1.0 Application, Definitions and Statement of Policy

1.1 Policy Application: As used in this policy, the term resident refers and applies to any individual at any level of graduate medical education enrolled in a formal training program at Montefiore Medical Center (Montefiore), but shall not specifically include (1) those individuals who are on the payroll of the NYC Health & Hospitals Corporation (HHC), Albert Einstein College of Medicine (AECOM), or an employer other than Montefiore, in which case the policies of the employing institution shall apply, or (2) those individuals who by virtue of an agreement are not subject to this policy.

1.2 Statement of Policy:

1.2.1 This policy is instituted pursuant to the requirements of the Accreditation Council for Graduate Medical Education (AACGME).

1.2.2 Every resident enrolled in a residency program at Montefiore shall have the right to due process in accordance with the provisions of this policy when an adverse action is recommended or imposed by the Program Director or clinical department in which the resident is training.
Adverse action shall be defined so as to include any act which:

(i) prevents the resident from successfully completing the residency training program;

(ii) prevents the resident from successfully completing the current training year (or PGY level) in which the resident is enrolled;

(iii) imposes a term of suspension; and/or

(iv) prevents the resident from achieving admissibility status to take the certification examination of the American Medical Specialty Board in the specialty in which the residency program is conducted.

1.3 Participation by Residents, Faculty and Others: Any resident, faculty member, member of the medical staff, or other Montefiore personnel who may have information relevant to the facts and circumstances underlying a (proposed or implemented) adverse action shall, if requested by any reviewing committee or hearing panel for which this policy provides: (i) appear before such committee or panel and provide responses to specific questions, (ii) provide the committee or panel with copies of any Montefiore documents in his or her possession or control that the panel may request, and (iii) cooperate with the panel=s efforts to ascertain the pertinent facts.
2.0 Summary or Interim Action

Notwithstanding any of the time periods or steps involved in the departmental resolution or hearing procedures set forth in this policy, Montefiore or representatives of any affiliated institution to which the resident is rotating, may at any time, when there is a reasonable basis for such action, impose a summary or interim, precautionary action, including but not limited to suspension, probation, or administrative or other restriction of the individual’s residency or professional and/or research functions, and including summary termination, in order to protect the health and safety of patients or other individuals at the institution(s) or the integrity of research, or when Montefiore reasonably believes that the resident engaged in illegal or immoral act(s) that are relevant to the practice of medicine. This shall not affect the resident’s rights to resort to any of the procedures provided for in this Policy which might otherwise be applicable, provided, however, that the imposition of the summary or interim action will take place in advance of such procedures and will remain in effect during the pendency thereof and until and unless reversed or modified as a result thereof. Authority to impose any of the actions provided for in this paragraph shall be with the Senior Vice President - Chief Medical Officer or his/her designee.

3.0 Departmental Procedures

3.1 Departmental Resolution: Whenever a pattern of poor performance prompts the chairperson to consider imposing an adverse action, the department, through its
chairperson, shall attempt to resolve the issues giving rise to the potential adverse action. The procedure for resolving such issues may, but need not necessarily, include a meeting(s) with the resident and/or others involved in the issues. In the event the matter cannot be resolved informally by the department chairperson, a departmental review pursuant to Section 3.2 of this policy may be initiated if in the discretion of the chairperson such review may be of value in reaching a resolution. If the chairperson determines not to convene a departmental review and the matter cannot be resolved informally at the departmental level, the department chairperson shall provide the resident with a written notification (the chairperson=s notice) that will: (1) state the adverse action recommended or imposed and the general reasons for it; (2) inform the resident of the determination not to convene a departmental review; (3) inform the resident that the resident shall have the right to request a hearing under Section 4.0 of this policy; and (4) inform the resident that a request for a hearing must be in writing received by the department chairperson within ten (10) days from the resident=s receipt of the chairperson=s notice or the resident will be deemed to have waived the right to a hearing and to have accepted the adverse action involved. A copy of this policy shall accompany the chairperson=s notice. In the event of a hearing, the hearing panel shall draw no inferences from the department chairperson=s determination not to have initiated a departmental review. In the event that the Senior Vice President - Chief Medical Officer, in consultation with the Montefiore Office of Legal Affairs, determines that the department chairperson
has a conflict of interest or that there may be an appearance of impropriety if such substitution is not made, or that reasons of fairness and equity otherwise render appropriate, the Senior Vice President - Chief Medical Officer shall designate another senior faculty member within the department or in another appropriate department to substitute for the chairperson for purposes of this Policy.

