
MOONLIGHTING POLICY FOR RESIDENTS

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Reviewed:
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Approved by: NYU SOM Graduate Medical Education Committee
Web address: http://www.med.nyu.edu/housestaff/GME_Policies/index.html
Applies to: All trainees, including those in ACGME- and non-ACGME-accredited specialty and subspecialty programs

I. Preamble

Moonlighting commitments must be subordinate to the primary responsibility each Resident has to his/her residency training program and to the patients under the Resident's care.

Moonlighting is neither a clinical nor an educational responsibility for the Resident enrolled in a training program; it is an option for *licensed physicians only* that is neither endorsed nor entirely prohibited by the New York University School of Medicine ("NYU"), although some individual programs may forbid it. Under no circumstance will moonlighting be allowed to create a conflict of commitment with the Resident's core residency training program.

The Accreditation Council for Graduate Medical Education ("ACGME") has discouraged moonlighting in the past for reasons including:¹

- Moonlighting clearly competes with the opportunity to achieve the full measure of the educational objectives of the residency; and
- The added time burden takes away from study and reduces rest and the ability for a more balanced lifestyle.

The ACGME recognizes that economic factors have led some Residents to pursue moonlighting; however, in no instance will a Resident be required to engage in such activity.

In addition, New York State and the ACGME have promulgated restrictions on the number of Duty Hours a Resident may work. The Resident is responsible for compliance with those limitations when engaged in moonlighting activities, in accordance with the provisions set forth under the NYU [Duty Hours Policy for Residents](#).

All Residents must comply with this *Moonlighting Policy for Residents*.

II. Definitions

- A. **ACGME** – Accreditation Council for Graduate Medical Education
- B. **Application** – Moonlighting Application
- C. **Director** – The Resident's NYU Director of Residency Training

- D. **Duty Hours** – Include all clinical and academic activities of the Resident; i.e., patient care (both inpatient and outpatient), administrative duties related to patient care, transfer of patient care, time spent in-house on-call, scheduled academic activities such as conferences, and any moonlighting activities. Duty Hours do not include reading and preparation time spent away from the duty site.²
 - E. **Foreign National Physician** – For the purpose of this document, a Foreign National Physician (“FNP”) is a physician who has been granted a visa to train in the United States. Restrictions on moonlighting apply and vary by visa type in accordance with *Section IV, Foreign National Physicians*, of this document.
 - F. **Hiring Entity** – A hospital or other employer for whom the Resident performs approved moonlighting activities.
 - G. **Moonlighting** – Any circumstance of working as a physician or healthcare provider outside the Resident’s authorized training program,³ including all work performed for other NYU programs and departments *and* for all Hiring Entities or private practice arrangements external to NYU. Extra on-call duty within the Resident’s authorized residency training program is not considered moonlighting.
 - H. **NYU** – New York University School of Medicine
 - I. **Resident** – In this document, all references to residents include trainees in specialty and subspecialty programs, whether or not ACGME-accredited.
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III. Policy and Procedure

The NYU *Residency Training Program Agreement* prohibits a Resident from engaging in any moonlighting activity except upon receipt of prior written approval from his/her Director of Residency Training (“Director”). The Director has the discretion to prohibit moonlighting activities that interfere with educational objectives, patient care responsibilities, and/or Duty Hour limitations and to develop a moonlighting policy for his/her training program that is more restrictive than the requirements set forth under this *Moonlighting Policy for Residents*.

- A. **Moonlighting Application**. The Resident must initiate the Application process.
 - 1. **Resident’s Submission of Application**. *Prior to the acceptance and commencement of any moonlighting activity, any Resident wishing to moonlight (as defined in Section II, Definitions) must submit a completed and signed Application to his/her Director for approval. The Resident may not commence, under any circumstance, any moonlighting activity without prior written approval from his/her Director. An Application may be obtained from the Resident’s Director, the NYU Office of House Staff Affairs, or online at [www.\[\]](http://www.[]).*
 - 2. **Director’s Discretion**. The Director has the discretion to decide, categorically or individually, whether or not the proposed moonlighting activity is compatible with the training requirements for his/her program. The Director, therefore, may permit, prohibit, limit, or revoke permission to moonlight as s/he deems appropriate. In addition, NYU, or any individual Director, may deny any moonlighting activity that is deemed inconsistent with NYU policy.⁴ The Director will base his/her written approval or denial of a Resident’s Application on factors that include, but are not limited to:

