: Institutional Guidelines for Resident Fair Hearing Process

I. PURPOSE

This Policy specifically describes the Resident Fair Hearing process and procedure. Only adverse action which may result in LVHN reporting a National Practitioner Data Bank ("NPDB") entry, shall entitle the Graduate Trainee to the rights set forth in the Resident Fair Hearing Process. The DIO in consultation with the Chief Medical Officer and the Associate Dean/Chief Division of Education will make the determination of whether a particular issue entitles the Graduate Trainee to a Fair Hearing Process. All other adverse actions are covered under the GRADUATE TRAINING AGREEMENT Appendix II: Institutional Guidelines for Evaluation, Promotion, Remediation, and Discipline.

II. DEFINITIONS

Administrative Leave – a leave from clinical duties with compensation and benefits that does not exceed 15 days and does not trigger any Resident Appeals Committee or Fair Hearing rights.

Adverse Action – A decision by the Program Director to issue a formal reprimand, to place on probation, to suspend, to declare in breach of contract, or to terminate employment of a Resident.

DIO – Designated Institutional Official – A liaison to the Accreditation Council for Graduate Medical Education. At LVHN, the DIO is an ex officio member and chair of the Graduate Medical Education Committee. The DIO provides physician leadership within the Office of Graduate Medical Education within LVHN's Division of Education and reports to the Chief of the Division of Education.

DOE – Division of Education – The central administrative support structure for education at LVHN.

DME – Director of Medical Education – The DME, in collaboration with the DIO, provides administrative oversight over the Office Graduate Medical Education (OGME) and central GME support services at LVHN. He/she reports to the Chief of the Division of Education.

GME – Graduate Medical Education

GMEC – Graduate Medical Education Committee

GME Resident Appeals Committee (RAC) – The primary mechanism by which Residents can appeal an adverse action.

GME Resident Fair Hearing Committee (FHC) – the review committee triggered by an adverse action that rises to the level of possible reporting to the National Practitioner Data Bank (NPDB). A Fair Hearing Committee ("FHC") is an ad hoc committee constituted in response to a specific request to conduct an Institutional Fair Hearing. At the conclusion of the hearing for which the FHC was constituted, that FHC shall be disbanded.

Hospital – Lehigh Valley Hospital and Lehigh Valley Hospital – Muhlenberg as Sponsoring Institutions.

LVHN – Lehigh Valley Health Network, individually and through Lehigh Valley Hospital and Lehigh Valley Hospital – Muhlenberg as Sponsoring Institutions.

MSS – Medical Staff Services – This office supports the credentialing of the medical and advanced practice clinician staff of LVHN. They facilitate the fair hearing process for the medical staff, AHPs and Residents.

Program Director – A qualified physician, or dentist, who meets ACGME or other accrediting agency qualifications and who is appointed by the institution. The program director has primary responsibility for the organization, implementation, and supervision of all aspects of the specified LVHN training program

Resident – (graduate trainee-includes fellows) – A graduate of a medical, osteopathic, dental school, holding the relevant professional degree (MD, DO, DDS, DMD) and formally enrolled in an Lehigh Valley Health Network accredited or approved medical or dental graduate training program.

Remediation – Plan developed by the Program Director to correct deficiencies identified in a Resident's academic and/or clinical performance.

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

III. RIGHT TO A FAIR HEARING

A. Fair Hearing

A Resident subject to an adverse action by his/her Program Director has the right to request initiation of an institutional Fair Hearing Committee if the adverse action may result in a report to the National Practitioners Data Bank (NPDB). No Resident may be reprimanded, disciplined, or otherwise harassed for having made such request. The Fair Hearing shall address the fairness of the process leading to an adverse action (i.e. whether the process was conducted in a capricious or arbitrary manner) and review the appropriateness of the Program Director's disciplinary or corrective action taken against the Resident. The Fair Hearing may not be used to question the validity of established policies, procedures, rules, or regulations.

B. Confidentiality

All documentation pertaining to a Fair Hearing shall be maintained by the OGME and kept in a separate file from the Resident's regular institutional file. If the final decision of the Fair Hearing results in anything other than a total and full reversal of the adverse action (finding of fact not supported and adverse action deemed inappropriate) then the final decision shall be maintained in the Resident's regular institutional file. If the decision of the Fair Hearing results in full reversal then the final decision and all supporting documents will be *confidentially* maintained by the office of OGME but kept in a separate file from the Resident's regular institutional file as a matter of record only.

C. Request for a Hearing

1. Request for Hearing

A Resident has thirty (30) days after receiving notification to file a written request for a hearing. The request must be delivered to the Office of Medical Staff Services (MSS) who will immediately notify the Vice President, Medical Staff Services. 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. MSS will notify the OGME that such a request has been filed.

