



Contract Number

22-444

SAP Number

Arrowhead Regional Medical Center

Department Contract Representative	William Gilbert, Director
Telephone Number	(909) 580-6150
Contractor	Kevin Perez, Resident
Contractor Representative	
Telephone Number	
Contract Term	Date of Execution through June 30, 2023
Original Contract Amount	\$0
Amendment Amount	N/A
Total Contract Amount	\$0
Cost Center	9182444200
Project Name	Resident Contract
	Fiscal Year 2022 – 2023
	Resident Employment Contract

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County, in carrying out the operation of the Arrowhead Regional Medical Center, operates the Accreditation Council for Graduate Medical Education (ACGME) accredited programs in postgraduate medical education; and

WHEREAS, Resident has met high standards for acceptance into one of these programs and possesses the skills necessary for the delivery of patient care services at the Arrowhead Regional Medical Center; and

NOW, THEREFORE, in consideration of mutual covenants and conditions, the parties agree as follows:

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1. DUTIES AND RESPONSIBILITIES OF RESIDENT

- 1.1 Residents are not independent practitioners and work under the supervision of an appropriately credentialed member of the medical staff. As delegated by supervising physicians, Resident examines, diagnoses, and treats patients at the Arrowhead Regional Medical Center (the "ARMC"), Ambulatory Clinics, Behavioral Health Inpatient Unit, and all other affiliated teaching and clinical care units. Specific duties are further detailed in the Residency Training Manual for the Residency Program in which Resident is enrolled.
- 1.2 Resident must meet the expectations of the program in each of the following areas: medical knowledge; patient care; interpersonal and communication skills; professionalism; practice-based learning and improvement; system-based practice; and any other area designated by the program. In order to remain in the program, residents must also follow the Code of Conduct and other standards for County employees.
- 1.3 Resident confers with attending physicians regarding care of patients and medical work performed, and assists them in examining and treating patients, in a manner in accordance with the accepted standards of residency training.
- 1.4 Resident confers with other residents and nursing personnel regarding the care of patients.
- 1.5 Resident completes and maintains all requisite medical records of any and all patients assigned to his or her care. In no instance shall Resident allow said records to become delinquent by more than fourteen (14) calendar days. Failure to fulfill this obligation shall result in the Residency Program Director (Program Director) assigning Resident to the Medical Records Department to complete said records.
- 1.6 Resident may apply for clinical privileges through the Medical Staff Organization and may be granted privileges to independently perform those services that he or she is competent to perform in accordance with Medical Staff Bylaws, Graduate Medical Education Committee policies, and the relevant Residency Training Manual. However, duties performed while under the privileges granted cannot be required and will not be considered part of the resident training program.
- 1.7 Resident shall not engage in any other professional medical employment, business, or practice without first obtaining written approval from the Program Director and in accordance with Graduate Medical Education Committee policies, and the relevant Residency Training Manual. In no event shall such additional employment, business, or practice conflict in any way with Resident's responsibilities and educational training program at ARMC.
- 1.8 Resident may be required to appear in legal proceedings on behalf of San Bernardino County, where the need for such appearance arises out of Resident's work for the County under this contract, and will not be entitled to receive additional compensation. If Resident is served with a summons to appear in court resulting from their work in the residency program, the summons should be forwarded to ARMC Risk Management Office immediately.
- 1.9 Resident shall abide by the requirements of the residency training accrediting body, which is the Accreditation Council for Graduate Medical Education (ACGME).

