



## CHILDREN'S HOSPITAL LOS ANGELES PHYSICIAN IN TRAINING AGREEMENT

THIS AGREEMENT is made and executed in duplicate at Los Angeles, California, as of **June 24, 2020** by and between CHILDREN'S HOSPITAL LOS ANGELES, a non-profit organization which owns and operates a pediatric patient care and teaching center, (hereinafter referred to as "Hospital" or "CHLA"), and **FULL NAME, M.D.** (hereinafter referred to as "Physician in Training") (collectively, the Hospital and the Physician in Training are referred to as "parties").

### WITNESSETH

WHEREAS, the Hospital is the owner and operator of Children's Hospital Los Angeles, in which it conducts a training program which meets applicable standards of the Medical Board of California of the State of California, and requirements of various specialty boards; AND,

WHEREAS the Physician in Training is a graduate of a School of Medicine registered with the Medical Board of California, or otherwise meets the requirements established for licensure as a Physician in the State of California and has taken such steps as are required to allow his or her participation in the said training program and has made application to Hospital for such participation AND,

WHEREAS, the Hospital, upon recommendation of the Program Director and Department Head, has approved said application for the training program, AND,

WHEREAS, the parties hereto are desirous of entering into this Agreement in order to provide a full statement of their respective covenants and agreements in connection with the Physician in Training's participation in said training program in Hospital and affiliates during the term hereof:

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, it is understood and agreed by and between the parties hereto as follows:

### ARTICLE I. APPOINTMENT

(A) Physician shall be appointed as **Pediatric Intern** in the **Division of Pediatrics, Department of Pediatric Residency Program**. This appointment is also referred to as being a member of the "house staff".

(B) Physician in Training is to serve as **Pediatric Intern (PGY1)** and discharge

the duties as hereinafter provided in the Hospital beginning **June 24, 2020** and ending **June 30, 2021** without regard to the length of the total training program. This contract applies only for the dates indicated and does not imply any guarantee of a training position, or any other position with the Hospital, for subsequent years.

## ARTICLE II. PHYSICIAN IN TRAINING'S GENERAL OBLIGATIONS

(A) Physician in Training agrees, to the best of his/her/their ability, to:

(1) Faithfully perform the duties assigned to him/her/them under the direction of the Program Director. These duties shall include, but are not limited to: (i) Development of a personal program of self-study and professional growth with guidance from the teaching staff; (ii) Participation in safe, effective, and compassionate patient care under supervision, commensurate with the physician's level of advancement and responsibility; (iii) Participation in the educational activities of the training program and, as required, responsibility for teaching residents and students; (iv) Participation in Hospital programs and activities involving the Medical Staff and adherence to established practices, procedures and policies of the Hospital; (v) Participation in Hospital committees and councils, especially those that relate to patient care review activities; and (vi) Application of cost containment measures in the provision of patient care.

(2) Abide by Medical Staff and Hospital Bylaws, Rules and Regulations, Policies and Procedures and the Department's and/or Division's Rules and Regulations, and Policies and Procedures. In making this commitment, Physician in Training understands and agrees that participating in the training program is to be carried out in accordance with and subject to the standards and ethics of CHLA.

(3) Be in proper medical attire as established by the rules and regulations of the Hospital, the Program Director, and the Division Head at all times while on duty.

(B) Physician in Training warrants that he/she/they shall have satisfied all the requirements of this Agreement and those established by the Medical Board of California, or appropriate licensing authority, which are prerequisites to his/her/their right to participate in the Division's program as of the date this Agreement goes into effect.

(C) (1) Physician in Training's hours of duty and rotation shall be established by the Program Director or Division Head in compliance with Accreditation Council for Graduate Medical Education (ACGME) guidelines, and may include weekend service requirements and On-Call responsibility on a twenty-four hour basis.

(2) It is expressly understood and agreed that the responsibility of Physician in Training for his/her/their patients is continuous and not necessarily limited to any scheduled hours of duty. The hours per day and days per week during which Physician in Training is on duty shall depend on the needs of the clinical service relative to patient care and on the Physician in Training's training requirements as determined by Program Director or Division Head in compliance with ACGME guidelines.

(D) The Hospital shall have the right to the exclusive services of Physician in Training during all scheduled hours covered by this agreement. The Physician in Training may not engage in any type of professional work outside of the Hospital without the prior written approval of the Program Director or Division Head.

(E) Physician in Training specifically understands that he/she/they are required to complete all medical records in accordance with Medical Staff and Hospital policies. Failure to comply may result in corrective action, including dismissal, being taken against the Physician in Training. Additionally, failure to comply will be noted in Physician in Training's permanent record. Issuance of certificate of completion will be withheld until all records are completed.

(F) The Physician in Training cannot work at CHLA until any and all visa issues, if applicable, are resolved and proper documentation is presented to the Graduate Medical Education Office.

(G) The Physician in Training will participate in daily and weekly rounds, didactic lectures and seminars as deemed appropriate by the Program Director or Division Head.

(H) The Physician in Training will participate in all aspects of medical and surgical care for pediatric patients as deemed appropriate by the Program Director or Division Head.

(I) The Physician in Training will be expected to participate in retrospective and/or prospective clinical investigative work, as well as basic research projects, as deemed appropriate by the Program Director or Division Head.

(J) The Physician in Training will rotate through related disciplines as deemed appropriate by the Program Director or Division Head.

(K) The Physician in Training will need prior written authorization from the Program Director before planning any vacation, trips for scientific meetings or for any other temporary absences from the Hospital, with the exception of statutorily protected leaves of absence (which are addressed in Attachment A and CHLA relevant policies) and are specifically excluded from this paragraph. Any unapproved leave of absence will be recorded in the permanent personnel file of the Physician in Training and a certification of satisfactory completion of the training program will not be issued for the duration of the unauthorized absence from the Hospital.

(L) The Physician in Training may not practice medicine in the Hospital or continue in the training program unless he/she/they meet the licensing requirements set by the respective training program.

(M) Moonlighting is working at another job for pay, whether at the Hospital or not, during the term of this contract. Physician in Training agrees that moonlighting will be governed by the policies adopted by the Physician in Training's applicable program and that Physician in Training will abide by those policies. Physician in Training acknowledges that the applicable program may not permit moonlighting by Physicians in Training. Physician in Training

also acknowledges that those with an Educational Commission for Foreign Medical Graduates (ECFMG)-sponsored J-1 visa are not allowed to moonlight, as per written rules by the ECFMG.

### ARTICLE III. RESPONSIBILITIES OF HOSPITAL AND PROGRAM

The Hospital and Program, to the best of their ability, agree to:

(A) Provide an environment wherein both the teaching staff and Physician in Training are seeking to improve their knowledge and skills. Insofar as possible, Physician in Training will be incorporated into medical staff programs of medical education and patient care in a true collegial relationship. The Program Director will organize formal teaching sessions tailored to meet the special requirements of the training program.

(B) Provide the Physician in Training with an opportunity to participate in policy development and review.

(C) Provide the Physician in Training with supervision in carrying out his/her/their patient care responsibilities. The supervision will be commensurate with Physician's level of advancement and responsibility.

(D) Provide counseling and psychological support services to Physician in Training on an as needed basis, if it is determined that the physical or emotional stress is related to the demands of the training program.

(E) Provide Physician in Training with access to his/her/their schedule of house staff assignments and rotations that will not be substantially changed without prior notice.