2. Failure to Request Hearing

A Resident who fails to request a hearing within the time and in the manner specified waives any hearing or appellate review to which he or she might otherwise have been entitled.

D. Parties' Rights and Duties

1. Rights of Parties. During a hearing, each party may:

- a. Call, examine, and cross-examine witnesses;
- b. Present evidence determined to be relevant by the Presiding Officer (as hereinafter defined), subject to Section III.F.4. hereof;
- c. Request that the record of the hearing be made by the use of a court reporter;
- d. Request that copies of the said proceeding be available upon payment of any reasonable charges associated with the preparation thereof; and
- e. Submit a written statement at the closing of the hearing.

2. Additional Rights and Duties of the Resident

- a. Subject to Section III.C.1., the Resident may be accompanied and represented at the hearing by an individual of his or her choice, including an attorney. The body (or bodies) whose recommendation or action prompted the right to a hearing (as well as other interested committees or components of the Hospitals, Boards 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 body (or bodies) whose recommendation or action prompted the right to a hearing of the right to legal counsel in connection with the preparation for the hearing.
- b. Upon completion of the hearing, the Resident has the right to receive the written recommendation of the Fair Hearing Committee (as hereinafter defined).
- c. At least fifteen (15) days prior to a hearing, the Resident shall provide the body (or bodies) whose recommendation or action prompted the right to a hearing with a list of witnesses. The parties shall also exchange exhibits at that time and provide copies of the same to the Hearing Committee.

E. Notification of Hearing

1. Notification

The DIO/OGME shall immediately deliver timely and proper hearing requests to the Vice President Medical Staff Services and President of the Medical Staff. Upon receipt of a request for a hearing, the Office of Medical Staff Services shall schedule and arrange for a hearing which shall be not later than sixty (60) days from the receipt of the request for the hearing. At least thirty (30) days prior to the hearing date, the Vice President, Medical Staff Services, shall send the Resident special notice of the time, place and date of the hearing and of the composition of the hearing panel; provided, however, that a hearing for a Resident who is under suspension then in effect must be held as soon as the arrangements may be reasonably made, but not later than forty-five (45) days after the Vice President, Medical Staff Services, received the hearing request. The special notice shall include a list of the witnesses (if any) expected to testify at the hearing on behalf of the body or bodies whose recommendation or action prompted the right to a hearing.

F. Fair Hearing Procedure

1. Appointment of the Hearing Committee

The FHC shall be comprised of the following four (4) persons, each of whom shall have a vote:

- a. The President of Lehigh Valley Residents Association (LVRA) or her/his designee chosen from the LVRA officers/board. This individual must be from a department/division other than that to which the appellant Resident belongs. If the President of the LVRA is unavailable or otherwise unable to act, the Director of Medical Education or the DIO shall appoint a Resident representative.
- b. The President of the Medical Staff or her/his designee.
- c. Two (2) members of the Medical Staff who are also members of GMEC (program directors or associate program directors) or Department Chairs. These members shall be appointed by the Chief of the Division of Education or this task may be delegated to the DIO/DME. These individuals must be from a department/division other than that to which the Resident belongs.

2. Hearing Officer / Presiding Officer

a. Hearing Officer

The use of a Hearing Officer to assist the Hearing Committee at the hearing is optional and is to be determined by the President of the Medical Staff or the Chief of the DOE as appropriate. A Hearing Officer may or may not be an attorney-at-law, but must be experienced in conducting hearings. A Hearing Officer shall not be in direct economic competition with the Resident involved or have any known reason for bias against said Resident.

b. Presiding Officer

If a Hearing Officer is used, then the Hearing Officer will be the Presiding Officer. If no Hearing Officer is chosen, then a committee member will serve as the Presiding Officer.

If any of the above-referenced individuals have a real or apparent conflict of interest involving the appellant Resident, another individual from the same category of persons shall be appointed to the FHC. The final decision will be made by the President of the Medical Staff. Three (3) or more members of the committee must be present for the hearing to proceed.

3. 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 III.C.2.

b. Testimony

If the Resident does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination. The FHC may request additional testimony from other individuals of its choice.

4. 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 may present evidence considered 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 may 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 may, but is not required to, order that oral evidence be taken only on oath or affirmation.

The appellant Resident or the departmental/institutional representative may submit written materials for review by the FHC. Any materials submitted for review at the FHC must be received no later than two (2) business days prior to the scheduled hearing. All materials must be delivered directly to the Office of Medical Staff Services and submissions must contain the appropriate number of copies for the FHC and other attendees to the Fair Hearing. Neither the appellant Resident nor the departmental/institutional representative may deliver materials directly to or have direct contact with any FHC member.

5. Official Notice

In reaching a decision, the Hearing Committee may 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 may 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.

