

Policy: AT Res/Fellows 7
Department: Academic Training
Subject: Resident Evaluation/Discipline/Due Process

I. Definitions

As used in this policy,

1. "Attending Physician" shall mean the "Active Medical Staff" as defined in the Hospital for Special Surgery's Medical Staff By-Laws.
2. "Resident" shall mean a resident or fellow in the HSS Orthopaedic Surgery Residency Program or other fellowship program at HSS (PGY 1-8).
3. "Faculty Advisor" shall mean the orthopaedic surgeon who is appointed by the Department of Academic Training as the Resident's mentor or Fellow's Fellowship Director.
4. "Hospital" and "HSS" shall mean "Hospital for Special Surgery."
5. "GME Committee" shall mean the committee at HSS, formerly known as the "Academic Council," that has the responsibility for monitoring and advising on all aspects of residency education, which is comprised of the Surgeon-in-Chief, the Director of the HSS Orthopaedic Residency Program (as further defined below), Director of Academic Orthopaedics, orthopaedic service chiefs, liaisons with other educational programs, the Vice President, Education & Academic Affairs and Designated Institutional Officer, the Director of New York-Presbyterian Hospital's surgical residency program or his/her designee, other HSS faculty members, and the Residents. The directors of HSS-sponsored fellowship programs are participate in this committee. The GME Committee meets at least quarterly.
6. "GME Executive Committee" shall mean members of the GME Committee who are responsible for, among other things, oversight of Resident performance based upon recommendations from the Resident Appraisal Committee. The GME Executive Committee is comprised of the Surgeon-in-Chief, the Director of the HSS Orthopaedic Surgery Residency Program, Director of Academic Orthopaedics and one service chief who is appointed by the Surgeon-in-Chief. When meeting for purposes of considering an issue relating to Resident discipline, the Surgeon-in-Chief may, at his/her discretion, designate another member of the GME Committee to take the Surgeon-in-Chief's place. In the event that the Resident is a fellow (PGY-5 or 6 and above) in a department other than Orthopaedics, the Surgeon-in-Chief shall appoint the director of the fellow's program as an ad-hoc member of the GME Executive Committee.
7. "Program Director" shall mean the Director of the HSS Orthopaedic Surgery Residency Program of, if the Resident is a fellow in an HSS-sponsored non-surgical fellowship, the service chief responsible for such fellowship.
8. "Program Committee" shall mean the *Resident Appraisal Committee* or the

Fellowship Committee that is appointed by the Surgeon-in-Chief and the specific program's Program Director to be responsible for supervising the evaluation of Residents and, consistent with this policy, for making recommendations for disciplinary action to the GME Executive Committee. The Resident Appraisal Committee meets at least twice a year or as otherwise needed and the Fellowship Committee meets bi-monthly.

II. Resident Performance Evaluation

The performance of Residents at New York-Presbyterian Hospital ("NYP Hospital") during the PGY-1 year shall be evaluated in accordance with NYP Hospital's evaluation policy. Any evaluations of PGY residents are reported to the Faculty at the GME Committee and any PGY-1 Resident whose performance is unsatisfactory shall be reported promptly by the director of NYP Hospital's surgical residency program to the Program Director. Any such report shall be handled by the Program Director in accordance with this HSS Policy.

1. Evaluation of Resident performance for PGY-2 and above will be performed by means of a Resident Evaluation Form (on a form similar to the copy attached) to be distributed to all orthopaedic surgeons and other physicians responsible for supervising residents in non-surgical programs at the end of every rotation. It is expected that all HSS physicians who have had significant contact with and/or who have directly supervised a Resident during a rotation should complete an evaluation on that resident.
2. The Evaluation reports will be reviewed by the Resident Appraisal Committee Chair or Fellowship Program Director on an ongoing basis. The Resident Appraisal committee meets at least two times yearly and more frequently as needed to review Resident evaluations. Fellow evaluations summaries are sent to each respective Program Director for their review.
3. The Resident will be evaluated on the basis of his/her performance in the areas of (a) basic and clinical orthopaedic or other relevant clinical knowledge; (b) application of his/her knowledge in a clinical setting; (c) skills in the operating room, if applicable; (d) interpersonal relations with patients, faculty, nursing staff, and peers; (e) ethical behavior and adherence to Hospital policies and procedures, and (f) the performance of the Resident on the national Orthopaedic In-Training Examination or other applicable examination. Criteria for evaluations are part of the Guidelines for Criteria of Evaluations and are provide to residents at the inception of the program.