(F) Cover Physician in Training under the professional liability policy carried by the Hospital in the manner described in Attachment C (which is incorporated into this Agreement as if set forth in full).

### ARTICLE IV. TRAINING STIPEND

(A) The current stipend for the Physician in Training's level of training is **\$62,745** per year, which is distributed bi-weekly. As provided by the current taxing statutes, this stipend is subject to deductions and withholdings under applicable federal, state, and local laws.

In the event Physician in Training resigns or is terminated from the Program, the stipend shall be discontinued going forward and amounts due shall be paid on the last day of work.

(B) Stipends are reviewed annually and established for the succeeding academic year. If the evaluation of stipend levels indicates an increase, stipends are adjusted as of July 1st, which is the beginning of the new academic year.

## ARTICLE V. MISCELLANEOUS BENEFITS

All of the benefits for the Physician in Training are set forth in Attachment A (which is incorporated into this Agreement as if set forth in full). Unless otherwise noted, benefits are only provided for the duration of the Physician in Training's house staff appointment.

## ARTICLE VI. ROLE OF PHYSICIAN IN TRAINING

Physicians in Training at the Hospital have a dual role. They are individuals who provide a service to the Hospital by caring for patients. For these services, the Hospital pays Physicians in Training a stipend. At the same time, the Hospital provides Physicians in Training, through its various training programs, with postgraduate education. In that context, they are considered students.

As a consequence of this dual role, Physicians in Training are recognized by the Hospital to be a distinct body of individuals, operating as apprentices, with whom it will, to the extent reasonably possible, establish and maintain a mutually agreeable relationship. As part of that relationship, it is understood by both parties that Physicians in Training are subject to the policies, rules, regulations, bylaws, accountability, and standards of conduct as applicable to all professional employees of the Hospital, and to all members of the medical staff, except as otherwise provided in this Agreement. Where Hospital policy for employees and this Agreement might conflict, this Agreement takes precedence.

## ARTICLE VII. QUALITY ASSURANCE AND PEER REVIEW

By signing this Agreement or participating in medical staff activities, Physician in Training agrees to be bound by this Article and the following statement of Hospital's policy:

Confidentiality is vital to free, open, and candid discussions necessary for medical staff quality assurance and peer review activities designed to improve the quality of care at the hospital. Each medical staff member's participation in such activities is in reliance on the confidential treatment of those activities by all members of the medical staff and other individuals involved. For these reasons, each Physician in Training agrees to keep confidential all information (oral or written) communicated in connection with medical staff quality assurance and peer review activities. Disclosure of such information, except as specifically required by law, pursuant to medical staff and hospital policy, to law enforcement agencies, or to professional or institutional licensing agencies, is prohibited. Corrective action, including suspension or termination from the training program, may be taken against any Physician in Training who fails to maintain the confidentiality of such information. Agreement to keep medical staff information confidential is a material condition to appointment or reappointment to a training program.

Each Physician in Training agrees to notify the Risk Management Office within 48 hours of any request or demand made to [him/her/them] (whether by subpoena or otherwise) to disclose confidential information related to his/her/their participation as a member of the staff or any committee thereof, and that [he/she/they] will not voluntarily disclose confidential medical staff information except as specifically provided in this Article. Each Physician in Training further agrees that the medical staff or the hospital may seek to enjoin the violation of this Article if necessary.

#### ARTICLE VIII. PRIVACY POLICIES, HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Under the Privacy Rule, health plans, health care clearinghouses, and health care providers must guard against misuse of individuals' identifiable health information and limit the sharing of such information. Patients will be able to better understand and control how their health information is used and disclosed. HIPAA also provided that the standards, implementation specifications, and requirements established by the Secretary not supersede any contrary State law that imposes more stringent privacy protections.

Key components of HIPAA Privacy Regulations:

- A provider must limit use, access, and disclosure of protected health information to that which is minimally necessary to perform his/her/their duties or responsibilities.
- A provider must make sure that all protected health information (PHI) is kept confidential and only used for purposes of treatment, payment, and hospital operations. All other uses or disclosures of protected health information require written authorization from the patient or patient's representative, unless otherwise permitted by law.
- A provider must keep medical records and other documents containing protected health information out of public view.
- When conducting a conversation regarding a patient, providers should do so in a private place or speak quietly so they cannot be overheard.
- When possible, providers should close patient/examining room doors or draw curtains and speak softly when discussing patients' health information.
- Providers should not discuss confidential information on patients in public places such as elevators, bathrooms, cafeteria, etc.
- Providers must password protect their laptop computers, personal digital assistant (pda) or other electronic equipment. Providers must not share passwords with others.

In addition, all house staff is required to sign CHLA's confidentiality agreement and onboarding documents.

#### ARTICLE IX. EXHAUSTION OF REMEDIES

If an adverse recommendation or action is made with respect to a Physician in

Training's status, including, but not limited to, suspension, termination or dismissal; non-reappointment; failure to advance; failure to receive a certificate of completion; restrictions on clinical privileges in the training program which remain in effect for a cumulative total of 30 calendar days or more for any 12-month period, or if any action is taken which is required to be reported to the Medical Board of California pursuant to Business and Professions Code Section 805, or its successor, or to the National Practitioner Data Bank, Physician in Training must exhaust his/her/their intra-organizational remedies afforded by this Agreement, if any, before resorting to a formal legal action challenging the recommendation, decisions, procedures used to arrive at it, or asserting any claim against Hospital or participants in the decision process; and the exclusive procedure for obtaining judicial review shall be by writ of mandate. Details of the remedies provided are described in Attachment D (Fair Hearing Plan for Physicians in Training).

## ARTICLE X. EVALUATION, ADVANCEMENT AND DISCIPLINARY ACTION

### (A) Evaluation

(1) Physician in Training shall receive from the Program Director, or designee, a formal written evaluation at least annually, but preferably semi-annually, which shall include a review of knowledge, skills, personal growth and development, and attitude. The evaluations shall be filed in the Physician in Training's personnel file, shall be discussed with the Physician in Training, and shall be accessible to the Physician in Training upon request. The Physician in Training shall sign a written acknowledgement that he/she/they received a written evaluation. The Program Director may conduct and record more frequent evaluations on an as-needed basis, in the sole and absolute discretion of the Program Director.

(2) A Physician in Training may dispute a written evaluation report by submitting a written response, which shall be filed with the evaluation report.

### (B) Advancement

(1) Advancement must be based on evidence of satisfactory progressive scholarship and professional growth of the Physician in Training, including demonstrated ability to assume graded and increasing responsibility for care. This determination is the responsibility of the Program Director with advice from members of the teaching staff.

(2) Participation in the training program is contingent upon satisfactory performance. For that reason, evaluation is a continuing and on-going process. At any time during the year, at the discretion of the Program Director, a review of an individual's performance may be initiated and conducted in order to determine whether a Physician in Training participating in the training program should be restricted or terminated. This decision is the responsibility of the Program Director with advice from members of the teaching staff.

The individual involved will be given an opportunity to discuss this recommendation with the Program Director. The Physician in Training will have the opportunity to challenge the recommendation through the grievance procedure or Fair Hearing Plan, if applicable,

but only as set forth in this Agreement.