6. Burden of Proof

The body (or bodies) whose adverse action or recommendation prompted the right to a hearing has the burden of proof.

7. Hearing Record

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

8. Postponement

Request for postponement of a hearing may 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.

9. Presence of Hearing Committee Members

A majority of the Hearing Committee, but not less than three (3) members, must be present for each hearing and during deliberations on the decision.

10. Recesses and Adjournment

The Hearing Committee may 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.

11. Hearing Committee Report

Within ten (10) days after final adjournment of the hearing, the Hearing Committee shall make a written report of its findings and recommendations and forwards the report along with the record and other documentation to the body (or bodies) whose adverse action prompted the right to a hearing to the Resident involved and to the OGME as well as the Vice President, Medical Staff Services, c/o Medical Staff Services Office. The Hearing Committee Report shall include a statement of the basis for the recommendations or action.

The FHC's final decision shall be determined by a simple majority vote. Copies of the FHC decision evidencing the signature of the Chief, Division of Education shall be submitted to:

- a. Committee members
- b. The appellant Resident
- c. The relevant Department Chairperson
- d. The relevant Program Director

12. Decision of the Fair Hearing Committee

The decision of the Fair Hearing Committee is subject to the Appeals Process described below. All relevant documentation containing original signatures shall be retained in the OGME as part of the Resident's file. Should the decision of the FHC result in a full reversal of the adverse action taken against a Resident by a Program Director, the adverse action will be removed from the Resident's regular institutional file and will not be reported after the Resident's graduation. Information regarding the adverse action and grievance procedure will be maintained by the OGME in a separate file as a matter of record.

G. Effect of a Fair Hearing Committee Report

1. Action on Hearing Committee Report

Within thirty-five (35) days after receiving the Hearing Committee Report, the body (or bodies) whose adverse recommendation or action occasioned the hearing shall consider the Report, and affirm, modify or reverse the original recommendation or action. The final result shall be transmitted to the DIO with a copy to the VP of Medical Staff Services.

2. Notification and Effect of Result

a. Notification

The DIO shall promptly send a copy of the result to the Resident by special notice, to the President of the Staff, to the OGME.

b. Effect of Favorable Result

If the FHC result is favorable to the Resident, the DIO shall promptly forward it, together with all appropriate supporting documentation, to the Program Director and Department Chair, and other relevant internal and external parties.

c. Effect of an Adverse Result

If the result of the FHC continues to be adverse to the Resident, this special notice shall inform him or her of his or her right to an appellate review.

IV. APPELLATE REVIEW PROCESS

A. Request for Appellate Review

1. Request for Appellate Review

A Resident has thirty (30) days after receiving special notice under Section III.G.2.a. to file a written request for an appellate review. The request must be delivered to the Vice President, Medical Staff Services, c/o Medical Staff Services Office, by special notice (see definition) and may include a request for a copy of the Hearing Committee Report and record and all other material, if not previously forwarded, that was considered by the Hearing Committee. If the Resident wishes to be represented by an attorney at any appellate review proceeding, the request for appellate review must state that intent and the name of the Resident's attorney.

2. Failure to Request Appellate Review

A Resident who fails to request an appellate review within the time and in the manner specified in Section IV.A.1. waives any appellate review to which he or she might otherwise have been entitled.

B. Notification of Time and Place for Appellate Review

1. Notification

The CEO shall immediately deliver timely and proper requests for appellate review to the Chairs of the Boards. Upon receipt of a request for appellate review, the Chairs shall schedule and arrange for an appellate review which shall not be later than sixty (60) days from the receipt of the request for appellate review. At least thirty (30) days prior to the appellate review, the Vice President, Medical Staff Services, shall send the Resident special notice of the time, place, and date of the review and of the composition of the Appellate Review Body.

C. Appellate Review Procedure

1. Appellate Review Body

The Appeals Committee of the Boards shall serve as the Appellate Review Body. If a Board action occasions the review, the Joint Conference Committee shall serve as the Appellate Review Body. The Chairs of the Boards shall designate one (1) of the appointees as Chair of the Appellate Review Body.

2. Nature of Proceedings

The proceedings conducted by the Appellate Review Body are a review based upon the hearing record, the Hearing Committee Report, all subsequent results and actions, the written and/or oral statements, if any, provided below, and any other material that may be presented and accepted under the appellate review procedure.

3. Hearing Officer/Presiding Officer

a. Use of Hearing Officer

The use of a Hearing Officer to assist the Appellate Review Body at the appellate review is optional and is to be determined by the Chairs of the Boards. A Hearing Officer may or may not be an attorney-at-law, but must be experienced in conducting hearings. A Hearing Officer shall not be in direct economic competition with the Resident involved.

b. Presiding Officer.

The Presiding Officer shall be the Chair of the Appellate Review Body or the Hearing Officer, if any, at the Chair's discretion.