2. GENERAL PROVISIONS RELATING TO RESIDENT

- 2.1 ARMC shall provide an educational program that meets the standards of the ACGME Postdoctoral Internship and Residency Common Program Requirements. A copy of the common program requirements is located in the relevant Residency Training Manual and the following website <http://www.acgme.org/>. A program specific training manual will be provided to Resident by the Program Director.
- 2.2 ARMC shall make every effort to maintain its staff and its facilities in compliance with all of the standards as set forth by the ACGME and relevant specialty Boards or Colleges.
- 2.3 Resident will be under the professional supervision of the Program Director for the Residency Program in which Resident is enrolled and under the administrative supervision of ARMC Medical Staff Department Chairman for the department where the Residency Program is located.
- 2.4 Resident shall devote such time as is necessary to satisfactorily complete his or her professional duties within accepted educational standards.
- 2.5 On rotations in which Resident is on-call, the frequency of the on-call shall not be more than allowed by the ACGME requirements.
- 2.6 Resident shall maintain the appropriate licensure to practice medicine as required by the state of California, a D.E.A. number with prescription rights, and any other license including the Postgraduate Training License (PTL) or other certification required to participate in their designated residency program. Resident shall maintain the required licensure for the duration of the educational program covered hereunder. Failure to obtain and maintain such licensure is grounds for immediate termination of this contract by ARMC Director, and not subject to the due process and other provisions set forth in Attachment I.
- 2.7 Unless specifically excused by the Program Director and approved by the Designated Institutional Official (DIO) in writing, all first-year residents will be required to attend an orientation program prior to the beginning of the contractual period. Residents new to ARMC are required to attend Graduate Medical Education (GME) orientation prior to the beginning of the contractual period. Residents continuing in an ARMC residency program are required to attend an annual update with the DIO.
- 2.8 Information regarding clinical and educational work hours, including moonlighting, are provided in the Graduate Medical Education Committee policies.
- 2.9 Professional liability will include residents under San Bernardino County's self-insurance program for the liability of Resident while acting in the performance of his or her duties or in course and scope of his or her assignment. Claims made after termination of training will be covered if based on acts or omissions of Resident within the course and scope of his or her assignments during training. Liability coverage will be provided for Resident on rotations outside ARMC provided such rotation or activity has been approved by Resident's Program Director and has all required contractual agreements including Program Letter of Agreement (PLA). ARMC professional liability does not cover private professional activity outside the educational program. Additional information regarding professional liability insurance is outlined in the Graduate Medical Education Committee policies.

- 2.10 Resident agrees to keep confidential all patient data, design concepts, algorithms, programs, formats, documentation, vendor proprietary information and all other original materials produced, created by or provided for the Arrowhead Regional Medical Center. In addition, upon termination of this contract, Resident agrees to return all confidential materials to the Director or his/her designee.
- 2.11 Government Code section 53243.2 requires the following provision be included in this Contract: If this Contract is terminated, any cash settlement related to the termination that Contractor may receive from the County shall be fully reimbursed to the County if Contractor is convicted of a crime involving an abuse of his or her office or position, as defined in Section 53243.4.

3. CONDITIONS OF APPOINTMENT AND REAPPOINTMENT

- 3.1 Resident's appointment is contingent upon successful completion of a Background Check and Medical Examination. Failure to successfully complete either the Background Check or Medical Examination may result in termination of employment pursuant to Section 8 of this Contract. Resident agrees to begin employment pending completion of the Background Check and Medical Examination.
 - 3.1.1 Background Check: Resident shall be fingerprinted through Live Scan for submittal to the Department of Justice (DOJ) and to the Federal Bureau of Investigation (FBI) pursuant to County and ARMC policies. Resident shall also complete the necessary Disclosure and Authorization forms for submittal to ARMC's investigative consumer reporting agency for the purpose of obtaining a consumer credit report and/or a consumer report and/or an investigative consumer report. The Background Check report will be reviewed and evaluated to determine clearance for Resident to work at ARMC.
 - 3.1.2 Medical Examination: Once ARMC has reviewed and evaluated the Background Check report, Resident will submit to and must successfully complete a Medical Examination through the County's Center for Employee Health and Wellness. The Medical Examination report will be reviewed and evaluated to determine clearance.
- 3.2 Resident shall submit evidence of eligibility to work in the United States and verification of identity within three (3) working days of the effective date of this Contract.
- 3.3 If the services to be performed under this Contract require Resident to drive a vehicle, Resident must possess a valid California driver's license at all times during the performance of this Contract.

Resident agrees to allow the County to obtain a Department of Motor Vehicles report of Contractor's driving record.

In order for Resident to be able to use a private vehicle during the performance of this Contract, Resident shall be covered by vehicle liability insurance at least equal to the minimum requirements of the California Vehicle Code. Such requirements currently are:

- 1. Fifteen thousand dollars (\$15,000) for single injury or death;

2. Thirty thousand dollars (\$30,000) for multiple injury or death;
3. Five thousand dollars (\$5,000) for property damage.