3.2 Departmental Ad Hoc Committee Review:

3.2.1 If the departmental chairperson determines in his or her discretion to initiate a departmental review, the chairperson shall provide the resident with a written notification of that determination, which shall include a statement of the adverse action recommended or imposed and the general reasons for it, and shall be accompanied by a copy of this policy.

3.2.2 The departmental review shall be conducted by a departmental ad hoc committee comprising at least three attending physicians from within the department appointed to the panel by the department chairperson. The departmental ad hoc committee shall not include anyone who was directly involved in the underlying matters giving rise to the adverse action or who actively participated in the determination to propose or impose the adverse action. If the inclusion of three attendings from within the department is not appropriate given circumstances such as, but not limited to, the size of the department and/or the number of attending physicians
who have been involved in the underlying circumstances or
determinations, the department chairperson may request that the Senior
Vice President - Chief Medical Officer appoint attending physicians from
another appropriate department.

3.2.3 The proceedings of the departmental ad hoc committee shall be informal.
The committee shall interview the resident and Program Director, shall
request and receive relevant documents, and may interview other persons
who may provide relevant information. The committee shall make a
record of all interviews and shall keep a record of all documentary
evidence received by it. The manner of making such a record shall be
determined by the committee with advice from the Office of Legal
Affairs at Montefiore. The Office of Legal Affairs shall advise the
committee with regard to all legal and procedural matters regarding the
activities of the committee.

3.2.4 Where possible, the departmental ad hoc committee shall attempt to
resolve the issues giving rise to the adverse action to the mutual
satisfaction of the department chairperson and the resident. The
departmental ad hoc committee activity shall be concluded when the ad
hoc committee issues a report stating that a mutually satisfactory
resolution has been achieved and setting forth the resolution, or, if the
committee determines in its discretion that further efforts to bring about a resolution would be fruitless, when the ad hoc committee issues a report stating that no resolution could be achieved. The report shall be furnished to the department chairperson and the resident. In the case of a report that states that no resolution was achieved, the report shall also include a statement notifying the resident: (1) that the resident shall have the right to request a hearing under Section 4.0 of this policy; and (2) that a request for a hearing must be in writing received by the department chairperson within ten (10) days from the resident’s receipt of the ad hoc committee report or the resident shall be deemed to have waived the right to a hearing and to have accepted the adverse action involved.

4.0 Hearing

4.1 Notice: When an adverse action has been recommended or imposed and the matter cannot be resolved at the departmental level as provided in this policy (either under circumstances where the department chairperson determined not to convene a departmental review pursuant to Section 3.2 of this policy, or a departmental review was convened but no resolution was achieved), the resident shall be entitled to a hearing. All requests for hearings shall be in writing. In cases in which the department chairperson has determined not to convene a departmental review, the request for the hearing must be received from the resident by the department chairperson no later than ten (10) days after receipt of
the notice from the chairperson of the determination not to convene a
departmental review. In the case where a departmental review took place, the
hearing request must be received from the resident by the department chairperson
no later than ten (10) days after receipt of the ad hoc committee report stating that
no resolution was achieved. In the event the resident does not request a hearing
within the time and in the manner required by this policy, the resident shall be
deemed to have waived the right to a hearing and to have accepted the adverse
action involved.

4.2 Hearing Panel: Upon the request for a hearing, the Senior Vice President - Chief
Medical Officer or a designee shall appoint a hearing panel which shall consist of
no more than five physicians, at least two of whom shall be residents at
Montefiore. The balance of the hearing panel may be comprised of full-time
attending physicians. No person who was directly involved in the underlying
matter giving rise to the adverse action or who actively participated in the
determination to propose or impose the adverse action, or who served on a
departmental ad hoc committee if any in the matter, shall be a member of the
hearing panel. The panel shall select one of its members to serve as hearing panel
chairperson, unless the Senior Vice President - Chief Medical Officer or designee
designates the panel chairperson.