III. Substandard Resident Performance

1. If substandard Resident performance is noted during any evaluation of the Resident's performance, the Director of Academic Orthopaedics and the Program Director will review the Resident's performance with Mentor for that Resident and the Resident. The Resident will be counseled in the areas of deficiency, and if deficiencies are appropriate for remediation, a remedial plan will be developed by the Program Director, the Faculty Advisor, and the relevant service chief(s). Progress and compliance will be reviewed at least monthly by those physicians.

2. If performance still remains deficient despite remedial action, or if deficiencies are deemed serious as to require immediate review, the Program Director shall call a meeting of the Program Committee to determine recommendations regarding any further action to be taken.

IV. Probation

1. If the Program Committee determines that probationary or other service status is appropriate, the Program Committee will (a) recommend a corrective action plan, (b) determine the length of the probationary or limited period, and (c) appoint one Program Committee member to monitor the Resident's performance along with the Resident's Faculty Advisor/Fellowship Director. The Program Committee will promptly send its recommendations to the GME Executive Committee, which shall make a final decision as the Program Committee's recommendations. The GME Executive Committee shall promptly inform the designated Program Committee Member, who shall notify the Resident in person as soon as practicable about the decision of the GME Executive Committee.
2. The Resident will meet monthly with the Faculty Advisor and/or designated Program Committee Member to monitor the Resident's performance.
3. At any time during such probationary or limitation period, the designated Program Committee Member, after consultation with the Faculty Advisor and the Resident's service chief, may recommend to the GME Executive Committee in writing that the Resident's probationary or limited status be discontinued or that the Resident should be suspended or terminated, or, if the end of such probationary or limitation period has been reached, that probation or limitation should be continued, and describing the reasons for his/her recommendation. The GME Executive Committee shall make the final determination and promptly notify the Resident. In the event that the designated Program Committee Member recommends suspension or termination, the procedure in Section V shall be followed.

V. Resident Suspension or Termination

1. Any recommendation for suspension or termination shall be made to the GME Executive Committee by the Program Committee or, in the event that a Resident has been on probation or limitation of services, by the Program Committee Member designated to monitor the Resident as provided in Section IV above. A Resident who has not fulfilled the requirements for performance improvement during his/her period of probation or limitation may be suspended or terminated from the Residency or Fellowship program.
2. The GME Executive Committee shall make a determination and will notify the Resident in writing of its decision ("Notice"). In the event of any suspicion or other action limiting or terminating the Resident's participation in the Program, the Notice shall include the reason's for the suspension, termination, or other action taken and shall be delivered to the Resident within three (3) business days of the GME Executive Committee's determination. The Notice will advise the Resident that he/she may request that the matter be reviewed, consistent with Section VII below;

that such request (the “Appeal”) must be made in writing stating in detail why the Resident disagrees with the suspension, termination or other limitation (“Grievance”); and that the Appeal must be received by the Surgeon-in-Chief within ten (10) business days after the Resident receives the Notice.

3. The Program Committee or the designated Program Committee Member may recommend that the Resident be placed on a limited suspension (“Leave of Absence”) in certain situations; if adopted by the GME Executive Committee, the GME Executive Committee will determine the length of the Leave of Absence and any conditions or limitations on that Leave of Absence.
4. Under exceptional circumstances, including instances where the conduct of the Resident creates reason to believe that immediate action is necessary to protect the health, safety, or welfare of any patient, member of the HSS Medical Staff, visitor or employee of the Hospital, or the Hospital itself, a Resident may be summarily suspended or placed on a Leave of Absence by the Surgeon-in-Chief, Director of Academic Orthopaedics, Program Director, or GME Executive Committee. Such summary suspension or Leave of Absence may be imposed without prior consideration by the Program Committee, shall become effective immediately upon imposition, and may be imposed either verbally or in writing. Within five (5) business days after imposition of such a summary suspension or Leave of Absence, the GME Executive Committee shall consult regarding the circumstances and incidents leading to the summary suspension or Leave of Absence, and shall decide upon its official recommendation, which may include continued suspension, Leave of Absence, termination or any other disciplinary or remedial measure it may choose. The GME Executive Committee recommendation shall then be forwarded to the Resident in writing by Notice pursuant to Paragraph 2 of this Section V.
5. In the event that the Resident is summarily suspended or terminated, the Resident shall return his/her beeper, coat(s), identification badge, credentials, and any other Hospital property to HSS within twenty-four (24) hours after the Resident has been notified that he/she has been suspended or terminated. Once a final decision has been rendered by the Surgeon-in-Chief and the President/Chief Executive Officer and if that decision results in the termination of the Resident from the HSS Residency / Fellowship Program, the Resident must vacate Hospital’s resident housing within one (1) month after notification of the final decision.

