

Contributory Health Impairment Hearing Procedures

For Honor cases reported on or after November 19, 2018

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I. Introduction

These procedures complement the Honor System of the University of Virginia (the "University") and apply to University students or former students against whom an Honor case has been initiated (individually, "Student"; collectively, "Students") and who are alleging a Contributory Health Impairment ("CHI") or are asserting a Lack of Capacity ("LC") to stand for a hearing. These procedures establish a method for assessing claims of CHI and for assessing whether a Student who establishes a CHI poses a Significant Risk (as hereinafter defined) to the University community, such that his or her actions and/or current condition make suspension from the University or from certain University activities, or other protective actions, conditions or restrictions, necessary. These procedures also define the process to be followed when LC is asserted by a Student in individual cases.

The University has established rigorous standards for evaluating an alleged CHI, and imposes immediate suspension on those Students asserting LC. Further, these procedures establish specific and formal deadlines. Failure to follow these procedures will prevent a Student from obtaining a Hearing on CHI (as hereinafter defined) or asserting LC.

It is the responsibility of a Student asserting CHI or LC to be familiar with, and proceed consistent with, these procedures. All Students with concerns about their mental health or psychological condition should carefully familiarize themselves with these procedures. As is discussed more fully in the Honor Committee's Bylaws, Psychological Evidence (as hereinafter defined) is not admissible in an Honor Hearing. Students charged with an Honor offense wishing to introduce Psychological Evidence must utilize these procedures. Questions regarding these procedures can be addressed to the Honor Committee at: (434) 924-7602. The University assumes no responsibility for the accuracy of responses to questions about these procedures, or about Honor Committee procedures, generally, except as may be provided by duly authorized representatives of the Honor Committee.

II. Definitions

As used in these procedures, the following terms shall have the meanings indicated:

- A. "Bylaws" - the applicable Bylaws of the University's Honor Committee;
- B. "Complainant" - the Dean, or a University employee within the organizational chain reporting to the Dean who is designated by the Dean;
- C. "Contributory Health Impairment" or "CHI" - a mental disease or disorder or medical condition which significantly contributed to the commission of an alleged Honor offense, causing the Student:
 - 1. To be unable to intend or control his or her actions giving rise to such alleged Honor offense; or
 - 2. To have been so impaired at the time of the commission of the alleged Honor offense as to lack the specific intent to commit such alleged offense;
- D. "Dean" - the University's Dean of Students or designee;
- E. "Executive Committee" - the Executive Committee of the University Honor Committee;
- F. "Expert Assessment" – a written assessment regarding the Student's alleged CHI, including any relevant history of mental or physical health services or treatment, rendered by a qualified person with relevant professional credentials in the assessment and treatment of the impairment(s) in question;
- G. "Hearing" – the CHI evaluation hearing described in Section VI below;
- H. "Honor Committee Participant" - an individual selected by the Vice Chair for Hearings or Chair of the Honor Committee to participate in or observe the Hearing;
- I. "Lack of Capacity" - the substantial inability to understand charges brought against the Student under the Honor System or to assist in his or her defense, due to a mental disease or disorder or medical condition;
- J. "Panel" - the Panel of three persons selected to evaluate the Student's claim of CHI, as described in Section V below;
- K. "Psychological Evidence" - any evidence relating to the mental state of the Student in relation to the commission of the alleged Honor offense, including any testimony, reports, written analyses or diagnoses on psychological or psychiatric matters, whether offered by the Student, any other fact witness, or any psychologist, psychiatrist, therapist, counselor or other, similar expert, and any evidence relating to medication prescribed for and/or taken by the Student for any alleged psychological condition;

- L. "Representative" - the person, if any, selected by the Student to act as the Student's Representative under these procedures (a Representative shall be a student or employee of the University);
- M. "Restrictions" - the suspension from the University or from certain University activities, or other protective actions, conditions or restrictions, collectively, which may be imposed by the Panel upon a Student who has established the existence of a Contributory Health Impairment;
- N. "Significant Risk" - the likelihood that the Student will, because of a Contributory Health Impairment, commit an act or acts which would constitute lying, cheating or stealing (as defined in the Bylaws);
- O. "Vice Chair for Hearings" - the Honor Committee's Vice Chair for Hearings;
- P. "Vice President" - the University's Vice President and Chief Student Affairs Officer.

