ARTICLE 17: GRIEVANCE & ARBITRATION PROCEDURE

A. Definitions

1. Grievance: A grievance is defined as a claim that the employer has violated a specific provision of this Agreement during the term of this Agreement, or has taken an adverse administrative action, during the term of this Agreement. Matters that are clinical, academic, or implicate professional standards of conduct are not subject to this Article.

2. Process: All grievances will be filed with the office of UC Irvine Enterprise Workforce Relations.

3. Eligibility: A grievance may be brought to the attention of the University through this procedure by an individual employee within the bargaining unit or by the union. A grievance may not be brought through this procedure by the University.

4. Consolidation: Grievances brought by or related to two or more bargaining unit employees, and multiple grievances by or related to the same employee, which concern the same incident, issue or course of conduct, may be consolidated for the purposes of this procedure upon mutual agreement of the University and the union, provided that the time limits described in this Article shall not be shortened for any grievance because of the consolidation of that grievance with other grievances. Notwithstanding the foregoing, the union can on its own bring a “class” grievance on behalf of 2 or more bargaining unit members.

5. Representation: An employee shall have the right to be represented in all steps of the grievance and arbitration procedure by one person of the employee’s choice, other than a University employee who is designated as supervisory, managerial or confidential. A union representative shall have the right to be present at all steps of the grievance and arbitration procedure.

6. Academic Decisions & Clinical Misconduct: Decisions or judgments by the University related to all academic matters, including determinations that a resident has failed to satisfy any requirements of the UC Irvine GME training program, such as clinical competence and professional standards of conduct shall not be subject to review under the grievance and arbitration procedure set forth in this Agreement. Such decisions may result in Academic and/or Administrative Actions listed in the University of California Irvine Graduate Medical Education Academic Due Process and Leave Guidelines. These decisions and academic and/or administrative actions shall only be subject to review as provided under the University of California Irvine Graduate Medical Education Academic Due Process and Leave Guidelines.

B. Procedure
1. **Step 1: Informal Review.** As soon as practicable, the employee and/or the union shall discuss the grievance with the Program Director. All parties shall informally attempt a resolution of the matter before a formal written grievance is filed. If the grievance is not resolved through informal discussions with the Program Director, the employee may file a formal grievance as set forth below.

2. **Step 2.** A formal grievance must be filed in writing on a grievance form provided by UC Irvine labor relations to the UC Irvine Senior Director, Enterprise Workforce Relations. The form may be amended by mutual agreement of the parties. The Senior Director, Enterprise Workforce Relations must receive the written grievance within thirty (30) calendar days after the date on which either the employee or the union knew of the event or action which gave rise to the grievance or within fifteen (15) calendar days after the date of the employee’s last day on pay status. Formal grievances must set forth:

   a. The specific section and provisions of the Agreement alleged to have been violated;
   b. The action grieved and how it violated the above mentioned provisions;
   c. The date of the occurrence of the alleged violations;
   d. How the grieving employee was adversely affected;
   e. The name of the employee representative;
   f. The date the employee discussed the alleged violation with the supervisor; and
   g. The remedy requested.

   The appropriate administrator in the UC Irvine School of Medicine shall review the grievance and meet with the employee and representative to discuss the grievance. Within fifteen (15) calendar days after receipt of the grievance, or within fifteen (15) calendar days after the meeting is held, a written response will be issued to the employee with a copy to the union representative. If the response is not issued within the established time limits or the grievance is not resolved, the grievance may be appealed to Step 3.

3. **Step 3.** If the grievance is not resolved at Step 2, the grievance may be appealed in writing by the employee or union representative to the Senior Director, Enterprise Workforce Relations. The written appeal must be received within fifteen (15) calendar days of the date on which the written response at Step 2 was issued.

   a. Within fifteen (15) calendar days of the receipt of the Step 3 appeal, the designated UC Irvine Labor Relations administrator shall schedule a meeting to discuss the grievance. During the meeting the employee and union representative shall present all evidence relevant to the grievance. The Step 3 meeting may be waived by mutual agreement and confirmation in writing by either party.
b. Decision: The University shall render a written decision within fifteen (15) calendar days following the date of completion of the Step 3 meeting or agreement to waive the Step 3 meeting. The decision will be mailed to the employee and the union representative. A copy of the decision shall be sent by certified mail and/or read receipt electronic mail to the union. Such decision shall not set any precedent. The union may appeal the grievance to arbitration as outlined below within thirty (30) calendar days of the date on which the decision was received by the union.

c. Electronic filing: If a grievance or appeal is filed by email, the attachment must be in PDF format or similar electronic document. The union also agrees that by filing a grievance or appeal by email, all subsequent University responses may be sent by email and shall constitute service of any written response as outlined in this article.