(3) The Program Director shall notify Physician in Training in writing if he/she/they will not be advanced to the next higher level or if he/she/they will not receive a certificate of completion. If possible, this notification will occur at least four months prior to the expected date of completion or advancement. If the primary reason(s) for the non-reappointment occurs within the four months prior to the end of this Agreement, CHLA will attempt to provide the Physician in Training with written notice of the intent not to reappoint as circumstances will reasonably allow prior to the expiration of the term of this Agreement. The Physician in Training may have the right to appeal any notice of non-advancement or failure to receive a certificate of completion through the grievance process or Fair Hearing Plan, if applicable, but only as set forth in this Agreement. CHLA is under no obligation, nor may it be held liable for breach of this Agreement, if it fails to provide notice of non-advancement or failure to receive a certificate of completion within the timeframes in this paragraph.

(4) Maintaining active training program status is necessary to continue participation and advancement in training.

(C) Corrective/Disciplinary Action

(1) It is the responsibility of the Program Director, or designee, to take informal or formal corrective disciplinary actions when a Physician in Training's conduct, performance, professional competence, ethical qualifications or character is below the level set by the program's standards or other applicable standards, such as professional ethics, Medical Staff or Hospital policies.

(2) Under no circumstance will the parties terminate this Agreement without written notice and without providing the other party an opportunity to informally discuss, review, and adjudicate any dissatisfactions, differences or grievances that may exist as described in the grievance process. If a Physician in Training has a grievance during the term of this Agreement concerning the training program at CHLA, or an affiliating institution where training is received, the grievance shall be pursued only as against CHLA.

(3) The following dispute resolution procedure shall apply when: a) a Physician in Training believes that there has been a misinterpretation of this Agreement, or the Hospital has failed to comply with this Agreement, or if a Physician in Training is dissatisfied with the operation of the training program as applied to the Physician in Training; or b) a corrective/disciplinary action has been recommended against the Physician in Training, but the recommendation does not constitute "grounds for hearing," as that term is defined in ARTICLE XI of this Agreement.

STEP 1: The matter shall be informally discussed with the Program Director. If the Physician in Training's complaint is related to the Program Director's behavior, he/she/they may skip Step 1 and start with Step 2.



STEP 2: If the matter is not satisfactorily settled in Step 1, the Physician in Training may appeal in writing to the Division Head or Designated Institutional Official (DIO). The appeal shall include all pertinent facts and remedies requested by the Physician in Training. The Division Head or DIO shall request a response in writing from the Program Director and a recommendation for settlement. The Division Head, DIO, or designee will conduct whatever additional investigation he/she/they determine is necessary, if any, and then the Division Head or DIO shall render a decision regarding the appeal.

In the event the same person is functioning as the Program Director as well as the Division Head, then the Department Head shall be substituted for the Division Head in Step 2. In the event the same person holds all three positions (Program Director, Division Head, and Department Head), the matter should be resolved in accordance with Step 3.

STEP 3: If the decision of the Division Head in Step 2 is not acceptable to the Physician in Training, the Physician in Training may appeal to the Department Head. If the Department Head made the decision in Step 2, the Physician in Training may appeal to the DIO. Before making a decision, the Department Head or DIO will appoint a dispute review panel. The dispute review panel shall be composed of not less than three (3) members. Alternate candidates for membership on the dispute review panel, usually two (2) in number, shall also be appointed by the Department Head or the DIO. Alternate candidates will replace voting members who become unavailable or disqualified; however, alternate candidates must hear all the evidence to be eligible to vote. At least two (2) of the members shall be appointed from the Active Staff and one member may be a Physician in Training. In the event that it is not feasible to appoint a dispute review panel from the Active Staff, the Department Head or DIO may appoint members from other staff categories or practitioners who are not members of the Medical Staff at CHLA. The Department Head or DIO shall designate one of the appointees as the Chairperson. An appointee who is a Physician in Training shall not be designated chairperson. No dispute review panel member shall have actively participated in the consideration of the matter at any previous level. Mere knowledge of the matter shall not preclude an appointee from sitting as a member of the dispute review panel.

The Chairperson of the panel shall set a date for a review. At the review, the parties may make oral statements and submit written statements from other persons, as well as any other documentation that the panel determines will be useful to its review. The review shall be informal in nature and none of the procedural rules with respect to Article XI hearings shall apply. The panel, by secret written ballot, will then make a recommendation to the Department Head or DIO, or designee, who shall then inform the Physician in Training of the recommendation. The Department Head or DIO, or his/her/their designee, will render a decision that shall be binding on all the parties.

If there is unreasonable delay at any step, the Physician in Training may appeal to the next step without further delay. The DIO has the sole discretion to determine whether the delay is unreasonable. The Physician in Training must make a decision to appeal from one step to another within seven (7) calendar days after receipt of the decision at each step, or the dispute resolution process will be considered closed.

- (4) Notwithstanding any other provision in this ARTICLE X, the Physician in Training may, at any time, informally discuss any concerns related to the training program with the DIO.

#### ARTICLE XI. FAIR HEARING PLAN

As the Physician in Training acknowledges in Attachment B, hereby incorporated by reference into this Agreement, Physicians in Training who are the subject of any one or more actions or recommended actions that are grounds for a hearing shall be entitled to the written notice and hearing procedures set forth in a Fair Hearing Plan for Physicians in Training (“The Plan”). “Grounds for a hearing,” as used in this Agreement, is defined as those actions or recommended actions that are identified in The Plan as constituting grounds for a hearing.

The Plan is attached to this Agreement as Attachment D for the Physician in Training’s information. The Plan is subject to revision by the Hospital at any time, including during the term of this Agreement, without requiring additional consent or agreement from the Physician in Training. The Physician in Training agrees to abide by The Plan as The Plan exists at the time any one or more of the adverse actions or recommendations that are grounds for a hearing is proposed, even if the fair hearing process in the Plan differs from the version attached to this Agreement at the time this Agreement is executed.

#### ARTICLE XII. CERTIFICATE OF COMPLETION

(A) Physician in Training, at the expiration of the period of appointment and employment provided for by this Agreement, if such Service has been completed to the satisfaction of the Program Director, shall receive from the Program Director a certificate attesting to the completion of said term of Service. It is understood and agreed by Physician in Training that in addition to completion of the program to the satisfaction of the Program Director, such certification of completion of the program will be conditioned upon Physician in Training having, on or before the date of termination of this Agreement, returned all Hospital property delivered to him/her/them, completed all medical records for which he/she/they are responsible, and settled all his/her/their professional obligations owed to the Hospital.

(B) If this Agreement is terminated prior to its expiration date, or if it is decided that Physician in Training is ineligible to receive a certificate of completion of the training program, each party, at its option, may submit an explanatory statement to the Council on Medical Education of the American Medical Association. It is understood that such statements shall be available to inquirers at the discretion of said Association.

ARTICLE XIII. GOOD FAITH

The Hospital and Physician in Training further covenant and agree that they have entered into this Agreement in good faith and acknowledge their respective ethical and legal obligations to fulfill said Agreement until its expiration date, except in the cases provided for in ARTICLE X or ARTICLE XI or in circumstances where Physician in Training is unable to do so because of incapacitating accident or illness.

ARTICLE XIV. ASSIGNMENT

Nothing contained in this Agreement shall be construed to permit assignment by Physician in Training of any rights under this Agreement and such assignment is expressly prohibited.

ARTICLE XV. CALIFORNIA LAW

The Hospital is situated and licensed under the laws of the State of California and most, if not all, of the services to be rendered hereunder shall be performed in California; accordingly, this Agreement shall be governed by and interpreted in accordance of the laws of California as may be applicable hereto.