III. Procedures for Claims of CHI

A. Requesting and Receiving a Hearing

1. TIMING OF REQUEST

Each Request for a Hearing on CHI may be made at any time after a Report (as defined in the Bylaws) has been received until seven (7) days after a Student is accused by an Investigative Panel (as defined in the Bylaws) unless the Vice Chair for Hearings or Chair of the Honor Committee determines, in his or her sole reasonable discretion, that good cause justifies an extension of time. The Request for Hearing on CHI must be submitted to the Vice Chair for Hearings, on the form attached hereto as Appendix A (a "Request for Hearing on CHI"). The Vice Chair for Hearings shall forward a copy of the Request for Hearing on CHI to the Dean, together with copies of the Honor Committee's records, including the Investigation Log, relating to the underlying Honor charges.

2. REQUIREMENTS FOR EVALUATION BY THE DEAN

- a. Following submission of a completed Request for Hearing on CHI, the Student must contact the Dean within ten (10) days to schedule an initial interview with the Dean. In addition, the Student must satisfy each of the following requirements within sixty (60) days from the date of submission of the Request for Hearing on CHI. In the Dean's sole reasonable discretion, the Dean may grant 30-day extension(s) for good cause if the student fails to satisfy the requirements in this subsection. Upon the expiration of the sixty-(60-) day period (and any extension(s) granted by the Dean for good cause shown), if any of the following requirements have not been satisfied, the Request for Hearing on CHI will be void, and the matter will be returned to the Honor Committee for resolution pursuant to its Bylaws.
 - i. The Student must meet with the Dean as scheduled.

3. REQUESTING ACCOMMODATIONS

The Student may request reasonable accommodations in order to fully and effectively participate in a Hearing on CHI. A Student wishing to request such accommodations must make such request in writing to the Honor Committee or to the Dean at the earliest possible time, but no later than ten (10) days prior to a Hearing on CHI, in order to afford the University sufficient time to respond to the request and provide accommodations, as appropriate. Once a request is received, the Student will be connected with the University's Student Disabilities Access Center ("SDAC") or the Americans with Disabilities Act (ADA) Coordinator, as applicable, to facilitate an interactive discussion to identify appropriate reasonable accommodations and to ensure that agreed-upon reasonable accommodations are provided.

4. REFERRAL BY THE EXECUTIVE COMMITTEE FOR CHI EVALUATION

The Executive Committee may, by majority vote at any time, refer a Student for a CHI evaluation by a Panel. In such cases, the other provisions of this Section relating to request timelines and forms of Request for Hearing on CHI shall not apply. The Student has the right to refuse such evaluation and remain within the Honor Hearing process. If a Hearing on CHI is held, the Vice President may make any special arrangements regarding representation of the Student that he or she deems appropriate.

5. REINSTATEMENT OF CASE BY HONOR COMMITTEE

In the event that a Student alleging a CHI fails to timely request a Hearing and/or to contact the Dean, or upon notification by the Dean that the Student has failed to provide the information needed by the Dean to fully evaluate the request, or if a Student forfeits a Hearing pursuant to subsection (7), below, the Honor Committee will proceed on the underlying Honor charges in accordance with its Bylaws.

6. NOTIFICATION OF APPROVAL OF HEARING REQUESTS

If the Dean approves a Request for Hearing on CHI, the Dean shall so notify the Student, the Vice President, and the Honor Committee, in writing. Such notice shall state that it is given under these procedures, shall refer to the underlying Honor charges, and shall enclose a copy of these procedures.

7. SCHEDULING AND FORFEITING A HEARING

A Student who fails to cooperate in the scheduling of a Hearing or who otherwise unduly delays the Hearing will forfeit the Hearing that has been granted by the Dean. Such cooperation includes responding to phone calls, emails, or letters addressed to the Student, working affirmatively with persons the Student wishes to have present at the Hearing to facilitate their availability, and making reasonable efforts to accommodate proposed Hearing dates. Students should anticipate that the University will be making a serious effort to schedule a Hearing time and date soon after a Request for Hearing on CHI has been granted. (The actual date of individual Hearings is necessarily dependent on the number of Hearing requests that have been granted, and on the time of year.) If the University reasonably concludes that a Student is not cooperating in the scheduling or preparation of a Hearing, it will notify the Student of this determination, in writing, and provide the Student with a fourteen (14) day opportunity to cure the problem. After that time, the University in its sole reasonable discretion, may determine that the Student has forfeited the Hearing and return the case to the Honor Committee.