1. UC Irvine Enterprise Workforce Relations shall notify the union of the email address where grievances and appeals may be electronically filed.
2. All subsequent University responses may be sent by email to gmmorse@cirseiu.org.

C. Time Limits

Time limits may be extended by mutual agreement of the parties in writing in advance of the expiration of the time limits, except for the Step 2 deadline for filing a formal grievance. Deadlines which fall on a university non-business day will be automatically extended to the next business day. If the grievance is not appealed to the subsequent step of the procedure within applicable time limits, and an extension has not been agreed to in advance, the grievance will be considered settled on the basis of the University’s written response. Failure by the University to reply to the employee’s grievance within the time limits specified automatically grants to the union the right to process the grievance to the next step of the grievance procedure.

D. Release Time

1. Whenever the University and the union convene a meeting to mutually resolve a grievance during the scheduled work time of an employee who is a grievant or a representative, reasonable release time shall be granted to the employee(s) involved upon the union’s advance request.

2. Bargaining unit members called to participate at such meetings may be released from work with reasonable advance request and grant leave with pay for reasonable time spent in meetings.
E. Resolution

Informal resolution may be agreed upon at any stage of the grievance process. Prior to the resolution of any formal grievance in this bargaining unit, the union shall be notified. Any offers of settlement are off the record and not admissible at any step in the grievance procedure or at arbitration.

F. Arbitration:

1. Request for Arbitration: A request for arbitration may be made only by the union and only after exhaustion of the grievance procedure. The request for arbitration must be received by the UC Irvine Senior Director, Enterprise Workforce Relations within twenty (20) calendar days of the receipt of the Step 3 grievance decision by the union from the University. Proof of service must accompany these mailings. The date of the arbitration request shall be the date received by Enterprise Workforce Relations or, if mailed by United States Postal Service, the postmark.

2. Selection of Arbitrators: Within fourteen (14) calendar days of a request for arbitration, the parties shall meet and attempt to mutually agree to the selection of any qualified and available person to serve as an arbitrator. Should the parties fail to select the arbitrator, they shall use the list of arbitrators herein by randomly drawing three names. The first arbitrator’s name drawn shall be contacted. If the arbitrator’s first available date is more than sixty (60) calendar days from the date of the request for arbitration, the parties may agree to contact the next arbitrator’s name drawn. If neither the second nor the third arbitrator is available within sixty (60) calendar days, the selection process shall be repeated until an arbitrator is selected.

3. Bifurcation: The arbitration process shall be bifurcated where the University asserts that there are procedural (e.g., timeliness, standing) and/or arbitrability issues that preclude the union from proceeding to a hearing on the merits of the claim.

   a. Where the University requests bifurcation prior to the selection of an arbitrator, the issue(s) of arbitrability shall be resolved in a hearing prior to and separate from the hearing (if any) about the substantive facts and/or allegations in dispute. In such a case, the parties shall use the arbitrator selection process to select two arbitrators. The first arbitrator will be selected to hear the issues of arbitrability and the second arbitrator will be selected to decide the merits of the case if the issues are determined to be arbitrable. Unless either party requests a full and complete arbitration proceeding on the arbitrability issue, the first arbitrator shall issue either a bench decision, or upon either party’s request, a written decision within seven (7) calendar days of the completion of the arbitrability hearing.

   b. In the event that the first arbitrator, as a result of the arbitrability hearing
If referenced above determines a matter to be arbitrable, the first arbitrator shall have no authority to decide the issues pursuant to the merits of the case. A hearing on the merits of the case will be scheduled with the second arbitrator, unless the parties agree otherwise.

c. If, following the selection of the arbitrator, the University raises for the first-time issue(s) of arbitrability, a single hearing on the issue of arbitrability and the substantive facts will be held, unless the parties agree otherwise.