- a. **Residency Review Committee Requirements.** The Resident's proposed moonlighting activity must comply with the requirements of his/her program's Residency Review Committee regarding moonlighting.
 - b. **PGY Level.** The Resident must have completed at least one year of clinical training in an approved residency training program and possess a valid New York State medical license or visa. Such training may include a transitional year or a year in a designated subspecialty.⁵
 - c. **Academic Standing.** The Resident must be in good standing, as evidenced by his/her evaluations.
 - d. **Total Duty Hours.** The Resident's total Duty Hours must not exceed the limitations set forth under NYU's [Duty Hours Policy for Residents](#).
 - e. **Conflict of Commitment.** Residency education is a full-time endeavor. The Director, therefore, must ensure that the Resident's moonlighting workload interferes neither with the Resident's ability to achieve the goals and objectives of his/her Graduate Medical Education program⁶ nor with his/her ability to complete regular duties, including call and continuity practice.⁷
 - f. **Visa Status (if applicable).** A Foreign National Physician's ("FNP's") visa may permit or expressly prohibit moonlighting, as discussed under *Section IV, Foreign National Physicians*, of this document.
3. **Director's Approval/Denial.** The Director must indicate his/her approval or denial of a Resident's [Application](#) by completing the appropriate section of the [Application](#). Any Resident who moonlights in the absence of prior written approval from his/her Director is subject to disciplinary action as explained in *Section V, Violations and Disciplinary Action*, of this document.
- a. **Moonlighting Denied.**
 - i. **Not Subject to Appeal.** The Director's decision to deny a Resident's [Application](#) is final and not subject to appeal.
 - ii. **Record Maintenance.** The Director will send the original denied [Application](#) to the Resident, maintain a copy in the Residents' department file, and forward a copy to the NYU Office of House Staff Affairs.
 - b. **Moonlighting Approved.** In the event the [Application](#) is approved, the Director will send the original approved [Application](#), with a copy of this *Moonlighting Policy for Residents* attached, to the Resident. Per ACGME requirements, the Director will maintain a copy of the approved [Application](#) in the Residents' department file.⁸ The Director also will forward a copy to the NYU Office of House Staff Affairs.
- B. Payroll.** The NYU Office of House Staff Affairs will be responsible for establishing a Dual Job for House Staff as House Staff Moonlighters. The Director will provide the NYU Office of House Staff Affairs the Salary Account number to be charged. NYU Office of House Staff Affairs will submit the required Confidential Personal Profile (CPP) or Requisitions to HR. Paperwork will be submitted after obtaining signatory approval of the pay source. Compensation will set up the Additional/Secondary job as a Casual Employee (to be confirmed) and the individual Department will report to Payroll the time worked (to be confirmed).
- C. Resident's Responsibilities.** Upon receipt of an approved [Application](#), the Resident must:

1. **Comply with Program Assignments.** The Resident's commitment to his/her residency training program must take priority over any moonlighting activity. Failure to comply with program assignments will subject the Resident to disciplinary action, as discussed in *Section V, Violations and Disciplinary Action*, of this document.
2. **Obtain Malpractice Coverage.** The Resident must either purchase sufficient malpractice insurance to cover his/her moonlighting activities or obtain written assurance from the Hiring Entity that it will provide malpractice insurance and workers' compensation coverage to the Resident. That insurance is separate from the coverage provided by NYU for the Resident's core training program. NYU's malpractice policy for Residents *does not* extend to medical services rendered outside of officially scheduled assignments, duties, or rotations.
3. **Obtain License or Limited Permit and DEA Registration Number.** In accordance with New York State Education Law,⁹ the Resident must obtain a license or limited permit before s/he may begin any moonlighting activity. Pursuant to Drug Enforcement Agency regulations,¹⁰ the Resident may not use, under any circumstances, a DEA Registration Number assigned to the Resident by NYU while engaged in moonlighting activities outside the NYU System.
4. **Refrain from Moonlighting During Regular Duty Hours.** The Resident may not moonlight during regular Duty Hours, as defined by his/her Director.
5. **Adhere to Duty Hour Limitations.** The Resident is responsible for complying with the Duty Hour limitations set forth under NYU's [Duty Hours Policy for Residents](#) when moonlighting and, as such, must assure his/her NYU Director that the combined training program and moonlighting hours do not exceed those Duty Hour limits.¹¹ Time spent moonlighting *must* be included in the calculation of Duty Hours.
6. **Submit Weekly Schedule.** The Resident must provide the Director with the Resident's total working hours for any and all moonlighting activities each week. Under no circumstance will any Resident be allowed to work in excess of Duty Hour limitations.
7. **Refrain From Wearing NYU Identification When Moonlighting.** The Resident must not be visually identifiable as a trainee in an NYU residency training program when moonlighting at a Hiring Entity other than¹² Tisch, Bellevue, NYU Downtown, and the Veterans' Administration Hospitals and the Hospital for Joint Diseases.
8. **Arrange for Direct Remuneration.** Each Hiring Entity must remit remuneration and benefits earned by the Resident while moonlighting directly to the Resident.¹³
9. **Submit Ad Hoc Changes/Annual Renewal.** The Resident must submit a new [Application](#) to his/her Director annually *and* as changes to his/her training program requirements or previously approved moonlighting activities occur.¹⁴ Changes include any modification to the a) training program schedule (e.g., due to promotion to next PGY level); b) number of moonlighting hours worked; c) supervisor(s) to whom the Resident is assigned while engaged in an approved moonlighting activity; and/or d) sites where the moonlighting activity occurs. The Director must approve or deny each request for continued or amended moonlighting activity in writing, per the procedure established under this *Section III*.

