

**House Officers Association  
Grievance #2023-205**

**RESPONSE TO ASSOCIATION GRIEVANCE**

**I. Introduction**

On October 17, 2023, the University of Michigan (“University” or “Employer”) received House Officers Association (“HOA” or “Union”) Grievance #2023-205, pertaining to the requirement for [REDACTED], [REDACTED], and [REDACTED], all House Officers in the Department of Anesthesiology, “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,” due to absences that were all a result of their respective COVID-19 illnesses.

The HOA claims the Employer to have violated the following:

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).

More specifically, the HOA argues all three impacted House Officers experienced illnesses that qualified as serious illnesses under the contract, and by extension, qualified for FMLA, as noted:

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.

Additionally, the HOA asserts the Department of Anesthesiology and American Board of Anesthesiology (“ABA”) added “unwritten caveats to existing policies for the sheer purpose of undermining the contractual rights of House Officers,” considering the COVID-related absences for each House Officer were determined to be “ineligible for the 40 additional days House Officers may take” under the ABA’s Absence from Training Policy.

As a remedy, the HOA seeks for “[REDACTED], [REDACTED], and [REDACTED] to be permitted to use Serious Illness Leave to cover their absences, [and] 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.”

## II. Analysis

As noted by the HOA, the CBA provides for a Serious Illness Leave in certain circumstances. Paragraph 85 of the CBA speaks to the Serious Illness Leave and reads:

To provide the Employee with confidentiality related to a serious illness, Work Connections, or its equivalent, will be utilized to obtain the necessary documentation for a paid leave under this Article. The Employer will be responsible for initiating the claim, however, the House Officer is able to do so as well. The House Officer is responsible for ensuring Work Connections receives the required documentation within a reasonable time frame or a time frame as prescribed by Work Connections.

In the case of each of the three House Officers who were absent from training due to their respective COVID-19 illnesses, only [REDACTED] and [REDACTED] qualified for a paid serious illness leave by definition under the contract, since, as delineated in Paragraph 86 of the contract, each was unable to work for at least one (1) week due to their respective illness. However, neither the absence of [REDACTED] or [REDACTED] qualified for a leave under the Family Medical Leave Act (“FMLA”). COVID-19 absences alone do not simply qualify for leave under FMLA, as there must be complicating factors that result from COVID-19 to certify as a serious health condition under FMLA. Nonetheless, the University’s HR Solutions Center provided both [REDACTED] and [REDACTED] the opportunity to provide additional information to demonstrate their respective COVID-19 related absences qualified as a serious health condition under FMLA. Neither House Officer responded to the inquiry from the HR Solutions Center. Despite receiving no response after its initial inquiry to each House Officer, the HR Solutions Center reached out again and notified each House Officer their case was considered to be resolved, but still noted its willingness to re-open their respective cases and review any “updated documentation in the future.” To date, no further documentation has been provided by either House Officer. In the case of [REDACTED], [REDACTED] absence from training did not qualify as a serious illness under the contract (nor did [REDACTED] absences qualify under FMLA), considering [REDACTED] only missed three days of scheduled training as a result of his COVID-19 infection. Two of the days during his five-day COVID-related isolation were not scheduled training days, and so [REDACTED] was not subject to a training extension as a result of his COVID-19 absences, nor was [REDACTED] required to utilize vacation time to avoid a training extension.

The absences for [REDACTED] and [REDACTED] also did not qualify under the additional 40 days that can be granted for qualifying serious illnesses under the ABA’s Absence from Training Policy. Included within the ABA’s Absence from Training Policy are Absence from Training Policy Guidelines. The Guidelines include a section entitled “Conditions or Circumstances Not Covered by This Policy” that stipulates the following:

Our Absence from Training Policy should not be applied to routine medical exams or checkups (e.g., physicals or dental exams), common colds, flu, earaches, stomach aches or other routine doctor visits or ailments. This leave may also not be used for jury duty, non-medical-related appointments, vacations or other routine life occurrences. Conditions not considered serious for purposes of this policy include:

- The common cold, flu, earaches and other ailments mentioned above, unless complications arise
- Routine medical exams
- Conditions requiring over-the-counter medication, bedrest, drinking fluids, exercise and similar activities that can be applied without a visit to a healthcare provider
- Cosmetic treatments unless they require inpatient hospital care or complications arise