Failure to comply with the requirements of this Section shall be deemed cause for termination of this Contract, pursuant to Section 7.2.

- 3.4 All patient medical records shall be completed by the last day of the contractual agreement between Resident and ARMC; otherwise Resident will not receive his or her Certificate of Training, until such are completed.

4. CONDITIONS FOR PROMOTION

Promotion to a subsequent Program Year level in the GME program, if any, is accomplished by affirmative recommendation from the specific residency Program Director. In instances where a resident's agreement will not be renewed, or when a resident will not be promoted to the next level of training, or when resident will be suspended or dismissed, the provisions on Attachment I, Resident Due Process, will be followed.

5. COMPENSATION OF RESIDENT

- 5.1 For the performance of PGY 2 level services in the Surgery Residency as set forth in agreement, Resident shall receive salary and benefits directly from the United States Air Force.
- 5.2 Effective the first pay period of the program year, Resident shall be provided with one hundred and sixty (160) hours of paid personal leave time. Residents hired after the beginning of the academic year shall be credited with personal leave on a prorated monthly basis. Personal leave may be used for such reasons as, but not limited to, vacation, sick, education, family, parental, bereavement, and emergency, pursuant to the relevant Residency Training Manual and the Graduate Medical Education Committee Policy, Vacation and Leaves of Absence. Personal leave used for vacation and education shall be approved and scheduled by the Program Director or designee, and is not subject to change without prior approval. Any unused personal leave accrual balances in effect at the end of the academic year shall be forfeited.
- 5.3 Residents shall be provided with six weeks of approved medical, dental, parental, or caregiver leave(s) of absence for qualifying reasons that is consistent with applicable laws once and at any time during the residency program without exhausting other allowed time away from training. The leave is pursuant to the relevant Residency Training Manual and the Graduate Medical Education Committee Policy, Vacation and Leaves of Absence and the ACGME Institutional Requirements.
- 5.4 Resident is eligible to receive Jury Duty Leave in the same manner and amount as regular County employees.
- 5.5 Leave in excess of the one hundred and sixty (160) hours provided in Section 5.2 above, may affect the ability of Resident to satisfy requirements to complete the program. Further, this additional leave may affect Resident's eligibility for specialty medical board certification. Information related to eligibility for specialty board exams may be found in the relevant residency

program manual and the relevant American Board of Medical Specialties and/or American Osteopathic Association's Department of Certifying Board Services policies.

- 5.6 Resident shall be covered by the County's Workers' Compensation insurance coverage while acting in the performance of his or her duties or in the course and scope of his or her assignment.
- 5.7 Resident shall receive all benefits as required by law (e.g. FMLA, Military Leave, Time off for Voting and Medicare). Where the County provides a greater benefit than is required by law, Resident shall receive the minimum benefit in accordance with the law, unless the greater benefit is specifically provided for in another provision of this contract.
- 5.8 Unless otherwise specified, all paid leave times, including but not limited to, personal leave, medical leave, employee relations leave, jury duty leave, and time off to vote in a United States public election, will be paid by the United States Air Force.

6 POLICY COMPLIANCE

6.1 San Bernardino County Non-Discrimination Policy

It is the Policy of the Board of Supervisors that the County of San Bernardino shall not discriminate against or tolerate the harassment of employees or applicants for employment on the basis of actual or perceived age, ancestry, color, race, sex, gender, gender identity, gender expression, religion, national origin, marital status, physical or mental disability, medical condition, genetic information, sexual orientation, military and veteran status, or any other basis protected by law. All County employees or applicants for employment are to be treated with respect and dignity. In addition, the County shall not discriminate on the basis of disability in admission or access to, or in operations of, its programs, services or activities. It is the responsibility of all County employees to adhere to and implement this Policy. The County has zero tolerance for any conduct that violates this Policy. Conduct need not arise to the level of a violation of the law in order to violate this Policy. Instead, failure to follow the Policy provides grounds for disciplinary action up to and including termination of employment or vendor contracts.