D. Director's Monitoring Responsibilities.

1. **Performance.** Once the Resident has begun an approved moonlighting activity, the Director must monitor and document the Resident's performance to ensure that factors

such as Resident fatigue are not detracting from patient safety or contributing to diminished learning or performance.¹⁵

2. **Duty Hours.** The Director must review the Resident's weekly report of moonlighting hours so that the Director may monitor the Resident's total Duty Hours. The Resident, however, is responsible for ensuring that s/he does not exceed established Duty Hour restrictions as set forth under the NYU [Duty Hours Policy for Residents](#).
- E. **Moonlighting Revoked.** Any limitations to, prohibitions against, or revocations of moonlighting privileges made subsequent to an approval must be documented in writing and presented to the Resident by his/her Director. The Director must maintain a copy of such written notice in the Resident's department file and forward a copy to the NYU Office of House Staff Affairs. Once the Director has revoked the Resident's permission to moonlight, the Resident will not be eligible for reinstatement or reconsideration of his/her moonlighting privileges for six months.

IV. Foreign National Physicians

FNPs have special visa restrictions that specifically relate to moonlighting:

- A. **F-1 Visa – Student/Practical Training Visa.** An F-1 visa holder enrolled in an NYU residency training program is not eligible for moonlighting privileges.
- B. **J-1 Visa – Exchange Visitor.** A J-1 visa holder is expressly prohibited from moonlighting. Visa sponsorship authorizes a specific training activity and associated financial compensation. Federal Regulations do not permit professional activities and/or financial compensation outside the defined parameters of the Resident's training program.¹⁶
- C. **H-1B Visa – Temporary Worker in a Specialty Occupation.** An H-1B visa holder may be eligible for moonlighting privileges *only* if the prospective Hiring Entity files an H-1B petition for concurrent employment for the Resident and that petition is approved by the Immigration and Naturalization Service. An H-1B visa holder is permitted to perform professional services for a specific academic institution (the FNP's program sponsor) in a specific position for a fixed period of time.¹⁷
- D. **O-1 Visa – Alien of Extraordinary Ability.** An O-1 visa holder may moonlight only if his/her visa specifically grants that option. A Resident with an O-1 visa is permitted to perform services of a professional nature for a specific academic institution (the FNP's program sponsor) in a specific position for an unlimited period of time.¹⁸

In order to apply for moonlighting privileges, an H-1B or O-1 visa holder must submit his/her visa documents, along with a completed [Application](#), to his/her Director, who will make a determination in consultation with the NYU Human Resources Immigration Office. If authorization for specific outside employment is not stipulated in writing in the Resident's visa, the [Application](#) will be denied automatically, and the H-1B or O-1 visa holder will not be permitted to moonlight.¹⁹ Once the Resident's Director and the NYU Immigration Office have reached a decision, the Director will follow the approval/denial process discussed in *Section III, Policy and Procedure*, of this document.

V. Institutional Violations and Disciplinary Actions

A. **Institutional Violations.** Violations that will lead to disciplinary action under this *Section V* include, but are not limited to:

- a. **Unauthorized Employment.** Unauthorized moonlighting is a violation of the Resident's program status and will subject him/her to termination from the program under this *Section V*. Unauthorized moonlighting includes, but is not limited to:
 - i. Moonlighting without prior written approval from the Director;
 - ii. Continuing to moonlight without reporting changes to such activity, as discussed under *Section III.B.9., Policy and Procedure*, of this document;
 - iii. Continuing to moonlight after permission to do so has expired;
 - iv. Continuing to moonlight after permission to do so has been revoked;
 - v. Misrepresenting the nature or scope of the moonlighting activity; and/or
 - vi. Moonlighting without adequate and appropriate malpractice insurance coverage.
- b. **Use of Resident's NYU DEA Registration Number.** Use of the DEA Registration Number assigned by NYU to the Resident for any reason or under any circumstance while moonlighting outside the NYU System.²⁰
- c. **Violation of Duty Hour Limitations.** Noncompliance with *New York Codes, Rules and Regulations, Section 405.4*, is a breach of policy that could jeopardize the accreditation status of the Resident's program and subject NYU to considerable financial penalties.

