

# HOA Grievance/Complaint

To: Hakim Berry, Director of Labor Relations  
Brian Sumner, HOA Contract Administrator

Date: October 17, 2023

## **CONTRACT VIOLATION:**

Article XIII: Paid Time Away, MOU Regarding Covid-19, and any and all other relevant or implicated provisions of the current Collective Bargaining Agreement (CBA) between the University of Michigan Regents (Employer) and the University of Michigan House Officers Association (HOA).

## **SUMMARY:**

On or around 10/3/23, the HOA was notified that three House Officers in the Anesthesiology Department: [REDACTED], [REDACTED], and [REDACTED], were recently off with Covid-19 symptoms. All three followed the published “Covid-19 Work Restrictions for University of Michigan Workforce Members” last updated 5/1/23. In accordance with this policy all three were required to be off work for five or more days. No FMLA paperwork was provided or initiated for these unit members.

Upon returning to work, each House Officer was told that they would need to forgo an equal number of pre-approved vacation days or face a training extension due to their absence from work for following the Employer’s Covid policy. They were also told this was the policy of the American Board of Anesthesiology (ABA).

The ABA’s most current Absence from Training Policy allows House Officers to be absent for 60 working days (defined in the policy as “12 weeks”) in years 1-3 of the program without any impact on training length. The policy also provides House Officers in Anesthesiology an additional 40 days (defined in the policy as “8 weeks”) that can be granted for FMLA qualifying illnesses. The policy states it is “designed to align with circumstances covered by the Family and Medical Leave Act” and allows for the additional 40 days to be granted for conditions such as a serious medical event, the sickness of a family member, or the birth of a child. Leave exemptions for Covid-19 do not appear anywhere in the Absence from Training Policy nor in the 2023

Policy Book of the ABA. As of the writing of this grievance, no written policy amendment regarding Covid-19 has been provided.

Article XIII Section B of the CBA permits House Officers Serious Illness Leave for incidents of serious disabling injury or illness with a duration of one week or more. The Employer and the HOA are also parties to an MOU related to Covid-19 that is still in force. That MOU permits House Officers various Special Use Time allotments for cases of self-isolation due to symptomatic Covid-19. For the affected House Officers, the CBA, the Covid MOU, and FMLA all provide them leave for a five-day disabling medical condition, which all of them were subject to when they had symptomatic Covid. Nowhere in the CBA or the Covid MOU are House Officers required to burn vacation time due to sickness with Covid. In fact, past House Officers in the Anesthesiology Department have been sick with Covid under the auspices of the same policies and still graduated on time without loss of vacation or extensions in their ABA required training.

Nonetheless, [REDACTED], [REDACTED], and [REDACTED] were told that Covid-19 does not count as a serious medical condition and is thus ineligible for the additional 40 days of leave permitted by the ABA. Given the length of time each was off work with symptomatic Covid, and the definitions of serious medical condition contained in both the CBA and FMLA this stretches credulity. The Anesthesiology Department and the ABA are abusing the latitude of their discretion by offering the affected House Officers a fait accompli of draining their vacation banks or delaying their graduation from the program. This case, however, has nothing to do with the academic discretion of the Department or the ABA. Nothing in the Departmental or ABA policies mentions anything regarding clinical or academic performance, or that Covid-19 is ineligible for the 40 additional days House Officers may take. This is a situation where the Department and ABA are overreaching their authority over credentialing and academics and arriving squarely in the middle of an employment issue, where the CBA controls and is legally binding. There is no discretion being asserted here and thus all academic decision-making authority granted to programs under the CBA and Covid MOU do not apply in this case.

This would be different if there was a new written ABA policy on Covid that had some sort of force of law, but that is not the case here. This is a Department and Board that are adding unwritten caveats to existing policies for the sheer purpose of undermining the contractual rights of House Officers. When Departmental and ABA policies cover an aspect of employment, and where both entities are provided leeway in how those policies are applied, then the decisions of both the Department and the

ABA should follow the CBA. A fair and just resolution for this grievance would be for [REDACTED], [REDACTED], and [REDACTED] to be permitted to use Serious Illness Leave to cover their absences, for such absences to be counted towards their 40-day allotment under ABA policy, as has been the past practice of the Department, and for all three to suffer no extension to their residency as a result, and that they be made whole.

On Behalf of the Association,



Dominic Barbato

Staff Associate

University of Michigan House Officers Association.