VI. Other Unsatisfactory Performance

1. The Program Committee may recommend to the GME Committee that the Hospital should not certify that a Resident has completed satisfactorily his or her graduate medical education and training.
2. If the GME Executive Committee accepts such recommendation, the procedure described in Section V, Paragraph 2 above shall be followed and the Notice shall include the reasons for the GME Executive Committee’s decision.

VII. Appeals Process

1. By an Appeal consistent with Article V, Paragraph 2, a Resident may formally appeal his/her probationary status, suspension, termination, limitation of duties, or non-certification of satisfactory completion of the Program within ten (10) business days of receipt of the Notice of the GME Executive Committee pursuant to Section V, Paragraph 2.
2. The Appeal shall be in writing and should be addressed to the Surgeon-in-Chief, who shall convene a panel of up to five (5), but not fewer than three (3) Attending Physicians, to review the Resident's Appeal ("Appeals Panel"), which shall meet to hear the issues involved (the "hearing") within twenty (20) business days after the Appeal has been received by the Surgeon-in-Chief. The Surgeon-in-Chief shall appoint one member of the Appeals Panel to serve as Chair.
3. The Appeals Panel shall not include the Surgeon-in-Chief or Program Director, and shall not include any Service Chiefs or Attending Physicians materially involved in the incidents directly leading to the disciplinary action.
4. The Resident shall have the right to be counseled and advised by an attorney or professional colleague of his/her choice. The attorney or professional colleague may attend the hearing of the Appeals Panel and may consult with the Resident during the hearing but may not participate in the proceedings.

An attorney or professional colleague of the Program Director or his/her designee may also attend the hearing of the Appeals Panel and may consult with the Program Director or his/her designee during the hearing but may not participate in the proceedings. HSS's in-house or outside counsel may attend and participate in the hearing to advise the Appeals Panel.

5. The Appeals panel will receive copies of the Notice, the Appeal, and all other relevant documents, and shall afford the Resident and Program Director an opportunity to attend the hearing of the Appeals Panel. The Appeals Panel shall give reasonable opportunities for the Resident and the Program Director or his/her designee to present any explanation or defense or offer any other information orally or in writing, for the Appeals Panel's consideration. The Resident and the Program Director may be granted permission by the Appeals Panel to submit a post-hearing written explanation or summary within a time schedule determined by the Appeals Panel. Failure of the Resident to attend the hearing of the Appeals Panel where such an opportunity to be heard has been afforded shall be deemed a waiver by the Resident of his/her right to challenge, appeal or be heard on, the disciplinary action.
6. Ten (10) business days before the hearing, the Resident and Program Director shall submit to the Appeals Panel a written list of proposed witnesses together with an explanation of the relevance of each witness' testimony to the hearing. The Resident and Program Director may also submit any documents they wish to have the Appeals Panel consider at the hearing, including an explanation of each document's relevance to the hearing. The Appeals Panel shall have complete discretion to decide which witnesses will be called to testify and which documents

are relevant and therefore merit review at the hearing. The Appeals Panel shall notify the Parties of its decision on these matters at least three (3) business days before the hearing. Each Party shall receive a copy of the other Party's proposed witness list as well as copies of the documents proposed for consideration by the Appeals Panel. During the hearing, the Appeals Panel shall have complete discretion to call forth any additional witnesses, including any witnesses that were not on either Party's proposed witness list, or to ask that additional documents be produced for its consideration, including any documents not previously submitted by the Parties.