B. **Disciplinary Actions.** Refer to the NYU [Evaluation, Corrective Action, and Disciplinary Policy for Residents](#) for relevant disciplinary action policy and procedure.

¹ ACGME, *Policy on "Moonlighting" by GME Resident*, June 27, 2000, www.acgme.org/ResInfo/moonlighting.asp.
² ACGME, "Resident Duty Hours Language, Final Language," February 13, 2003, http://www.acgme.org/DutyHours/dutyHoursLang_final.asp.
³ ACGME, "Moonlighting," *ibid*.
⁴ Vanderbilt University Medical Center, *2001 House Staff Manual*, "Extracurricular Professional Activity (Moonlighting)," <http://www.mc.vanderbilt.edu/gme/manual/admin.html>.
⁵ University of Rochester, *Office for Graduate Medical Education, Resident/Fellow Manual for Medical and Dental Programs, 2003-2004*, "Policy on Moonlighting," <http://www.urmc.rochester.edu/smd/gme/pdf/ResidentManual.pdf>.
⁶ ACGME, "Moonlighting," *ibid* and ACGME, "Duty Hours," *ibid*.
⁷ St. John's Mercy Medical Center, *Mercy Family Medicine Residency Program Specifics*, "Moonlighting Policy," undated, <http://www.mdnetlink.com/sjmmcgme/familymed/ppprogspec.shtml#Moonlighting>.
⁸ ACGME, "Moonlighting," *ibid*.
⁹ NYS Education Law *Medicine Requirements*, "License Requirements," April 18, 2003, www.op.nysed.gov/medlic.htm. Also, *NYS Medicine Education Law*, Article 131, "Medicine," January 21, 2003, www.op.nysed.gov/article131.htm.
¹⁰ DEA, *Pharmacist's Manual: An Informational Outline of the Controlled Substances Act of 1970*, "Practitioner's Use of a Hospital's DEA Registration Number," February 2003, www.deadiversion.usdoj.gov/pubs/manuals/pharm2/2pharm_manual.pdf.
¹¹ Emory University, *House Staff Policies and Orientation Manual*, "Moonlighting," January 25, 2001, <http://www.emory.edu/WHSC/MED/GME/section6.html>.
¹² Emory, *ibid*.
¹³ East Carolina University, *Residency Policy and Guides*, "Graduate Medical Education on Resident Professional Activity Outside of the Educational Program (Moonlighting)," March 1, 2001, <http://www.ecu.edu/intmedresidency/CurrentResidents/Policies/Moonlighting.pdf>.
¹⁴ Vanderbilt, *ibid*.
¹⁵ ACGME, "Moonlighting," *ibid*.
¹⁶ Brown University/Lifespan, *Graduate Medical Education House Officers' Manual*, "Institutional Policy for Moonlighting Activities, December 20, 2001," www.lifespan.org/Services/GME/AMC/Manual/2/moonlighting.htm; Pursuant to 22 CFR 514 (Federal Register 22 CFR 514, Subsections 16, 27, and 40, www.access.gpo.gov/su_docs/aces/aces140.html), and in accordance with the Federal Regulations Governing Exchange Visitor Physicians. Also, University of Missouri, *Health Sciences Center Policy*, "Moonlighting – J-1 or H-1B Visa Holders," September 7, 1999, <http://www.hsc.missouri.edu/~brain/Programs/policyvisa.PDF> and *United States Medical Licensing Examination (USMLE) Guide*, "Visa," undated, <http://www.usmleguide.com/visa.htm>.
¹⁷ Missouri, *ibid* and USMLE, *ibid*.
¹⁸ Missouri, *ibid* and USMLE, *ibid*.
¹⁹ Missouri, *ibid*.
²⁰ University of Arkansas, *Policy of the Graduate Medical Education Committee, Resident Support/Conditions for Employment*, "Moonlighting and Malpractice Insurance Coverage While Moonlighting," December 2000, <http://www.uams.edu/gme/2.610.html>.