6.2 San Bernardino County Sexual Harassment Policy

It is the policy of San Bernardino County to provide a work environment free from unwelcome sexual overtures, advances, or coercion. Employees are expected to adhere to a standard of conduct that is respectful to all persons within the workplace. The County will not tolerate any form of sexual harassment, nor will it tolerate any act of retaliation against any person filing a complaint of sexual harassment. In addition, favoritism that arises from consensual romantic or sexual relationships between employees may be construed as harassment. This Policy applies to regular status, extra help, recurrent, probationary or contract employees; volunteers; applicants for County employment; elected officials, department heads, and any person providing services to the County pursuant to a contract.

6.3 San Bernardino County Reasonable Accommodation Policy

San Bernardino County does not discriminate against qualified individuals with disabilities as defined in the Americans with Disabilities Act (ADA) of 1990 and the California Fair Employment and Housing Act (FEHA) in job application, procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. In accordance with Title I of the ADA and FEHA, San Bernardino County will consider the issue of reasonable accommodation in the workplace in a fair and equitable manner for each qualified individual as required by law.

Government Code Section 12940(n) of the FEHA mandates that employers use the "Interactive Process" in determining effective reasonable accommodation. This Interactive Process is required any time an employee with a known disability or medical condition requires reasonable accommodation to perform the essential job functions of his/her position. This process requires a meeting with the employee and supervisor or manager to discuss possible reasonable accommodations, during which both parties have an opportunity to exchange information and is documented.

6.4 Conflict of Interest

As a condition of employment, Resident does hereby agree to follow and uphold the Conflict of Interest policy of the County's Personnel Rules as follows:

No official or employee shall engage in any business or transaction or shall have a financial or other personal interest or association which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political association. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active County employment providing such acts do not constitute a conflict of interest as defined herein. An employee is also subject to applicable provisions of the California Government Code, including but not limited to Sections 1090, 1126, 87100, and/or any other conflict of interest Code, policy or rule applicable to County employment.

- 6.5 The policy for grievances is outlined in the Graduate Medical Education Committee Policy. This policy provides information for resident to resolve concerns, complaints, and grievances of an academic nature.

7 DURATION OF APPOINTMENT

- 7.1 This contract shall be for the period of one-year commencing on the date it is fully executed through June 30, 2023. The Arrowhead Regional Medical Center Director is authorized to execute amendments to the Contract to extend the term for a maximum of four (4) successive one-year periods. However, Residents on-call on the last contracted day are to remain in service through the following morning, until released from duty by the Residency Program Director.
- 7.2 The County may terminate this Contract or take other appropriate disciplinary action, pursuant to this Contract, Graduate Medical Education Committee policies, relevant Residency Training Manual and Attachment I, Due Process.

- 7.3 Details of conditions for reappointment are outlined in Graduate Medical Education Committee policies and the relevant Residency Training Manual.
- 7.4 This Contract may only be amended by written agreement signed by the parties hereto.

8 CONCLUSION

This contract, consisting of ten (10) pages and Attachment I is the full and complete document describing services regarding the Resident's rights and obligations of the parties, including all covenants, conditions, and benefits. This contract supersedes any and all agreements that may exist between Resident and the County.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

▶ *Jessie Smith*
 Office of Graduate Medical Education
 Arrowhead Regional Medical Center

SAN BERNARDINO COUNTY

▶ *Dawn M. Rowe*
~~Curt Hagman, Chairman, Board of Supervisors~~
Dawn M. Rowe, vice Chair,

Dated: **JUN 28 2022**
 SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD.

By *Lynna Morell*
 Lynna Morell
 Clerk of the Board of Supervisors
 of San Bernardino County
 Deputy



By ▶ *[Signature]*
 (Authorized Resident signature - sign in blue ink)

Name Kevin Pérez
 (Print or type name of person signing contract)

Title Resident Physician
 (Print of Type)

Dated: 22 Jun 2022

Address 1541 Arrowhead Dr.
Fontana, CA 92336

FOR COUNTY USE ONLY

Approved as to Legal Form ▶ <u><i>Cynthia O'Neill</i></u> Cynthia O'Neill, Principal Assistant County Counsel	Reviewed for Contract Compliance ▶ _____	Reviewed/Approved by Department ▶ _____ William L. Gilbert, Director
Date <u>6/22/22</u>	Date _____	Date _____

ATTACHMENT I

ARROWHEAD REGIONAL MEDICAL CENTER RESIDENT DUE PROCESS

I. Purpose

It is the desire of the Arrowhead Regional Medical Center (ARMC) that each resident successfully complete each year of residency and becomes eligible to take the respective Board examination, if applicable.