7. During the hearing, the Resident and the Program Director shall have the right to question witnesses who have been called by the Appeals Panel. Any member of the Appeals Panel may question witnesses. The Appeals Panel, in addition to calling additional witnesses and seeking additional documents as provided in Paragraph 6 above, may recall witnesses. A Resident who does not testify on his/her own behalf may be called and examined by the Appeals Panel; if the Resident declines to testify, his/her refusal to testify may be construed against the Resident. The Program Director is required to testify if asked to do so by the Appeals Panel.
8. A transcript of the hearing shall be made at HSS's expense, and one (1) copy shall be provided to the Resident at HSS's expense.
9. The Program Director shall have the burden of coming forward with evidence reasonably supporting the disciplinary action. The Resident shall then have the burden of presenting evidence and proving that the disciplinary action lacks any reasonable factual basis or is otherwise arbitrary, unreasonable or capricious.
10. A request for postponement or continuance of a proceeding by either Party, as well as all other matters relating to the scheduling of the hearing, shall be determined or ruled upon by the Appeals Panel within its reasonable discretion. The Appeals Panel may, at any time it deems appropriate, conduct its deliberations outside the presence of the Resident and/or the Program Director.
11. A majority of the Appeals Panel must be present throughout the hearing and the deliberations. Any absent member of the Appeals Panel may participate in the deliberations and decision-making after reviewing the record of the hearing. If the Chair of the Appeals Panel is absent, an alternate shall be designated by the Chair. No member of the Appeals Panel may vote by proxy.
12. The Appeals Panel shall report its recommendation in writing, including a statement of the basis for its recommendation, to the Surgeon-in-Chief and the President/Chief Executive Officer within five (5) business days after it has reached its determination.
13. The Surgeon-in-Chief and the President/Chief Executive Officer of the Hospital, in consultation with and upon the advice of the Legal Advisory Committee of the HSS Board of Trustees, shall make the final determination and shall notify the Resident of their decision within five (5) business days of their receipt of the determination of the Appeals Panel.

14. The determination of the Surgeon-in-Chief and the President/Chief Executive Officer of the Hospital shall be final and binding on all parties.

VIII. Notices

1. Except as otherwise specifically provided in this policy, all notices required under this policy shall be in writing.
2. The Resident shall be deemed to have received any notice required under this policy (a) on the day it is hand delivered to the Resident, with the Resident's written acknowledgement of receipt, or (b) on the day it is delivered by overnight mail to the Resident's address on file at the Academic Training Department.

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Date Re-issued: 12/19/2007



9/19/07

Martha O'Brasky, MPA
Director, Education Division

Date



9/19/07

Laura Robbins, DSW
Vice President, Education & Academic Affairs

Date

Policy: AT Res/Fellows 7a
Department: Academic Training
Subject: Grievance Procedures

Should a resident have concerns or other potentially sensitive issues, there are several means within the Hospital where these concerns can be reported.

1. Where confidentiality is not an issue, trainees are encouraged to discuss concerns with any of the following: their program director; the Chief Resident or Fellow; the Designated Institutional Officer or the GME Office.
2. Residents are convened on a regular basis throughout the year, either for "Resident Monthly" or for residents classified as PGY 6 and above, "Fellow Administrative" meetings. Resident Monthly meetings are led by the Program Director and the Fellow Administrative Meetings are led by the Chair of the Fellowship Committee. The purpose of these meetings is to impart general information, but most importantly to provide a forum for the residents to provide feedback on their educational experience. At the conclusion of the meeting, the Program Director or Chair of the Fellowship Committee leaves so as to provide the fellows with a closed door forum. One to two fellows volunteer to report information anonymously to the GME office or one of the aforementioned parties for further action, if necessary. For example, if a resident expresses an issue with a faculty member, the issue is brought to the Faculty Appraisal & Development Committee for further discussion and resolution.
3. For confidential reporting, trainees can report their concerns to either the Compliance Office at (212) 606-2398 or Compliance hotline at **888-651-6234**.

The Compliance Help line establishes an avenue for employees and interested parties to resolve problems and to report suspected violations of the HSS Code of Conduct, illegal or unethical conduct occurring within the Hospital, in the event that other resolution channels have been ineffective or the caller wishes to remain anonymous.

All employees are expected to report perceived misconduct, including actual or potential violations of law, regulation, or HSS policy.

The Compliance Help line is operated on our behalf by National Help line Services, Inc., an independent firm. All callers are treated professionally and with empathy. The Help line is available 24 hours/day.

When calling the Compliance Help line, a caller is not required to disclose his/her identity. Should an employee choose to disclose his/her identity, it will be held in confidence to the fullest extent practical or allowed by law. HSS will not allow any retribution or retaliation against an employee who reports a compliance issue in good faith.

All calls are documented on a confidential intake form and sent to the Chief Compliance Officer. The Chief Compliance Officer is responsible for acting upon the calls in a timely manner and for taking all necessary actions to resolve an issue raised by a Compliance Help line caller.

Date Reviewed:

To Graduate Medical Education Committee: 07/07/2009
To Medical Board 07/15/2009

Date Issued: 07/15/2009



Martha O'Brasky, MPA
Assistant Vice President, Education & Academic Affairs

7/15/09
Date



Laura Robbins, DSW
Vice President, Education & Academic Affairs

7/15/09
Date