4.3 Hearing Procedure:
4.3.1 **Statement of Reasons:** No less than fifteen (15) days prior to the commencement of the hearing, the hearing panel shall require that it and the resident each receive a copy of the statement of reasons that shall provide, with reasonable particularity, the facts or circumstances giving rise to the adverse action. The resident may, but is not required to, file a rebuttal to the statement. Any rebuttal statement must be delivered to the chairperson of the hearing panel, with a copy to the chairperson of the department, not less than fifteen (15) days prior to the pre-hearing conference (see Section 4.3.3, below) or, if the hearing panel informs the department chairperson and the resident that there shall not be a pre-hearing conference, at least fifteen (15) days prior to the commencement of the hearing.

4.3.2 **Attorneys:** The department and the resident may be represented by legal counsel throughout the hearing. Counsel for the department and for the hearing panel shall be attorneys employed by the Montefiore Office of Legal Affairs unless the Office of Legal Affairs, in its discretion, determines that outside counsel shall be engaged. Nothing in this policy shall prohibit the same attorney from representing the department and providing advice to the hearing panel with regard to procedural matters. If the resident intends to be represented by legal counsel at the hearing, the resident or such counsel shall provide the name of the attorney to the
Office of Legal Affairs at least ten (10) days prior to the pre-hearing conference, or, if the hearing panel informs the department chairperson and the resident that there shall not be a pre-hearing conference, at least ten (10) days prior to the commencement of the hearing.

4.3.3 **Pre-Hearing Conference**: The hearing panel may, in its discretion, determine to conduct a pre-hearing conference, and if so shall so notify the department chairperson and the resident. In that event, the conference shall be attended by the resident, the department chairperson or a designee and all legal counsel involved. The pre-hearing conference shall take up such matters as the hearing panel shall determine to (1) dispose of non-substantial issues prior to the commencement of the hearing; (2) clarify and establish procedures, consistent with this policy, as may be necessary or appropriate for the hearing; (3) identify facts and issues in dispute and not in dispute, and to encourage the department and the resident to agree upon as many of the facts as possible; (4) obtain from the department and the resident the identification and/or copies of documents to be offered at the hearing; (5) obtain from the department and the resident the identification of witnesses whose testimony shall be offered at the hearing; and (6) otherwise make such rulings and determinations and take such actions, consistent with this policy, as may be appropriate to facilitate the orderly conduct of the hearing proceeding. The hearing
panel may request that the parties submit pre-hearing conference statements, which shall be in such form and cover such matters as the hearing panel shall determine.

4.3.4 Costs: Montefiore and the resident shall each bear its, and his or her, own costs, including attorney’s fees, witness fees, expert consultation fees, and such other similar expenses if any. Montefiore shall bear the administrative costs associated with the conduct of the hearing, including the recording and preparation of hearing transcripts. Montefiore shall pay the costs of transcripts on the basis of normal delivery time, unless the panel determines in its discretion that expedited or daily delivery is appropriate.

4.3.5 Confidentiality: The hearing and all proceedings in connection therewith, including the record of the hearing and all evidence submitted to the hearing panel, shall be deemed confidential, unless such information was already known or otherwise becomes available in a nonconfidential manner to parties outside the hearing, but in such cases the fact that such information was submitted to the hearing panel or part of the hearing or proceedings shall nevertheless remain confidential. The hearing panel, the department and the resident are advised of such confidentiality by this policy, but may be further specifically advised of it by the panel, and
whether or not they are so further advised, shall not disclose such confidential information to anyone outside the hearing except as may be required by law. Without limiting the generality of the foregoing exception, nothing in this policy shall be deemed to preclude the parties or any other participant in the hearing from disclosing any part of the record of the hearing in any action or proceeding before a court or governmental agency of competent jurisdiction in which the record or such part is relevant, subject to any applicable privileges.