IV. Evaluation of Request for Hearing on CHI

A. The Dean's Review:

The Dean shall meet with the Student and review the Request for Hearing on CHI. In order to grant such a request, the Dean must find that sufficient facts have been presented for the Panel to have a strong basis for concluding that:

1. The alleged CHI was contemporaneous with the alleged Honor offense; and
2. There was a direct connection between the alleged CHI and the alleged Honor offense.

B. Factors Guiding Review:

While no single factor is decisive, the Dean's assessment shall take into account:

1. The timing of the alleged CHI and psychological counseling/therapy in light of questions such as: When was the disorder or condition first diagnosed? Did psychological counseling/therapy begin prior to the commission of the alleged offense? If so, when? Was counseling sought contemporaneous with such alleged offense? Was counseling sought only after the Student was made aware that Honor charges had been filed?
2. Whether the Student developed a counseling relationship related primarily to preparing a Request for Hearing on CHI evaluation or has documented an ongoing therapeutic relationship with a mental health counselor/therapist.
3. Whether the Student has presented other independent evidence (witness testimony, academic/grades, other social/environmental information) documenting a pre-existing or contemporaneous disorder or condition.
4. Whether the Student has documented a diagnosed medical condition that created a neuro/psychiatric condition that might meet the standard for a CHI.
5. Whether the alleged CHI might be found to be of a type and severity to have made the Student substantially unable to intend or control his or her actions giving rise to the underlying Honor charges.
6. Whether credible evidence suggests that the Student's psychological, emotional or mental state might have been so impaired during the commission of the alleged offense as to negate the Student's specific intent to commit such alleged offense.

V. Hearing Panels, Notification, Documentation

A. Panel Appointment

A Panel shall preside over each Hearing under these procedures. The Vice President shall select the Panel members and shall notify the Complainant and the Student of the names of the Panel members and of the Panel Chair. This notification shall occur as

soon as possible after notification by the Dean that a Hearing has been granted. The Vice President shall strive to staff the Panel with persons he or she deems as having the appropriate expertise, such as psychologists, psychiatrists, or both. Selection of Panel members may be made without any restriction on the number of prior Panels on which a person has served.

B. Notification and Provision of Case Documents

If the Vice President has not already done so, the Complainant and the Student shall be notified as soon as possible regarding the date, time, and place of the Hearing. The Vice President shall provide the Student a copy of the complete case file to be presented to the Panel for examination prior to the Hearing. The Complainant shall provide copies of any additional documents that might be submitted at the Hearing to the Student and the Honor Committee a reasonable time prior to commencement of the Hearing, which ordinarily should be no less than seventy-two (72) hours before the Hearing commences.

C. Notification of and Participation by the Honor Committee

The Chair of each Panel shall inform the Vice Chair for Hearings of the date of each Hearing sufficiently in advance to allow for selection of an Honor Committee Participant. The Honor Committee in turn will notify the Chair and the Student prior to the Hearing if an Honor Committee Participant will be present. Further, the Committee shall timely provide copies to the Complainant of any written materials (beyond those already in the case file) that the Honor Committee Participant might introduce into the Hearing, sufficient to allow the Complainant to distribute such materials to the Student in advance of the Hearing, as provided above.

VI. General Hearing Procedures

A. Attendance at the Hearing: Role of Student's Attorney

The Complainant, the Student, and if present, the Student's Representative, the Student's attorney, and the Honor Committee Participant, shall be entitled to attend the entire Hearing, excluding deliberations. (Any references herein to "party" refer to the Complainant, or the Student, as the context may require.) Any action required or permitted to be undertaken by the Student during the Hearing may be undertaken by the Student's Representative, if any. The Student's attorney, if present, may advise the Student and the Student's Representative, if any, during the Hearing, but only if this can be accomplished without interrupting the Hearing. The Student's attorney may not address the Panel or otherwise participate in the Hearing. The Panel shall determine the propriety of attendance at the Hearing by any other persons. Witnesses other than the parties and the Student's Representative, if any, may remain in the Hearing room only while giving their testimony, unless the Panel and the parties agree otherwise. The Panel shall be entitled to have present a person who may advise it, privately or otherwise.