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ARTICLE XVI. SEVERABILITY

In the event that any of the provisions, or portions thereof, of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provision, or portions thereof, shall not be affected thereby.

I hereby recommend the above individual to the Children's Hospital Los Angeles for training as indicated.

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_  
Program Director  
Children's Hospital Los Angeles

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_  
Department Chair  
Children's Hospital Los Angeles

IN WITNESS WHEREOF, Children's Hospital Los Angeles has caused this Agreement to be executed by its duly authorized officials and the Physician in Training has executed this Agreement by hereunto setting his/her/their hand.

This Agreement is not valid until signed by the designated Hospital representative.

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_  
Physician in Training

PRINTED NAME \_\_\_\_\_  
Physician in Training

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_  
Chief Executive Officer  
or Designee Children's  
Hospital Los Angeles

## ATTACHMENT A

### MISCELLANEOUS BENEFITS

1. Flexible Benefits Program:

Per policy HR-58.0, for the duration of your house staff appointment, you will be eligible to participate in CHLA's flexible benefits program which include medical, dental, vision and life insurance for you and your dependents, and 401(k) and 403(b) plans. It is necessary for you to select and enroll in the plan of your choice before coverage is effective. Upon termination of your appointment, you may continue the plan via COBRA by completing the COBRA forms, which will be mailed to your address on file following your termination.

2. Liability Insurance:

Children's Hospital Los Angeles will provide professional liability coverage (malpractice) at no cost to you. This coverage is in effect when acting within the capacity and scope of duties related to the **CHLA Pediatric Residency Training Program** only.

3. Vacation:

You will be provided 14 days of paid vacation, per academic year. The academic year runs from July 1, 2019 through June 30, 2020. Although the use of vacation days must be approved in advance by the Director of the Training Program, CHLA strongly encourages you to use all of your vacation days during the academic year. Toward that end, CHLA will work with you to schedule your vacation days with reasonable notice during the academic year. To the extent that a Physician in Training does not use his/her/their vacation days during the academic year, then those unused vacation days will carry over for the Physician in Training's use during the next academic year. If a Physician in Training resigns/terminates from the training program and has unused vacation days as of the date of resignation/termination, then CHLA will pay the Physician in Training for his/her/their unused vacation days.

4. Protected Sick Leave:

Physicians in Training shall be provided six (6) days of paid sick leave as provided by applicable State law and/or local ordinance. Paid sick leave can be used for personal time and kin care as well as personal illness and/or any other purpose provided by applicable State law and/or local ordinance. CHLA's Sick Leave policy is not otherwise applicable to Physician in Training.

5. Pregnancy-Disability Leave:

Physicians in Training will be allowed up to 8 weeks of paid pregnancy disability leave (PDL). Extended weeks needed for complications can be taken as described below (see section on Disabling Non-Work-Related Illness or Injury below). Please note the American Board of Medical Subspecialties requires that Physicians in Training complete a specified number of months of active participation in a training program to qualify for Board Eligibility and Certification. Therefore, a Physician in Training may need to extend their training period to satisfy that requirement. Additional leave as provided by statute and/or law will be provided upon request; however, the usage of such leave may require an extension of the training period.

6. Parental Leave:

Physicians in Training will be allowed 2 weeks of paid parental leave. Additional leave commensurate with applicable statutes will be provided (please see “Pregnancy Disability Leave”, section 5, above, for Certification ramifications).

7. Continuation of Stipend in the Event of Disabling Non-Work-Related Illness or Injury:

Your stipend will be continued in the full amount for up to seven (7) calendar days per academic year in the event of a totally disabling, non-work-related illness or injury. In the event of such illness or injury, after using five (5) days, a doctor’s note must be provided to the appropriate personnel in your department (e.g., Residency Director/Coordinator), as per CHLA policy HR-24.0. (This section does not apply to pregnancy disability leave, which is covered in another section above.)

As this plan is to provide stipend protection in the event of a non-work-related, disabling personal illness or injury, no payment will be made for unused stipends discussed in this section; in other words, the seven (7) days is not accrued and will not be paid out if unused.

If the non-work-related illness or injury causing inability to participate in the training program extends beyond seven (7) calendar days in the academic year, your stipend will be continued at 2/3 of the full amount for the remainder of the academic year as previously defined in this Agreement. It will then cease at the end of the contractual period.

This payment will not exceed 2/3 of your regular stipend amount inclusive of all sources of income (e.g., State Disability Insurance, Short-term Disability insurance, etc.).

Extended absences may have bearing on determination of eligibility to receive a certificate indicating satisfactory completion of the requirements of the training program, but such determination will not be affected by whether or not the stipend continues during such period of absence.

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## ATTACHMENT B

In executing this Addendum to the Physician In Training Agreement, I specifically acknowledge I have read, understand and agree to be bound by the provisions of ARTICLE X, entitled "EVALUATION, ADVANCEMENT AND DISCIPLINARY ACTION" as well as ARTICLE XI entitled "FAIR HEARING PLAN " and shall participate in any and all procedures established pursuant to ARTICLES X and XI (including appearances at any interviews, hearings or other proceedings).

I understand that Children's Hospital Los Angeles has an interest in evaluating materials that are relevant to my completion of the training program and fulfillment of my obligations under this Agreement, including materials which are relevant to my professional competence, ethical qualifications, and character. I, therefore, have agreed that the Hospital, the Program Director, Division Head, Department Head or their designated representatives, may:

- (1) Consult with medical school deans, administrators, and medical faculty members of universities, and administrators and medical staff members of other hospitals with which I have been associated, who may have information bearing on my professional competence, ethical qualifications, and character.
- (2) Inspect all records and documents, including academic and disciplinary records, at universities and colleges that I have attended, and any and all medical and other records relating to my professional competence, ethical qualifications, and character.

I hereby consent to the release of such information, records and documents for such purposes to Children's Hospital Los Angeles from any and all individuals and organizations as indicated herein above.

I release from liability the Hospital, Hospital Administration, Program Director, Division Head, Department Head, the Hospital's Medical Staff, and all their officers, employees or representatives for their acts, communications, reports, recommendations or disclosures performed in good faith as an incident to any action, proceeding, or review undertaken in connection with this Agreement. I further release from liability any and all individuals and organizations which provide information, in good faith, to the Hospital Administration, Program Director, Division Head, and Department Head concerning my academic and professional performance and competence, ethics, and character, and other information as may be relevant to any review, evaluation or other proceeding carried out in connection with this Agreement. In addition to these specific releases, the said parties shall be entitled, to the fullest extent permitted by law, to absolute immunity from liability arising from any such act, communication, report, recommendation or disclosure.

I FURTHER UNDERSTAND THAT THE HOSPITAL, HOSPITAL ADMINISTRATION, PROGRAM DIRECTOR, DEPARTMENT HEAD, DIVISION HEAD, AND OTHER MEMBERS OF ITS MEDICAL STAFF ARE ACCORDED RIGHTS, PRIVILEGES,

AND IMMUNITIES WITH RESPECT TO THE RELEASE TO THIRD PARTIES OF INFORMATION THEY MAY HAVE CONCERNING ME UNDER SECTION 805 OF THE CALIFORNIA BUSINESS AND PROFESSIONAL CODE, SECTIONS 43.7, 43.8, AND 47 OF THE CALIFORNIA CIVIL CODE, AND OTHER APPLICABLE PROVISIONS OF CALIFORNIA LAW. I HEREBY CONSENT TO ANY SUCH RELEASE WHICH IS MADE OR GIVEN IN A MANNER WHICH QUALIFIES FOR ANY IMMUNITY(IES) AND/OR PRIVILEGE(S) AFFORDED BY APPLICABLE PROVISIONS OF CALIFORNIA LAW.