The policy and process described below establish disciplinary and non-disciplinary procedures for all ACGME accredited graduate medical education training programs, and which would be applicable if a Resident's performance in such a program fails to meet academic expectations and/or the Resident engages in misconduct.

Residents will be afforded the procedural rights described herein. Residents are not entitled to other procedural rights afforded regular or permanent employees under San Bernardino County (County) Personnel Rules or ARMC policies. To the extent a provision of this Contract or Attachment conflicts with the Residency Training Manual, the Contract or Attachment provision prevails and controls.

II. Scope

The provisions of this Attachment apply to accredited medical residency program residents employed by ARMC.

III. Definitions

Resident: Any physician in an ACGME accredited graduate medical education program, including interns, residents, fellows, and visiting residents.

Designated Institutional Official (DIO): The individual in a sponsoring institution who has the authority and responsibility for all of the programs accredited by the Accreditation Council for Graduate Medical Education (ACGME).

Academic Deficiency: The Resident is not meeting one or more of the ACGME Core Competencies, as revised from time to time, which may include but is not limited to: patient care and procedural skills, medical knowledge, practice-based learning and improvement, interpersonal and communication skills, professionalism, and system-based practice. In certain instances, behavior may be characterized as both misconduct and academically deficient. Examples of academic deficiencies include, but are not limited to:

- a. Issues involving knowledge, skills, job performance or scholarship.
- b. Failure to achieve acceptable exam scores within the time limits identified by the training program.
- c. Unprofessional conduct.

- d. Professional incompetence including conduct that could prove detrimental to ARMC's patients, employees, staff, volunteers, visitors, or operations.

Misconduct: Conduct by a Resident that violates workplace rules or policies, applicable law, or widely accepted societal norms. Examples of misconduct include, but are not limited to:

- a. Unethical conduct, such a falsification of records.
- b. Illegal conduct (regardless of filing of criminal charges or criminal conviction).
- c. Sexual misconduct or sexual discrimination or harassment.
- d. Discrimination or harassment based on some other protected classification.
- e. Workplace violence.
- f. Unauthorized use or disclosure of patient information; and
- g. Violation of ARMC, County or other applicable policies or procedures, including without limitation the Standards for Employee Conduct.

Disciplinary Action: Any of the following actions taken in response to a Resident's Misconduct or Academic Deficiency: suspension from a program; dismissal from a program; non-promotion to the next PGY level; and non-renewal of a Resident's agreement.

IV. Administrative Leave Pending Investigation

If the Program Director or the DIO, as appropriate, or any of their respective designees, determine that immediate action is required prior to completion of a review or investigation of possible Misconduct or Academic Deficiency, in order to protect the health and safety of patients, staff or other persons, or the interests of ARMC, the Resident may be placed on immediate administrative leave, with or without pay as appropriate depending on the circumstances. In this event, the Hospital Director, County Counsel, and Human Resources should be alerted. This action is not disciplinary in nature and therefore cannot be appealed pursuant to the Appeal of Disciplinary Action Policy. This type of leave is intended to be a short-term measure to allow for a review of the underlying concern and determination as to whether Disciplinary Action or some other action is warranted.

V. Non-Disciplinary Action

- a. Whenever the performance or conduct of a Resident suggests the need for intervention or improvement short of disciplinary action, the Residency Program Director or designee shall investigate the matter and determine the next steps.
- b. Non-Disciplinary actions are those actions intended to assist the Resident in meeting the expectations of the program in each of the following areas: medical knowledge; patient care; interpersonal and communication skills; professionalism; practice-based learning and improvement; system-based practice; and any other area designated by the program. Non-Disciplinary actions may also address failures to comply with the requirements of federal, state, or local law or policy, including policies and requirements of the ARMC and the County.