4.3.6 **Time and Place of Hearings:** The hearing panel shall determine the date, time and place of all hearing sessions and shall notify each party in writing. No adjournment of any hearing shall be permitted except upon the consent of the hearing panel. The hearing panel may provide such consent and may otherwise make known its processes, procedures, opinions and decisions through the chairperson of the hearing panel or through legal counsel to the hearing panel. If required by the hearing panel, the department and the resident (including legal counsel thereto) shall communicate to the hearing panel only through the hearing panel=s legal counsel or such other individual as the hearing panel shall designate.

4.3.7 **Additional Provisions regarding the Conduct of the Hearing:** The following shall govern the conduct of all sessions of the hearing:
(i) The department, as proponent of the adverse action, shall have the burden to come forward and demonstrate the factual basis and reasoning which support the recommended or imposed adverse action.

(ii) The panel shall uphold the adverse action unless it finds that the action was arbitrary, capricious, or that a factual basis sufficient to justify the action is not supported by a preponderance of the evidence.

(iii) All testimony shall be taken under oath.

(iv) The proceedings of the hearing shall be kept by stenographic record and copies shall be made available to the department and the resident at the expense of Montefiore, as provided in Section 4.3.4 of this policy.

(v) All documentary evidence submitted shall be in sufficient numbers (as determined by the hearing panel) to provide copies to the department, the resident, each member of the hearing panel and their respective attorneys.

(vi) All evidence (oral or written) presented to the hearing panel shall be on the record. There shall be no off-the-record or ex parte communications to the hearing panel.

(vii) At all sessions of the hearing, a majority of the hearing panel members shall constitute a quorum. If a quorum is present, the
hearing shall proceed. Hearing panel members not in attendance for all or part of any hearing session shall be required to read the transcript(s) thereof before panel deliberation begins.

(viii) The department and the resident shall be entitled to be represented by attorneys throughout the hearing process, as provided in Section 4.3.2 and subject to Section 4.3.4 of this policy.

(ix) The department and the resident shall be entitled to call, examine and cross-examine witnesses and to introduce relevant documents and physical evidence, subject to subsection (xi), below, and to Section 4.3.8 of this policy.

(x) The hearing panel shall have the right to call witnesses of its own and to question any witnesses produced by the department or the resident.

(xi) The hearing panel shall determine the order and conduct of the hearings; the admissibility of all evidence, whether testimonial, documentary or physical, including whether to permit any particular proposed witness to testify or to permit any type of testimony altogether (e.g., and without limitation, expert testimony); the scope of examination and cross-examination; and the time allotted for witnesses to testify; and shall, through its chairperson or legal counsel, make rulings on all objections and motions as more fully set forth in Section 4.3.8 of this policy. The
hearing panel may, in its discretion or upon the request of either party, exclude witnesses from being present who are not currently testifying.

(xii) Official notice may be taken by the hearing panel, either before or after submission of the matter for decision, of any generally accepted technical or scientific matter relating to the issues under consideration at the hearing and of any facts which may be judicially noticed by the courts of the State of New York. The hearing panel shall also be entitled to consider any relevant information on file at Montefiore and all other information which can be considered in connection with the acceptance or continuation of the resident in a residency training program at Montefiore, or the certification of the resident as having successfully completed such program, and/or the eligibility of the resident to take the specialty board examination(s). The department and the resident shall be informed of the matters to be noticed and those matters shall be noted in the record of the hearing. The department and the resident shall be given the opportunity, upon request, to refute the officially noticed matters in the manner to be determined by the hearing panel.
(xiii) The hearing panel decision shall be based on the evidence presented at the hearing and matters officially noticed by the panel pursuant to subsection 4.3.7(xii), above.

4.3.8 Additional Rules of Procedure: The hearing need not be conducted in accordance with formal rules of evidence or according to any other formal rules of law or procedure. Any relevant evidence and information upon which reasonable people may rely in the conduct of serious business matters, regardless of the existence of any common law or statutory or court rules that might make improper the admission of such evidence, shall be received by the hearing panel as determined by the hearing panel. The department and the resident shall each be permitted to comment on information offered by the other and admitted into evidence, and to produce other information (subject to its admissibility into evidence) to refute such information. The chairperson of the hearing panel, directly or through legal counsel, shall rule on all questions of admissibility of evidence, objections to questions or responses, and any other similar matters, and motions related to evidentiary or any other matters.