I further agree that, upon request of Children's Hospital Los Angeles, I will execute releases in accordance with the tenor of ARTICLES X and XI of the Agreement in favor of any individual or organization, subject to such requirements, including those of good faith, as may be applicable under the laws of the State of California.

I UNDERSTAND THAT MY EXECUTION OF THIS AGREEMENT INDICATES THAT I HAVE READ, UNDERSTOOD, AND AGREED TO BE BOUND BY THE FOREGOING.

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_  
Physician in Training

PRINTED NAME \_\_\_\_\_  
Physician in Training



## ATTACHMENT C

The professional liability policy carried by the Hospital includes in the definition of insured any medical doctor employed by the named insured but only when such employee is acting within the capacity and scope of his/her/their duties.

The above extension of coverage will cover the Physician in Training for his/her/their assignments both inside and outside the Hospital and tail coverage, provided he/she/they are functioning at the direction of his/her/their Program Director or the Designated Institutional Official of Children's Hospital Los Angeles.

The above extension of coverage will only cover law suits filed within the borders of the United States of America.

As a condition of professional liability coverage, it is required that notification of all occurrences which might result in a malpractice claim be given to the insurance carrier promptly. It is therefore an unqualified requirement that the Physician in Training notify the Program Director or Division Head, or his/her/their designee, immediately of any incident which might give rise to a claim of malpractice to be followed by a written incident report which is to be filed within 48 hours with the Office of the Risk Manager. Failure to follow the above instructions may result in disciplinary action against the Physician in Training.

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## ATTACHMENT D

### FAIR HEARING PLAN FOR PHYSICIANS IN TRAINING

#### PREAMBLE AND DEFINITIONS

##### 1.1-1 SCOPE AND INTRA ORGANIZATIONAL REMEDIES

The intra-organizational remedies and the hearing and appellate review bodies provided for in this Article are strictly quasi-judicial in structure and function. These bodies shall have no authority to hold legislative, notice and comment type hearings or to make legislative determinations, or determinations as to the substantive validity of the Agreement, hospital rules, regulations or other intra-organizational legislation. If adverse action described in this Article is taken or recommended, the Physician in Training must exhaust the remedies afforded by this Article before resorting to formal legal action challenging any recommendation or decision, the procedures used to arrive at the recommendation or decision, or asserting any claim against the Hospital, individuals employed by or related to the training program in any way, or participants in the investigation and/or decision making. Technical, insignificant, or non-prejudicial deviations from the procedures and deadlines set forth in this Article shall not be grounds for invalidating the action taken.

##### 1.1-2 DEFINITIONS AND USE OF TERMS

The following definitions apply in this Article:

- (a) "Notice" refers to a written communication picked up by addressee from the Hospital, with receipt acknowledged; or delivered to the required addressee by messenger; courier delivery service with confirmed delivery (such as Federal Express or UPS), or sent by the United States Postal Service, first-class postage prepaid, certified or registered mail, return receipt requested, addressed to the required addressee at his/her/their address as it appears in the records of the Hospital.
- (b) "Date of Receipt" of any notice or other communication shall be deemed to be the date it was picked up by addressee from the Hospital, with receipt acknowledged; or delivered to the required addressee, by messenger or courier delivery service; if delivered by United States Postal Service, first-class postage prepaid, three (3) business days after it was deposited in the United States mail.
- (c) Unless otherwise specified, references to the "Designated Institutional Official" or "DIO" shall include the Designated Institutional Official's (DIO) designee, as selected by the DIO. The DIO may delegate any of his/her/their responsibilities under this Article to the DIO's designee, so

long as the DIO maintains oversight over the execution of those responsibilities.

## **1.2 GROUNDS FOR HEARING**

Any one or more of the following actions or recommended actions taken for a medical disciplinary cause or reason, as defined in Section 805 of the California Business and Professions Code, shall constitute grounds for a hearing if such actions or recommendations would require the hospital to file a report to the Medical Board of California pursuant to Business and Professions Code Section 805 or to the National Practitioner Data Bank if the action becomes final:

- (a) Non-reappointment to the training program;
- (b) Failure to be advanced to the next higher physician postgraduate level or failure to receive a certificate of completion;
- (c) Termination or dismissal from the training program;
- (f) Summary suspension of clinical privileges for more than 14 days;
- (g) Restrictions which are imposed, or voluntarily accepted, on clinical privileges in the training program for a cumulative total of 30 days or more for any 12-month period;
- (h) Any other restriction or action which requires a report to be made to the Medical Board of California under the provisions of Section 805 of the California Business and Professions Code or to the National Practitioner Data Bank.

## **1.3 REQUESTS FOR A HEARING**

### **1.3-1 NOTICE OF ACTION OR PROPOSED ACTION**

In all cases in which the training program has recommended or taken any of the actions constituting grounds for a hearing as set forth above, the Program Director shall notify the Physician in Training of the proposed action. Such notice shall include all of the following:

- (a) The action that is proposed;
- (b) The reasons for the proposed action;
- (c) That the Physician in Training has a right to request a hearing on the proposed action; That the such request for hearing must be in writing and received by the Program Director within 30 days after the date of the Notice of Action or Proposed Action;

- (d) A summary of the Physician in Training's rights or a copy of this Article;
- (e) If applicable, a statement that the action will result in a report to the Medical Board of California or to the state licensing board having jurisdiction over the Physician in Training and the National Practitioner Data Bank.

### **1.3-2 REQUEST FOR HEARING**

The Physician in Training shall have 30 calendar days following the date of receipt of notice of such action to request a hearing by a Trier of Fact. The request shall be effected by written notice to the DIO. In the event the Physician in Training does not request a hearing within the time and in the manner set forth above, he/she/they shall be deemed to have accepted the recommendation, decision or action involved and it shall become the final action of the training program. The action shall be considered by the Appeal Board within 30 calendar days, but shall not be binding on the Appeal Board. The Appeal Board acting on behalf of the Board of Directors shall make the final decision with respect to the Physician in Training.

### **1.3-3 TIME AND PLACE FOR HEARING**

Upon receiving a request for hearing, the DIO, within 30 calendar days after the date of receipt of the request, shall give notice to the Physician in Training of the time, place, and date of the hearing. The date of the commencement of the hearing shall be not less than 30 calendar days from the date of the notice of hearing, nor more than 60 calendar days after the receipt of the request for a hearing; provided, however, that when a request is received from a Physician-in-Training who is under a suspension which is then in effect, the hearing shall be held as soon as arrangements may reasonably be made. However, the date of the hearing may be delayed upon the stipulation of both parties.

### **1.3-4 NOTICE OF CHARGES**

At least 30 days prior to the hearing, the DIO shall state in writing the acts or omissions with which the Physician in Training is charged. Amendments to the Notice of Charges may be made at any time, as long as the Physician in Training has the opportunity to prepare for and defend against any additions or modifications to the Charges. The DIO may amend the Notice of Charges to delete any acts any time prior to the trier of fact's deliberations. Notice of such amendment shall be given to the Hearing Officer and each party. After any amendment that adds acts, omissions, charts or reasons to the original Notice of Charges, the Physician in Training may request from the Hearing Officer a reasonable postponement of the hearing, which shall be granted if requested promptly and only if necessary to prepare a response or defense to those

amendments. The Hearing Officer shall give prompt notice to the parties and members of the Trier of Fact of each such postponement.