B. Evidence

The Panel may allow for flexibility in the sequencing and introduction of evidence. The Panel is not bound by the rules of procedure or evidence applicable to judicial proceedings, and may adopt such rules of procedure and evidence, and take into account

any evidence, it deems appropriate. The Panel shall decide all procedural and evidentiary questions raised during the Hearing.

C. Decisions by the Panel

All decisions by the Panel shall be made by majority vote.

D. Recordings and Transcripts

The Panel shall make its best efforts to arrange for the Hearing to be accurately recorded and shall arrange for any transcription of the recording which it deems appropriate, or which a party requests, upon payment by the requesting party of reasonable transcription charges. Such recording and transcription may be made by any person or persons, including University employees, that the Panel may designate.

E. Testimony Under Oath

Before testifying, each witness shall swear or affirm to the Panel that his or her testimony shall be the truth, the whole truth, and nothing but the truth.

F. Burden of Proof

The Student bears the burden of proof on all issues (i.e., the existence of a CHI and, if applicable, the lack of a Significant Risk) at the Hearing and any related proceedings hereunder. In order to carry this burden, the Student must persuade the Panel on the issue in question by a preponderance of the evidence. A preponderance of the evidence means the greater weight of the evidence; to establish a fact by a preponderance of the evidence means to prove that the fact is more likely true than not true.

G. Opening Statements, Order of Evidence; Questioning Witnesses; Exhibits

The parties may make opening statements at the beginning of the Hearing, and closing statements at the end of the Hearing. The Student shall have the right to make the first opening statement and to make a rebuttal opening statement. The Student shall first present any witnesses, documents, and other evidence to support his or her position. The Complainant shall then have the opportunity to present relevant evidence. The Student shall then have the right to present rebuttal evidence. The Honor Committee Participant may present evidence when the Student and the Complainant have completed their presentations. The Panel may allow such additional evidence as it deems appropriate, in its sole reasonable discretion. The Student, the Complainant, and the Honor Committee Participant shall have the right to question witnesses upon the completion of witnesses' initial testimony. Panel members may question witnesses at any time. Documents and other exhibits offered shall be marked and, when received in evidence by the Panel, made a part of the Hearing record.

H. Continuances

The Panel may continue the Hearing from time to time as it may determine, provided that the Hearing shall be completed within ten (10) days of its commencement, unless the parties agree otherwise or the Panel decides otherwise, in writing, for good cause. Once the Hearing has been completed, it may be reopened by the Panel at any time before the Panel renders its written decision.

I. Findings of the Panel

1. EFFECT OF PANEL'S FINDINGS ON CHI

If the Panel finds that the Student has not established a CHI, it shall refer his or her case back to the Honor Committee for further proceedings on the underlying Honor charges. If the Panel finds that the Student has established a CHI, the underlying Honor charges shall be dismissed and the Panel shall proceed as described below.

2. DETERMINATION OF SIGNIFICANT RISK: RESTRICTIONS

If the Panel finds that the Student has established a CHI, the Panel shall impose Restrictions upon the Student, in its sole reasonable discretion, unless the Student is able to prove that he or she does not now pose a Significant Risk. The Panel shall in every case seriously evaluate whether a suspension is appropriate to allow the Student to recover from the CHI, and to protect the University community from the risk of dishonorable conduct in the future. A Restriction involving suspension shall be described in the Student's record with the University Registrar as "suspension pending elimination of risk found by Vice President for Student Affairs' Panel." Restrictions not involving suspension are not recorded with the Registrar. A notice of all Restrictions will also be filed with the Office of the Dean of Students and the Vice President. If the Panel determines that the Student has carried his or her burden on the issue of Significant Risk (i.e., the Panel determines that the Student does not pose a Significant Risk), no Restrictions will be imposed.