4.3.9 Conclusion of Hearing: The hearing panel shall have the discretion to conclude the evidentiary portion of the hearing proceedings after giving
each party (the department and the resident) a reasonable opportunity to present relevant evidence and information.

4.3.10 **Written Submissions**: At the conclusion of the evidentiary portion of the hearing process, the hearing panel may, in its discretion, request written submissions from the parties within a time frame established by the hearing panel.

4.3.11 **Findings and Decision**: Upon conclusion of the evidentiary portion of the hearing process and the receipt of written submissions (if requested by the panel), the hearing shall be officially closed. Thereafter, the hearing panel shall deliberate outside the presence of any other person except its legal counsel and, upon conclusion of its deliberations, shall make written findings and render its decision, which shall contain a statement of the reason(s) for its decision. The hearing panel shall endeavor to render its decision within twenty (20) days following the conclusion of the hearing. The decision shall take such form as the hearing panel shall determine and shall constitute the hearing panel=s decision with respect to the adverse action.
4.3.12 **Notices:** All notices required in connection with the hearing process shall be in writing and sent by regular mail, overnight mail, fax or such other means as shall be determined by the hearing panel.

4.3.13 **Disposition of Hearing Report:** The hearing panel report, including its findings and decision, shall be delivered to the Office of Legal Affairs, which shall forward it, certified mail, return receipt requested, to the resident and to the department chairperson, together with a notice to the party to whom the decision of the hearing panel was adverse in whole or in part, stating (1) that such party has the right to appeal the determination of the hearing panel; (2) the time and the method for requesting such an appeal, as set forth in Section 5.2 of this policy; and (3) that if an appeal is not requested in the time and manner provided by this policy, the recipient of the notice shall be deemed to have waived the right to appeal and to have accepted the decision of the hearing panel.

5.0 **Appeal**

5.1 **Right to Appeal:** The resident shall have the right to appeal the determination of the hearing panel to the president of Montefiore if it is adverse to the resident. If the decision of the hearing panel is adverse to the department, the department shall also have the right to appeal the adverse determination.
5.2 **Notice of Appeal**: Any party desiring to appeal from an adverse determination of the hearing panel (an "appellant") must give written notice to the president of Montefiore of the appellant=s intention to appeal, which must be received by the president within ten (10) days after the receipt by the appellant of the hearing panel=s decision. If the department or the resident, as the case may be, does not request an appeal in the time and manner provided by this Section 5.2, such party shall be deemed to have waived the right to appeal and to have accepted the decision of the hearing panel.

5.3 **Appeal Determination**: In the event an appeal is duly and timely requested, the president shall undertake an appellate review of the matter. The president shall make the final determination as to each finding upon which the appeal is based. Such final determination shall be based on the record of the hearing proceedings. The president shall endeavor to issue a final determination(s) within thirty (30) days of his/her receipt of the notice(s) of appeal.

6.0 **Computation of Receipt Dates**

Communications required or permitted under this policy, including without limitation notices, requests, reports, decisions and determinations (collectively, ACommunications@), shall be deemed to have been received on the actual date of receipt if made by certified mail, return receipt requested, on the next business day if made by
overnight mail, on the date of transmission or personal delivery if made by fax or personal delivery, and five (5) days after mailing if made by regular mail.

7.0 Address of Resident for Receipt of Communications

Communications to the resident if made by personal delivery will be delivered directly into the hands of the resident; communications mailed by regular or overnight or certified mail, return receipt requested, will be addressed to the resident at his or her last known address on file in the Montefiore House Staff Office. It is the responsibility of the resident to determine what address is currently on file for him or her in the House Staff Office, and to determine whether that address should be updated with the House Staff Office. In the event the resident updates his or her address with the House Staff Office at any time after activities commence under this policy, it shall be the responsibility of the resident to notify the department chairperson in writing of the updated address. The departmental chairperson shall provide a copy of any such notice from the resident to the ad hoc committee if one is convened, and to the hearing panel if any, and in the event of an ad hoc committee review or a hearing, the department chairperson shall also provide a copy to the Montefiore Office of Legal Affairs.

Effective 10/99