### 1.3-5 TRIER OF FACT

The DIO shall select a Judicial Hearing Committee, a Dedicated Review Panel, or an Arbitrator to serve as the trier of fact (referred to collectively and individually as, “Trier of Fact”) at the hearing. The DIO shall inform the Physician in Training of its decision at least 30 days prior to the hearing.

(a) Judicial Hearing Committee

1. If the DIO selects the Judicial Hearing Committee alternative, then the DIO shall appoint a Judicial Hearing Committee consisting of at least three (3) members. Alternate candidates for membership on the Judicial Hearing Committee, usually two (2) in number, shall also be appointed by the DIO. Alternate candidates will replace members who become unavailable or are disqualified. The members and alternates selected to serve on the Judicial Hearing Committee shall be members of the Children’s Hospital of Los Angeles Medical Staff or of the Faculty, or shall have temporary Medical Staff membership to serve and shall be unbiased, shall not have actively participated in the formal consideration of the matter at any previous level (i.e., they shall not have acted as an accuser, investigator, fact finder or initial decision maker in the same matter), and shall stand to gain no direct financial benefit from the outcome. However, knowledge of the matter involved shall not preclude a member of the Medical Staff or Faculty from serving as a member or alternate on the Judicial Hearing Committee. In the event that it is not feasible to appoint a Judicial Hearing Committee from the Medical Staff or Faculty, the DIO may appoint practitioners who are not members of the Medical Staff or Faculty. All members shall have M.D. or D.O. licenses, unless the affected Physician in Training does not have an M.D. or D.O. license. In such cases, whenever feasible, at least one member of the Judicial Hearing Committee shall hold the same type of license as the Physician in Training. Whenever feasible, at least one member should practice the same specialty as the Physician in Training.
2. Both the Physician in Training and the training program shall have the right to a reasonable opportunity to *voir dire* the Judicial Hearing Committee members and the right to challenge the impartiality of any member. Challenges to the impartiality of any

Judicial Hearing Committee member shall be ruled on by the hearing officer.

3. Upon the close of the hearing, the alternates may be excused and the members shall proceed with their deliberations. If during deliberations, one or more of the members is unable to complete deliberations, one of the alternatives may be recalled to substitute for that member. When an alternate substitutes for a member, deliberations must start over.
4. The DIO shall designate a Chairperson of the Judicial Hearing Committee.
5. Judicial Hearing Committee members may be paid by the hospital or their fees split between the parties. In the event that the payment is not split between the parties, the affected Physician in Training shall agree in writing that payment to the Judicial Hearing Committee members shall not be used as a means to argue bias in any later quasi-judicial or judicial challenges.

(b) Dedicated Hearing Panel

1. If the DIO elects to use a Dedicated Hearing Panel, the DIO shall appoint at least three (3) members to the panel. Dedicated Hearing Panel members must be willing to commit six (6) or more hours per day on consecutive days, with the exception of weekends and holidays (unless otherwise stipulated by the parties), for the purpose of hearing evidence, engaging in deliberations and reaching a decision.
2. The Dedicated Hearing Panel may be comprised of five (5) practitioners, but in no event less than three (3) practitioners. The DIO also shall appoint alternate candidates for membership on the Dedicated Hearing Panel, usually two (2) in number. All members shall have M.D. or D.O. licenses, unless the Physician in Training does not have an M.D. or D.O. license. In such cases, whenever feasible, at least one member of the Dedicated Hearing Panel shall hold the same type of license as the Physician in Training. Whenever feasible, at least one member should practice the same specialty as the affected Physician in Training.
3. The DIO, in his or her sole discretion, may solicit Dedicated Panel members from this medical staff, other medical staffs, medical societies, national medical boards, external peer review agencies or any other medical organization of good reputation. No more than

two years may have elapsed since the panel member was last engaged in clinical, administrative or academic medicine.

4. All potential Dedicated Panel members shall be subject to *voir dire* by the Physician in Training and the training program and may be challenged for good cause. The Hearing Officer shall have the discretion to rule on whether a potential panel member may serve on the Dedicated Hearing Panel.
5. Knowledge of the matter shall not automatically disqualify a potential panel member.
6. Dedicated Hearing Panel members may be paid by the hospital or their fees split between the parties. In the event that the payment is not split between the parties, the Physician in Training shall agree in writing that payment to the Dedicated Hearing Panel members shall not be used as a means to argue bias in any later quasi-judicial or judicial challenges.

#### **1.3-6 FAILURE TO APPEAR**

Failure, without good cause, of the Physician in Training to appear and proceed at such a hearing shall be deemed to constitute voluntary acceptance of the recommendations or actions involved, and it shall thereupon become the final recommendation of the training program. Such final recommendation shall be considered by the Appeal Board within thirty 30 days, but shall not be binding on Appeal Board.

#### **1.3-7 POSTPONEMENTS AND EXTENSIONS**

Postponements and extensions of time beyond the times expressly permitted in this Article may be requested by any affected person and shall be permitted by the Hearing Officer on a showing of good cause. Additionally, the parties may always agree to stipulate with respect to postponements and extensions.

### **1.4 HEARING PROCEDURE**

#### **1.4-1 PREHEARING PROCEDURE**

It shall be the duty of the Physician in Training and the DIO to exercise reasonable diligence in notifying the hearing officer of any pending or anticipated procedural irregularity as far in advance of the scheduled hearing as possible, in order that decisions concerning such matters may expeditiously be made. Objection to any such prehearing decisions may be raised at the hearing, but outside of the presence of the Trier of Fact, and when so raised shall be preserved for consideration at any appellate review hearing which might be requested.

#### **1.4-2 REPRESENTATION**

The hearings provided for in this Article are for the purpose of intra-professional resolution of matters bearing on professional conduct, professional competency, or character. Accordingly, the Physician in Training is entitled to representation at the hearing as follows:

- (a) If the Physician in Training wishes to be accompanied at the hearing by an attorney, he/she/they shall state the notice of such intent in the written Request for Hearing.
- (b) The training program representative shall not be accompanied by an attorney if the Physician in Training is not accompanied by an attorney. The foregoing shall not be deemed to deprive any party of its right to the assistance of legal counsel for the purpose of preparing for the hearing.
- (c) Attorneys for either party may accompany their clients in the hearing sessions in order to advise their clients, although any such attorney shall not examine witnesses, shall not address the Trier of Fact, and shall not make any oral statement whatsoever in the hearing.
- (d) Whether or not attorneys are present in the hearing pursuant to this Article, the Physician in Training and the training program may be represented at the hearing by a practitioner licensed to practice medicine in the State of California who is not also an attorney at law.
- (e) The Hearing Officer shall not allow the presence of attorneys at the hearing to be disruptive or cause a delay in the hearing process.
- (f) The Physician in Training and the DIO may together stipulate to allow greater participation by attorneys in the hearing than this Article provides. Otherwise, the above provisions of this Section will control and may not be overturned by the Hearing Officer or the trier of fact.