VII. Panel Decision, Hearing Records

A. The Panel's Written Decision

The Panel shall endeavor to provide the Complainant, the Student, the Vice President and the Honor Committee with a copy of its written decision within ten (10) days from the conclusion of the Hearing. The decision shall include findings and conclusions as to the alleged CHI, findings and conclusions as to Significant Risk, if applicable, and will enumerate any Restrictions imposed by the Panel. Members of the Panel may submit separate written decisions concurring with, or dissenting from, in whole or part, the majority's decision.

B. Effective Date of Restrictions

If the Panel determines that the University's or the Student's welfare requires it, the Panel may include in its decision a determination that the Restrictions imposed upon the Student shall be effective immediately and shall continue in effect until such time as the Vice President may determine otherwise. If the Restrictions include sanctions other than suspension, or if the Panel determines that a suspension need not commence immediately, the Restrictions shall take effect ten (10) days after the Student's receipt of the Panel's written decision, or, in the event of a timely appeal, at such time as the Vice President determines.

C. Disposition of Hearing Records

The Panel shall retain in confidence all records relating to its proceedings, except for:

1. Records of cases in which the Panel finds no CHI and the Student is later acquitted of the underlying Honor charges, which records shall be destroyed upon the completion of all Honor Hearings and appeals of the case; and
2. Cases in which applicable law authorizes disclosure of such records.

VIII. Appeals

A. Notice of Appeal

The Student may appeal the Panel's decision by so notifying the Vice President, the Honor Committee and the Complainant, in writing, within ten (10) days after receipt of the Panel's written decision. Such notification shall include a statement of the specific portion(s) of the Panel's decision with which the Student disagrees, any arguments in support of the Student's position, and the Student's proposed alternative to the conclusions of the portion(s) of the decision in question. Failure to meet these notice requirements may result in the denial of an appeal.

B. Proceedings on Appeal

The Vice President may afford the Student, the Complainant, and the Honor Committee an opportunity to present written arguments, as opposed to evidence, in support of their positions on the Student's appeal. The Vice President may impose any reasonable time and length limitations on such presentations. The Vice President may question the Panel members about their decision. The Vice President may also obtain and review any or all of the transcripts and exhibits of the Hearing before the Panel.

C. Standard and Outcome of Appeal

The Vice President shall evaluate whether the Panel's findings and conclusions are supported by substantial evidence in the record and, if so, shall affirm those findings and conclusions. If the Vice President is persuaded of the existence of fraud or serious mistake before the Panel, or of extraordinary circumstances justifying the introduction of new or additional evidence, the Vice President may direct the Panel to reopen its Hearing and receive additional evidence, or the Vice President may appoint a new Panel to consider the case de novo. The Vice President's determination of these issues is final and may not be appealed.

D. Written Decision on Appeal

The Vice President shall give the Student, the Complainant and the Honor Committee a written decision on the appeal in as timely a fashion as the Vice President's schedule can accommodate. This decision is final and may not be appealed.

E. Termination of Restrictions

A student who is subject to Restrictions lasting longer than one year (365 days) may apply in writing to the Dean for termination or modification of the Restrictions. Such an application shall not be filed sooner than the ninth month from the effective date of such Restrictions, nor more than once every twelve months. If the Student is not satisfied with the decision of the Dean on such application, the Student may seek review of such decision, in writing, by the Vice President. The Vice President may, at that time, establish such procedure as he or she may deem appropriate to determine whether the

Student's application should be granted, or may review and affirm, reverse, or alter the underlying decision by the Dean. The Vice President's decision on such an application is final and may not be appealed.

IX. Procedures for Claims of Lack of Capacity ("LC")

A. Assertion of LC

1. Timing and Process for Asserting LC: A Student may assert that he or she lacks the capacity to stand for a hearing ("Assertion of LC") prior to the beginning of an Honor Hearing. The Assertion of LC must be made in writing, in the form attached hereto as Appendix B (the "Assertion of Lack of Capacity and Acknowledgement of Suspension from the University"), and must be submitted to the Vice Chair for Hearings. The Vice Chair for Hearings shall forward a copy of the Assertion of Lack of Capacity and Acknowledgement of Suspension from the University to the Dean.