- c. Non-Disciplinary action may include written evaluations, oral counseling by attending physicians or other faculty, written warnings to the Resident by the Program Director or other faculty identifying those areas that are deficient, and other measures determined by the Program Director, in his or her discretion, to assist the Resident in satisfactorily meeting the expectations of the program.
- d. Non-Disciplinary actions are not considered formal disciplinary actions. The Resident has no right of appeal for non-disciplinary actions. However, if the Resident believes the non-disciplinary action is not warranted, he or she may submit documentation of such belief to the DIO, as appropriate. The DIO, as appropriate, will review the matter.

VI. Formal Disciplinary Action

In circumstances under which non-disciplinary measures are unsuccessful, or in cases of serious misconduct, formal disciplinary action may be undertaken pursuant to this policy and process. Disciplinary Action is issued to a Resident as the result of Academic Deficiency or Misconduct. A program is not required to issue a Resident any form of non-disciplinary, remedial action as a prerequisite to recommending or taking Disciplinary Action. Serious Academic Deficiencies and/or Misconduct may warrant Disciplinary Action, up to and including dismissal, regardless of whether a Resident ever received or was subject to any prior form of remedial action.

a. Types of Formal Disciplinary Actions

1. **Dismissal:** A permanent separation of the Resident from the program.
2. **Non-Promotion to the Next PGY Level:** A lack of promotion of the Resident to the next level of training unless or until Resident's performance improves to the required level.
3. **Non-Renewal:** Non-renewal of a Resident Agreement for the next academic year.
4. **Suspension:** A period of time in which the Resident is not allowed to take part in all or some of the activities of the program. Time spent on suspension may not be counted towards the completion of program requirements. During the suspension the Resident will be placed on administrative leave with, or without, or with pro-rated pay, as appropriate depending on the circumstances.

b. Recommending Formal Disciplinary Action

1. When a Program Director has determined that Disciplinary Action is warranted, the Program Director should alert the DIO, the Hospital Director, County Counsel, and Human Resources of his/her intended actions. The Program Director should also present the situation to the faculty of the Resident's program. In making a determination of what Disciplinary Action to recommend, the Program Director should consider the totality of circumstances as then known, including but not limited to, the severity of the Resident's behavior, potential for patient harm, prior attempts at behavior modification and the results of these attempts, and the Program Director's experience and judgment on resident knowledge, skill, and professionalism progression. If reasonably feasible, any action deemed necessary by the Program Director, after consultation with the program faculty, will be discussed by the Program Director with the Resident prior to its implementation.

2. The Program Director will prepare a written Notice of Recommended Disciplinary Action. The Notice should be reviewed by DIO, Human Resources and County Counsel as indicated prior to being provided to the Resident. The Notice must include:
 - i. A recommendation of the specific Disciplinary Action to be taken.
 - ii. A description of the Academic Deficiency and/or incident or incidents of Misconduct that are the basis for the Disciplinary Action.
 - iii. The specific remedial action or improvement that is required, unless the Corrective Action is dismissal or non-renewal.
 - iv. A defined period of time with a start and end date for improvement (if applicable and determined to be appropriate given the circumstances); and
 - v. Notice of the right to appeal.
3. The Notice of Recommended Disciplinary Action shall be signed by the Program Director or the Program Director's designee and delivered by the Program Director or the Program Director's designee to the Resident in person, if possible. The Resident should be requested to sign the Notice to acknowledge receipt. Failure of the Resident to sign the Notice does not invalidate service. If hand delivery is not possible, the Notice should be delivered to the Resident by some other reliable method.
4. A copy of the signed Notice of Recommended Disciplinary Action must be placed in the Resident's file and forwarded to the GME Office and Human Resources.

c. Pending Final Decision

1. The Program Director may remove the Resident from participation in the program pending expiration of the time frame to request appeal and final resolution of the appeal. In making a determination as to whether to remove the Resident from the program pending final resolution, the Program Director should take into account whether the Resident's continued participation could endanger the health or well-being of patients, staff, or others. The Program Director should also consider the nature of the underlying concern giving rise to the Disciplinary Action (i.e., an allegation of serious misconduct tends to weigh in favor of removal from participation pending resolution). The Resident shall continue to be paid until there is a final decision on the Disciplinary Action and the appeal (if invoked by the Resident) is final.
2. Residents may appeal a Disciplinary Action. No report of Disciplinary Action to any outside entity, including but not limited to any certifying body, professional association, or other training program, may be made until the appeal process has concluded or any appeal rights have expired (unless any such disclosure is authorized in writing by the Resident or disclosed pursuant to compulsory legal process, in which case County Counsel should be consulted prior to such disclosure). The foregoing shall not prevent the Program or GME Office from notifying necessary persons or entities that the Resident is on leave for purposes of ensuring appropriate patient coverage.