#### **1.4-3 THE HEARING OFFICER**

The DIO shall appoint a hearing officer to preside at the hearing. The hearing officer shall be an attorney at law qualified to preside over a quasi-judicial hearing and, preferably with experience in Medical Staff matters. Both the Physician in Training and the training program shall have a reasonable opportunity to *voir dire* the hearing officer and the right to challenge the impartiality of the hearing officer. The hearing officer shall rule on any challenges to his/her/their impartiality.

The Hearing Officer shall not act as a prosecuting officer, as an advocate for the Hospital, Board, training program, DIO, or the Physician in Training. If



requested by the Trier of Fact, he/she/they may participate in the deliberations of such body and be a legal advisor to it, but he/she/they shall not be entitled to vote.

The hearing officer shall gain no direct financial benefit from the outcome of the hearing. The DIO will attempt to appoint a Hearing Officer that is acceptable to the Physician in Training. In the event that the DIO and the Physician in Training cannot agree on the Hearing Officer, the DIO will appoint a Hearing Officer only if (1) the Hearing Officer has not been served as a hearing officer for the hospital in the preceding three years, and (2) if the Hearing Officer agrees not to accept appointment as a hearing officer for the hospital for at least five years following the conclusion of the hearing and appeal process.

The Hearing Officer shall preside over the *voir dire* process and may question panel members directly, and shall make all rulings regarding service by the proposed hearing panel members/alternates and the Hearing Officer. The Hearing Officer shall endeavor to assure that all participants in the hearing have a reasonable opportunity to be heard and to present relevant oral and documentary evidence in an efficient and expeditious manner, and that proper decorum is maintained. The Hearing Officer shall be entitled to determine the order of, or procedure for, presenting evidence and argument during the hearing and shall have the authority and discretion to make ruling on all questions which pertain to matters of law, procedure or admissibility of evidence. The Hearing Officer's authority shall include, but not be limited to, making rulings with respect to requests and objections pertaining to the production of documents, requests for continuances, designation and exchange of proposed evidence, evidentiary disputes, witness issues, including disputes regarding expert witnesses and setting reasonable schedules for timing and/or completion of all matters related to the hearing. Such authority shall include ruling on motions to limit witnesses and evidence at the hearing unless a positive showing of relevance can be made prior to the testimony or the introduction of the evidence. If the Hearing Officer determines that either side in the hearing is not proceeding in an efficient and expeditious manner, the Hearing Officer may take such discretionary action as seems warranted by the circumstances.

In all matters, the Hearing Officer shall act reasonably under the circumstances and in compliance with applicable legal principles. In making rulings, the Hearing Officer shall endeavor to promote a less formal, rather than more formal, hearing process and also to promote the swiftest possible resolution to the matter consistent with the standards of fairness set forth in this Article. When no attorney is accompanying any party to the proceedings, the Hearing Officer shall have the authority to interpose objections and to initiate rulings necessary to ensure a fair and efficient process. The hearing officer shall not, however, have the authority to override or revise the Representation section of this Article.

#### 1.4-4 PRE-HEARING DOCUMENT EXCHANGE

At the request of either side, the parties shall, at least 10 days prior to the first evidentiary hearing, exchange lists of witnesses expected to testify and copies of all documents expected to be introduced at the hearing. If after this list has been given to the other party, witnesses are added, it shall be the duty of that party to notify the other part of the change. Failure to disclose the identity of a witness or to produce copies of all documents expected to be produced at least 10 days prior to the commencement of the hearing shall constitute good cause for a continuance.

- (a) The Physician in Training shall have the right to inspect and copy any documentary information relevant to the charges which the training program has in its possession or under its control, as soon as practicable after the receipt of the Physician in Training's request for a hearing.
- (b) The training program shall have the right to inspect and copy, at the training program's expense, any documentary information relevant to the charges which the Physician in Training has in his/her/their possession or control, as soon as practicable after the training program's request.
- (c) The failure by either party to provide access to the information at least 30 days before the hearing shall constitute good cause for a continuance.
- (d) The right to inspect and copy by either party does not extend to confidential information referring solely to individually identifiable practitioners, other than the Physician in Training. The presiding officer shall consider and rule upon any request for access to information, and may impose any safeguard the protection of the peer review process and justice requires. When ruling upon requests for access to information and determining the relevancy thereof, the presiding officer shall, among other factors, consider the following:
  - 1. Whether the information sought may be introduced to support or defend the charges;
  - 2. The exculpatory or inculpatory nature of the information sought, if any;
  - 3. The burden imposed on the party in possession of the information sought, if access is granted; and
  - 4. Any previous requests for access to information submitted or requested by the parties to the same proceeding.

#### **1.4-5 RECORD OF THE HEARING**

A certified court reporter shall be present to make a record of the hearing proceedings and any prehearing proceedings if deemed appropriate by the Hearing Officer. The cost of the attendance of any certified court reporter shall be borne by the Hospital. The cost of the transcript shall be borne by the party requesting the same. Oral evidence shall be taken only on oath or affirmation.

#### **1.4-6 RIGHTS OF THE PARTIES**

At a hearing, both sides shall have the following rights: to ask Trier of Fact members and/or the hearing officer questions which are directly related to determining whether they are impermissibly biased and to challenge such members, to call and examine witnesses, to introduce exhibits or other documents, to cross examine or otherwise attempt to impeach any witness who shall have testified orally on any matter relevant to the issues, and otherwise to rebut any evidence. The Physician in Training may be called by the DIO and examined as if under cross-examination. Each party shall have the right to submit a written statement after the close of evidence in support of his/her/their position. Each party shall have the right to present oral argument at the conclusion of the case.

#### **1.4-7 MISCELLANEOUS RULES**

- (a) The rules of law relating to the examination of witnesses and presentation of evidence shall not apply in any hearing conducted hereunder. Subject to the exceptions below, any relevant evidence, including hearsay, may be admitted by the Hearing Officer. The Trier of Fact may interrogate the witnesses or call additional witnesses if it deems such action appropriate.
- (b) Evidence of mediation, compromise, or offers of settlement, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove, and may not be used to prove or allege, either parties' opinion regarding the strength or weakness of the actions that provide the grounds for the hearing; however, such evidence may be introduced by the party who made the offer solely as evidence of attempts to resolve the matter outside of the hearing process.
- (c) Upon motion of either party or the Hearing Officer, the Trier of Fact may terminate the hearing if it finds that either party has (1) exhibited flagrant or repeated noncompliance with this Article in a manner that prejudices the other party or results in repeated delays to the hearing process, (2) has egregiously interfered with the orderly conduct of the hearing, or (3) has failed to appear at the hearing. If the motion to terminate is based on the Physician in Training's failure to appear at the hearing, the Trier of Fact shall find that the Physician in Training has waived his/her/their hearing rights if he/she/they have failed to appear at the hearing, unless the

Physician in Training can prove by clear and convincing evidence that an unforeseen and unanticipated emergency prevented him/her/they from attending the hearing. A finding that the termination results from the Physician in Training noncompliance or egregious conduct shall result in a finding that the Physician in Training has waived his/her/their right to a hearing. The hearing officer shall be permitted to advise the Trier of Fact regarding his/her/their recommendation with regard to the disposition of the motion. Evidence of, or a finding that, a party intended to prejudice the other party, delay the hearing process, or interfere with the orderly conduct of the hearing is not necessary to support or grant the motion to terminate the hearing.