2. Consultation with the Dean: Serious consequences attach to the Assertion of LC and resulting avoidance of the Honor Hearing process. Further, Students considering such a choice may by definition find themselves in an impaired and troubled state. For these reasons, Students must meet with the Dean to discuss the Assertion of LC and resulting suspension from the University, who must certify such consultation in writing. The Dean may consult with the University's Counseling and Psychological Services, with a mental health specialist treating the Student, or with others who might have relevant input to assist the Dean in this consultation.

B. Suspension from the University

1. Consequences of Assertion of LC: An Assertion of LC involves a claim that a serious mental disease or disorder or medical condition currently impairs a Student's fundamental functioning so as to make his or her participation in an Honor Hearing impossible. For this reason, a Student making this claim will be deemed to pose a Significant Risk, mandating immediate suspension from the University. Students will not be allowed to complete classes if such suspension occurs mid-semester. Such suspension shall be noted on the Student's record as: "Suspension Pending Elimination of Risk and Resolution of Honor Charges."

2. Procedures for Return to the University: The above suspension shall only be removed if: a. The Student files a written Request for Conditional Return to Stand Hearing, in the form attached hereto as Appendix C; and b. The Student is acquitted of the underlying Honor charges upon completion of such Hearing.

X. Notices

All notices to be given under these procedures shall be in writing and shall be deemed to have been given upon actual receipt by, delivery in person to, or receipt by mail by, the person to whom the notice is addressed, or such person's secretary or, in the case of a Student, his or her Representative. Notices to Students shall be deemed to have been

sent when delivered to their Primary E-Mail Address pursuant to Section IV of the Bylaws.

XI. Amendments

These procedures may be amended at any time, in writing, by mutual agreement of the Honor Committee and the Vice President. Representatives of the Honor Committee's Executive Committee, the Vice President, and the Office of University Counsel shall make reasonable efforts to meet on or before March 15, 2003, for the purpose of reviewing and, if appropriate, revising, these procedures, and may meet thereafter for such purpose prior to the beginning of each academic year or at such other intervals as they may deem appropriate. The procedures applicable to a particular Student shall be these procedures, as amended through the date on which the relevant Honor charges are initiated.

XII. Honor Committee Authority

The Vice President recognizes and respects the principles of student self-governance embodied in the Honor system. Notwithstanding anything to the contrary, these procedures are subject to the continuing authority of the Honor Committee which reserves the right to revoke them; provided any revocation shall not be applicable to cases initiated with the Honor Committee prior to the effective date of such revocation. The Vice President shall be notified, in writing, of such revocation not less than 30 days prior to its effective date.

XIII. Appendices

A. Appendix A

Request for Hearing on Contributory Health Impairment

Student's Name: _____

Honor Committee Case Number: _____

Date of Investigative Panel hearing: _____

Date this Request received by Vice Chair for Hearings: _____

Understanding Procedures: I have read and understand the CHI Hearing Procedures, a copy of which is attached to this Request. I understand that I may elect to have a University student or employee act as my Representative at my Hearing, if such a Hearing is granted.

Student's Signature

Date

Witnessed By

Date

B. Appendix B

Assertion of Lack of Capacity and Acknowledgement of Suspension from the University

Student's Name: _____

Honor Committee Case Number: _____

Date of Honor Hearing (if scheduled):

Student's ID/SS number: _____

Date this Request received by Vice Chair for Hearings: _____

Understanding Procedures: To the best of my ability, I have read and understand the CHI Hearing Procedures, a copy of which is attached to this Request.

Student's Signature

Date

I have consulted, to the best of my abilities, with the Student whose signature is found above, regarding the consequences of the Student's decision to submit this Assertion of Lack of Capacity and Acknowledgement of Suspension from the University.

By Dean of Students or Dean's Designee

Date

C. Appendix C

Request for Conditional Return to Stand Hearing

Student's Name: _____

Honor Committee Case Number: _____

Date of Student's Suspension: _____

I was suspended from the University pursuant to my Assertion of a Lack of Capacity and Acknowledgement of Suspension from the University. I wish to request a conditional return to the University for the sole purpose of completing my Honor Hearing process. I understand that I may return fully as a student only if I am acquitted through such Honor Hearing.

I am prepared to return for an Honor Hearing on or after the following date:

I will require assistance from an Honor Advisor: () yes () no

I can be reached as follows:

Address:

Telephone:

Email:

Student's Signature

Date