In the case of each House Officer, again, there is no evidence their COVID-related absences were the result of “complications” arising from the illness, as no documentation was provided to the University’s HR Solutions Center to indicate otherwise. And while the HOA notes that “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,” the ABA informed local programs under its governance, including the Anesthesiology program at the University of Michigan, that COVID-19 related absences would need to be managed differently moving forward. One communication provided from the ABA regarding this change read as follows:

As of May 11, 2023, we no longer allow days away from training due to COVID to count under the Additional Absence from Training Policy. They must be accounted through the 60 days allowed away from training during the CA 1 – 3 years.

If a resident is out for a serious illness and it is covered under FMLA, then they can apply for the revised leave of absence policy.

With this change as of May 11, 2023, the ABA began treating COVID-19 absences in a manner consistent with influenza and similar illnesses that may necessitate short term absences from training, while still recognizing “complications [may] arise” as a result of the illness – COVID-19 or otherwise – that may qualify as a serious illness under the Absence from Training Policy. This change regarding the management of COVID-19 absences from training was communicated to Anesthesiology House Officers.

In addition, the HOA cites the University violated the parties’ MOU Regarding COVID-19 as it relates to its management of each House Officers’ COVID-19 absences from training. However, the MOU makes no mention if or how COVID-19 absences qualify for FMLA or a serious illness leave, and so the CBA must be relied upon for determining how absences related to COVID-19 illness are to be managed.

That aside, worthy of note in response to the HOA’s grievance, Section 1 - *Impact on training* of the MOU reads as follows:

The University cannot guarantee that a House Officer’s training will not be impacted by self-isolation or self-quarantine, or subsequent COVID-19 related illness. The HOA and the Employer recognize that leave time associated with self-quarantine, self-isolation, or actual illness may cause delays or interruptions of training, such that the required training cannot be completed within the required total training time established for each training program, and that the requirements vary between training programs. The Program Director retains sole discretion to determine whether a training extension is required, and such determinations are not subject to the grievance and arbitration proceedings of the U-M/HOA Collective Bargaining Agreement.

The MOU, which was executed by the parties on March 30, 2020, during the height of the COVID-19 pandemic when such illnesses were at their peak, even acknowledges the possibility for academic training to be extended depending upon the requirements of the training programs. Over three years later, after COVID-19 has been declared to be in an endemic state, this portion of the parties’ MOU remains pertinent to these circumstances regarding the COVID-related absences of [REDACTED] [REDACTED] and [REDACTED]. Furthermore, the MOU acknowledges the “sole discretion” of the individual program director “to determine whether a training extension is required,” and acknowledges that “such determinations are not subject to the grievance and arbitration

proceedings.” This language aligns with language in Paragraph 82 of the CBA that acknowledges the role and discretion of the national certifying Board and the local Program Director in determining program training requirements. It reads as follows:

Reductions in training are not assured or guaranteed and are always subject to the applicable national certifying Board’s approval, upon request of the Program Director in his or her sole discretion. In no case may the Program Director be compelled to make the request of the national certifying Board. The request is made solely on the assessment of readiness for independent practice. The Program Director’s determination regarding reductions-in-training are not subject to the grievance and arbitration proceedings of the Parties’ Collective Bargaining Agreement.

With these specific circumstances, the “readiness for independent practice” of each of the three House Officers is not relevant, considering the ABA’s requirement that COVID-related absences must qualify as a serious illness under its Absence from Training Policy. As such, the Program has acted in alignment with the ABA, as the national certifying Board in its treatment particularly of [REDACTED] and [REDACTED], since, as noted earlier, [REDACTED] is not subject to a training extension nor was he required to utilize vacation time for purposes of offsetting his COVID-19 absences from training.

The union has failed to identify any violation of the CBA or the MOU Regarding COVID-19 by the Department of Anesthesiology.

### **III. Conclusion**

Based upon the foregoing reasons, the grievance is denied.

FOR THE UNIVERSITY REVIEW COMMITTEE: s/ Brian Sumner

Senior Labor Relations Specialist

Date emailed to the HOA: November 15, 2023