d. Finalization of Formal Disciplinary Action

The recommended Disciplinary Action will become final at such time as: the time frame for requesting an appeal expires and the Resident has not submitted a request for an appeal; the Resident withdraws an appeal; or the appeal process concludes, and the recommended Disciplinary Action is upheld.

e. Right to Appeal

The Resident has the right to appeal Notice of Recommended Disciplinary action. Such appeal must be in writing and contain a written statement setting forth in detail the reasons for the appeal. The Resident must submit the appeal within (10) ten calendar days of receipt of the Notice of Recommended Disciplinary Action. Failure to submit a timely appeal shall constitute a waiver of the Resident's right to appeal and the recommended disciplinary action shall become final on a date determined by the Program Director, and no further appeal will be available to the Resident.

f. Hearing Committee

If a timely appeal is submitted, a hearing committee consisting of five members shall hear the appeal. GME and the DIO shall coordinate with the Executive Committee of the Medical Staff as soon as practical to appoint four members, all of who must be Active Medical Staff and one which must be a director of a residency program other than the one in which the Resident is enrolled. The President of the House Staff Association or designee shall appoint one member, who shall be either a member of the Active Medical Staff or a resident. No individual who was materially involved in any of the facts underlying the notice of proposed action may serve on the hearing committee.

g. Hearing Committee Chairperson

The GME Office and DIO will coordinate with the Executive Committee of the Medical Staff to select a chairperson of the hearing committee, who shall set the date, time, and place of hearing. The chairperson shall notify the Resident and all parties concerned thereof in writing of the date, time, and place of the hearing. The date of the hearing will be scheduled to take place within 15 calendar days from the date the chairperson is appointed or as soon as practicable.

h. Representation

The Resident has the right to be represented at the appeal hearing, at his or her own expense.

i. Conduct of the Hearing

1. The purpose of the appeal hearing is for the hearing committee to determine whether the action proposed was done so in bad faith, arbitrarily, or capriciously.
2. Initially, the Program Director will submit the recommended disciplinary action, with any and all evidentiary attachments, to the hearing committee for its review. Such evidentiary attachments must be available to the Resident. The hearing committee may ask questions of the Program Director about the basis of the recommended disciplinary action.
3. The Resident shall be given the opportunity to challenge the basis of the proposed action and to demonstrate that the action proposed was done so in bad faith, arbitrarily, or capriciously.

4. Witnesses may be called by all parties concerned. Any party may ask questions of witnesses relevant to the issues under consideration. The hearing committee may request the appearance of witnesses.
5. The hearing is not restricted by rules of evidence applicable to evidentiary court hearings. The Program Director need not substantiate charges with witness testimony. Evidence in the form of evaluations and other documents are admissible evidence and may alone support the charges. All evidence upon which the hearing committee's decision is based must be presented at the appeal hearing.
6. The hearing before the hearing committee shall be recorded by electronic or other device as approved by the chairperson of the hearing committee.
7. The hearing may be continued or recessed only upon the majority vote of the hearing committee.

j. Recommended Decision of the Hearing Committee

The hearing committee shall render a proposed decision within ten (10) calendar days of the conclusion of the hearing. The proposed decision shall be submitted to the Hospital Director. The proposed decision shall be provided to the Resident and the Program Director. The Resident and the Program Director have the right to submit a written response to the proposed decision to the Hospital Director. The Resident and the Program Director must submit such response within 10 calendars of receipt of the proposed decision.

k. Final Decision of the Hospital Director

Within 20 calendar days of receipt of the proposed decision, the Hospital Director shall review the proposed decision and any timely written response by the Respondent and the Program Director, and issue a decision. The Hospital Director's decision is final and no further administrative appeal is available. The decision of the Hospital Director shall be coordinated by GME and transmitted to the Respondent and the Program Director.