G. Arbitration Process

1. Process

a. The arbitration proceeding shall provide an opportunity for the union and the University to examine and cross examine witnesses under oath and to submit relevant evidence. Relevant materials and the names of all witnesses who are to be called shall be identified by the parties prior to the hearing. To the extent possible, witnesses and materials should be identified at least seven (7) calendar days prior to the hearing.

b. The arbitrator may not admit settlement offers as evidence at the arbitration hearing.

c. Prior to the arbitration, the union and the University shall attempt to stipulate as to the issue(s) to be arbitrated and to as many facts as possible.

d. Settlement proposals may be offered at any stage prior to or during arbitration.

e. The union shall have full authority to settle, withdraw, or otherwise dispose of any grievance brought on behalf of the union and/or on the behalf of residents. An agreement by the parties to settle, withdraw, or otherwise dispose of a grievance appealed to arbitration shall be binding upon the grievant(s).

f. The arbitration hearing shall be closed to the public, unless the parties otherwise agree in writing.

g. The arbitrator, following the close of the record of the hearing, shall consider the evidence presented and render a written decision. The written decision shall include a brief description of each issue under submission, the position of the parties, the findings of facts, the arbitrator’s conclusion(s) as to the violation of the agreement, if any, and, where appropriate, a remedy.

h. The arbitrator’s fees shall be borne equally by the parties. Expenses for stenographic or other services or facilities shall be borne by the party requesting
such services or faculties, unless the parties agree otherwise in advance.

i. Unless there is an agreement by both parties to modify the scope of the hearing, the issue(s) to be heard by the arbitrator shall solely and in its entirety be restricted to the issue(s) presented at Step 2. Issues or allegations which were known or should have been known to either party but not introduced by the Step 2 process shall not be introduced by either party at the arbitration hearing.

2. Scope of Arbitrator’s Authority

The arbitrator shall consider the evidence presented and render a written decision within thirty (30) calendar days of the close of the record of the hearing. The arbitrator’s decision will set forth the findings of fact, reasoning, and conclusions on issues submitted by the parties. The arbitrator’s authority shall be limited to determining whether the University has violated arbitrable provisions of this contract and to ordering corresponding remedies. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this contract nor shall the arbitrator have the authority to review any academic or clinical judgment. To the extent that the University’s action is based upon academic or clinical judgment, the arbitrator shall have no authority or jurisdiction to substitute his/her judgment for that of the University and its agents.

The arbitrator shall have the authority to subpoena documents and to require the attendance of witnesses upon the reasonable request of either party but not upon his or her own motion. The expense of service and appearance fees, if any, shall be borne entirely by the party requesting the subpoena of witnesses and each party shall, in advance of the hearing date, inform the other party of the identity of witnesses it subpoenaed. The arbitrator shall be the sole judge of the relevancy and materiality of the evidence and testimony offered. The arbitrator may receive and consider evidence but shall give appropriate weight to any objections made. All documents to be considered by the arbitrator shall be filed at the hearing, or within the post-hearing time lines agreed to by the parties during the hearing.

3. Decision and Remedy

a. If the grievance is sustained in whole or in part, and subject to the limitations set forth herein, the remedy shall not exceed restoring to the employee the pay, benefits, or rights lost as a result of a violation of this Agreement, less any compensation and benefits received from any source, including, but not limited to, workers’ compensation and unemployment insurance benefits. The decision of the arbitrator, within the limits described herein, shall be final and binding and distributed to the parties within thirty (30) calendar days of the close of the record of the hearing, unless the arbitrator notifies the parties that the time
frame cannot be met.

b. The arbitrator shall have no authority to award back wages or other monetary reimbursement, nor shall the University be liable on a grievance claiming back wages or other monetary reimbursements for:

1. Any period of time during which an extension of time limits has been granted by the employer at the request of the union; or

2. Any period of time between the first date the arbitrator is available for an arbitration hearing and the date of the hearing, when the first date of the hearing, when the first date is rejected by the union; or

3. Any period of time greater than sixty (60) calendar days prior to the date of the informal review, Step 1 of the grievance procedure.

4. Release Time and Pay Status:

   a. Whenever an arbitration hearing or a meeting convened to resolve the arbitration is scheduled during the regular work time of an employee who is a grievant or a representative, reasonable release time with pay shall be granted to such employee(s) involved so long as a written request for release time is received at least 24 hours in advance. Employees so released shall be granted leave with pay.

   b. When arbitrations or meetings occur outside an employee’s scheduled work time, no employee release time shall be granted. Employees called as witnesses may be released from work for reasonable time spent in meetings convened to resolve the arbitration and for the arbitration hearing. Time spent in investigating and preparation for arbitration shall not be on pay status.

5. List of Arbitrators

   a. Lou Zigman
   b. Anthony Miller
   c. Fred Horowitz
   d. Bob Bergeson