4. Representation at Appellate Review

If the Resident desires to be represented by an attorney at an appellate review appearance, his or her request for the review pursuant to Section IV.A.1. must declare his or her intent to be so represented. The Appellate Review Body shall determine in its sole discretion whether to permit such representation. The body (or bodies) whose

recommendation or action prompted the right to an appellate review (as well as other interested committees or components of the Hospitals, Boards or Medical Staff) may be represented by an attorney at the appellate review if and only if the Resident is represented by an attorney. The foregoing provision shall not be deemed to deprive the Resident or the body (or bodies) whose recommendation or action prompted the right to the appellate review of the right to legal counsel in connection with the preparation for the appellate review.

5. Written Statements

The Resident may submit a written statement detailing the findings of fact, conclusions and procedural matters with which he or she disagrees and his or her reasons for such disagreement. This written statement may cover any matters raised at any step in the hearing and appellate review process. The statement shall be submitted to the Appellate Review Body and the body (or bodies) whose adverse action prompted the appellate review through the CEO at least fourteen (14) days prior to the scheduled date of the appellate review, except if the time limit is waived by the Appellate Review Body. A similar statement may be submitted to the Appellate Review Body through the CEO by the body (or bodies) whose adverse action prompted the appellate review at least seven (7) days prior to the scheduled date of the appellate review.

6. Oral Statements

The Appellate Review Body, in its sole discretion, may allow the parties or their representatives to personally appear and present oral statements. Any party or representative appearing shall be required to answer questions of any member of the Appellate Review Body.

7. Powers

The Appellate Review Body has all the powers granted to the Hearing Committee, and any additional powers that may be reasonably appropriate to or necessary for the discharge of its responsibilities.

8. Presence of Members

A majority of the Appellate Review Body must be present for each appellate review session and during deliberations.

9. Recesses and Adjournments

The Appellate Review Body may recess and reconvene the proceedings without additional notice for the convenience of the participants or for any other purpose. At the conclusion of the oral statements, if allowed, the appellate review shall be closed. The Appellate Review Body shall then, at a time convenient to itself, conduct its deliberations outside the presence of the parties. The appellate review shall be adjourned at the conclusion of those deliberations.

10. Consideration of New or Additional Matters

Upon written request of either party, the Appellate Review Body shall have the right, in its sole and absolute discretion, to consider new and additional information. The Appellate Review Body shall not consider any such new and additional information unless the party seeking to introduce the information can demonstrate that the

information was not available or discoverable in time for presentation to the Hearing Committee at the original hearing.

D. Appellate Review Action

1. Action Taken

Within thirty (30) days of adjournment, the Appellate Review Body may affirm, modify or reverse the adverse result or action, or in its discretion, may refer the matter back to the Hearing Committee for further review and recommendation to be returned to it within twenty (20) days and in accordance with its instructions. Within ten (10) days after receipt of such recommendation from the Hearing Committee the Appellate Review Body shall take action.

a. Joint Conference Committee

If the Joint Conference Committee acted as the Appellate Review Body, it shall submit its recommendation to the Boards. The Boards shall then render a final decision.

b. Appeals Committee

If the Appeals Committee acted as the Appellate Review Body, it shall submit its recommendation to the Boards. If the Boards' action is consistent with the last recommendation of the MEC, the decision shall be considered final. If the Boards' action is inconsistent with the last recommendation of the MEC, the decision of the Boards shall not be considered final and the CEO shall submit the matter to the Joint Conference Committee for further review and consideration. The Joint Conference Committee shall, within thirty (30) days of receipt of the matter, submit its recommendation to the Boards. The Boards shall then render a final decision.

2. Notification of Action Taken

The Vice President, Medical Staff Services, shall provide the Resident, the President of the Medical Staff, the OGME, the Appellate Review Body and the Boards with the recommendation and/or action taken by the Appellate Review Body, the Joint Conference Committee and the Board.

V. MISCELLANEOUS

A. Miscellaneous

1. Number of Hearings and Reviews

Notwithstanding any other provision of the Medical Staff Bylaws or of this Plan, no Resident is entitled as a right to request more than one (1) evidentiary hearing and appellate review with respect to the subject matter that is the basis of the adverse recommendation or action which prompted such right.

2. Compliance with Bylaws

The failure by LVHN committees or components to meet the conditions described in this Plan 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 a recommendation to uphold an adverse action is made or action taken pursuant to Section III.A. of this Plan, the Resident must first exhaust the remedies afforded by this Plan before resorting to legal action. The fact that a Resident has exhausted the remedies afforded by this Plan shall not in any way suggest that any subsequent legal action is proper or appropriate.

VI. Approval

GRADUATE MEDICAL EDUCATION COMMITTEE: November 10, 2014