#### **1.4-8 BASIS OF DECISION**

The decision of the Trier of Fact shall be based on the testimony and evidence admitted at the hearing, including all logical and reasonable inferences from the evidence.

#### **1.4-9 BURDEN OF GOING FORWARD AND BURDEN OF PROOF**

- (a) The training program shall bear the burden of persuading the Trier of Fact, by a preponderance of the evidence, that its action or recommendation was reasonable and warranted. In meeting this burden, the training program shall not be limited to presenting only that information available to it at the time it imposed or recommended the action, but rather may present any relevant information (within the limits discussed elsewhere in this Article) available to it at the time of the hearing.
- (b) The training program is not required to prove each and every charge or issue in front of the Trier of Fact in order for its actions and/or recommendation(s) to be found reasonable and warranted.
- (c) “Reasonable and warranted” means within the range of alternatives reasonably open to the training program under the circumstances, and not necessarily that the action or recommendation is the only measure or the best measure that can be taken or formulated in the Trier of Fact’s opinion.

#### **1.4-10 ADJOURNMENT AND CONCLUSION**

The presiding officer may adjourn the hearing and reconvene the same at the convenience of the participants without special notice. Upon conclusion of the presentation of oral and written evidence and argument, the hearing shall be closed. The Trier of Fact shall thereupon, outside of the presence of any other person with the exception of the hearing officer, conduct its deliberations and render a decision and accompanying report.

#### **1.4-11 DECISION OF THE TRIER OF FACT**

Within 30 calendar days after final adjournment of the hearing, the Trier of Fact shall render a decision which shall be accompanied by a written report that contains findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached, which shall be in sufficient detail to enable the parties, any appellate review board, and the Board to determine the basis for the Trier of Fact's decision on each matter contained in the notice of charges. The final decision of the Trier of Fact must be sustained by a majority vote of the members voting. The decision and report shall be delivered to the DIO and the Chief Executive Officer. At the same time, a copy of the report and decision shall be picked up by the Physician in Training from the Hospital, with acknowledgment of receipt; or delivered to the Physician in Training by messenger, courier delivery service, or United States Postal Service, first-class postage prepaid, registered or certified mail, return receipt requested. The decision of the Trier of Fact shall be considered final, subject only to the right of appeal to the Board as provided below. If the final action must be reported to the Medical Board of California, or other state licensing authority having jurisdiction over the Physician in Training, or the National Practitioner Data Bank, said written decision shall state that the decision, if adopted by the Board, will be reported to the appropriate state or federal entities.

#### **1.5 APPEALS TO THE BOARD**

##### **1.5-1 TIME FOR APPEAL**

Within 10 calendar days after the date of receipt of the Trier of Fact's decision, either the Physician in Training or the training program may request an appellate review by the Board. Said request shall be delivered to the Chief Executive Officer in writing by messenger, courier delivery service or by United States Postal Service, first-class postage prepaid, certified or registered mail, return receipt requested, and it shall include a brief statement of the reasons for the appeal. If such appellate review is not requested within such period, both sides shall be deemed to have accepted the action involved and it shall thereupon become the final action of the training program. Such final recommendation shall be subject to review and action by the Board at its next regularly scheduled meeting.

##### **1.5-2 REASONS FOR APPEAL**

The reasons for appeal from the hearing shall be: (a) substantial failure to comply with the procedures required by this Article or applicable law in the conduct of the hearing and the rendering of the decision so as to deny the Physician in Training a fair hearing; or (b) the decision was not supported by the evidence

based upon the hearing record or such additional evidence as may be permitted pursuant to this Article.

### **1.5-3 TIME, PLACE, AND NOTICE**

When appellate review is requested pursuant to the preceding subsection, the Board shall, within 30 days after the date of receipt of such an appeal notice, give the Physician in Training and the DIO notice of the time, place, and date of the appellate review. The date of appellate review shall not be less than 30 days nor more than 90 calendar days from the date of receipt of the request for appellate review; provided, however, that when a request for appellate review is received from a Physician in Training who is under suspension which is then in effect, the appellate review shall be held as soon as the arrangements may reasonably be made, not to exceed 45 calendar days from the date of receipt of the request for appellate review. The time for appellate review may be extended for good cause by the Board, or appeal board (if any).

### **1.5-4 APPEAL BOARD**

When an appellate review is requested, the Board may sit as the appeal board or it may appoint an appeal board which shall be composed of Board members and shall have at least three members. Knowledge of the matter involved shall not preclude any person from serving as a member of the appeal board, so long as that person did not take part in a prior hearing on the same matter or act as accuser, investigator, fact finder, or initial decision maker in the same matter. Members shall gain no financial benefit from the outcome. The appeal board may select an unbiased attorney to assist it in the proceeding, but that attorney shall not be entitled to vote with respect to the appeal. The attorney selected by the Board shall not be the attorney that represented either party at the hearing before the Trier of Fact.

### **1.5-5 HEARING PROCEDURE**

The proceedings by the appeal board shall be in the nature of an appellate hearing based upon the record of the hearing before the Trier of Fact, provided that the appeal board may accept additional oral or written evidence, subject to a foundational showing that such evidence could not have been made available to the Trier of Fact in the exercise of reasonable diligence and subject to the same rights of cross-examination or confrontation provided at the Trier of Fact hearing; or the appeal board may remand the matter to the Trier of Fact for the taking of further evidence and for reconsideration of its decision in light of such further evidence. Each party shall have the right to present a written statement in support of his/her/their position on appeal or to appear personally and make oral argument. If requested, each party shall have the right to be represented by an attorney.

### **1.5-6 DECISION**

The appeal board may conduct deliberations outside the presence of the parties and their representatives. Within 15 calendar days after the appellate review proceedings the appeal board shall render a final decision in writing. The appeal board may affirm, modify, or reverse the Trier of Fact's decision, or, in its discretion remand the matter for further review and recommendation by the Trier of Fact. The Appeal Board shall give great weight to the Trier of Fact's factual findings within its scope of expertise and shall not act arbitrarily or capriciously. At all times, the appeal board shall be entitled to exercise its independent judgment. Copies of the decision shall be picked up by the Physician in Training from the Hospital, with acknowledgment of receipt; or delivered to the Physician in Training and to the DIO, by messenger, courier delivery service or by United States Postal Service, first-class postage prepaid, certified or registered mail, return receipt requested.

### **1.5-7 FURTHER REVIEW**

Except where the matter is remanded for further review and recommendation pursuant to this Article, the final decision of the appeal board following the appeal procedures set forth in this Article shall be effective immediately and shall not be subject to further review. However, if the matter is remanded to the Trier of Fact, it shall promptly conduct its review and make its recommendations to the appeal board in accordance with the instructions given by the appeal board. This further review process and the time required to report back shall not exceed 30 calendar days in duration, except as the appeal board may otherwise stipulate.

### **1.5-8 RIGHT TO ONE HEARING**

Except in circumstances where a new hearing is ordered by the Board or a court, no Physician in Training shall be entitled as a right to more than one hearing and one appellate review on any matter which shall have been the subject of action by either the training program and Program Director or the Board or by both.

## **1.6 SUMMARY ACTIONS**

Notwithstanding the foregoing, the Program Director, Division Head, Department Head, DIO, or Chief Executive Officer may summarily suspend or restrict a Physician In Training from the training program where the failure to take that action may result in an imminent danger to the health of any individual, provided that the Physician In Training is subsequently provided with the notice and hearing rights set forth above.