Understanding Academic Law: Legal Issues in GME

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Content Outline

- Why does it have to be so complicated?
- What do you “legally” have to do?
- What is the worst that can happen?

Academic v Employment Law

Remember the key term in Graduate Medical Education is “Education”

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It can become complicated when your institution wants to utilize employment law to resolve an academic issue

So What If…

Jim is a 2nd year resident in a 3-year training program. In his first year, Jim was described in his semi-annual evaluation as “marginal” and as “needing improvement.” During his 2nd year he was given both formal and informal feedback about needing to “read more” and “improve his knowledge/skill/ability.”

The time is approaching to promote Jim to a PGY-3, members of the faculty are concerned that he has not improved sufficiently and is not prepared to advance.

<u>Are you legally obligated to promote Jim?</u>

Levine, Jeffrey L. *Guide to Medical Education in the Teaching Hospital*. Irwin, PA: Association for Hospital Medical Education, 2010. Print.

Not all Due Process is the Same

Academic	Misconduct
1. Notice of a Deficiency	1. Notice of the Charges
2. Opportunity to Cure	2. Opportunity to Respond
3. Reasonable Decision-Making Process	3. Reasonable Decision-Making Process

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Not all Due Process is the Same

Academic
1. Notice of a Deficiency i. Can be formal or informal
2. Opportunity to Cure i. No formal “probation/remediation” status required
3. Reasonable Decision-Making Process i. Does not mean a formal hearing ii. Decision made in the ordinary course of assessing performance and there is some opportunity for review by a neutral party (ie dean or medical director)

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Not all Due Process is the Same

Misconduct
1. Notice of the Charges i. Can include: dishonesty, sexual harassment, forgery, theft, violence, fraud, etc.
2. Opportunity to Respond i. No requirement to cure
3. Reasonable Decision-Making Process i. A multi-party fair hearing is not required

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So What About Jim…

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So What About Jim…

1. Be careful of unduly burdensome policies
2. Make sure your policies are reviewed
3. Follow your policies

How about this…

A 3rd year resident, Meghan, reported she examined a patient before signing out, and that patient is stable. After reviewing the chart, the attending discovered there was no note from Meghan, instead a note from a nurse documenting a spike in the patient's temperature and numerous failed attempts to page Meghan.

Initially Meghan denied the reports. Ultimately she admitted to not seeing the patient, but denied getting any pages from the nurse.

How would you characterize Meghan's actions?

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Other obligations…

Residency programs have an obligation to provide fair and honest evaluations of all residents and to disclose these evaluations to 3rd parties in a variety of circumstances.

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What about agreements to censor information?

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Information that is censored impairs the ability of the system to function and has been compared to providing a false transcript from medical school.

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A program director should not agree to compromise a final/summative assessment even if requested to do so by attorney or resident.

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There are protections in place…

1. The Qualified Privilege
   - Entitled to a qualified privilege in communicating information as long as you act in good faith, convey truthful information, and do not communicate information with the intent to harm one's reputation

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2. Legal Precedent
   - Program directors have been protected by the courts for providing honest evaluations of residents

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But what about lawsuits?

Great article about lawsuits: Trouble in Academia: Ten Years of Litigation in Medical Education:
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- *Of the cases identified institutional defendants "won better than **90%** of the time."*

But what about lawsuits?

1. *In a 10 year period, there were 302 cases involving students, residents and faculty members*

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But what about lawsuits?

1. *In a 10 year period, there were 302 cases involving students, residents and faculty members*
2. *Nearly 75% of the claims were for: discrimination, wrongful termination and due process violations*

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But what about lawsuits?

1. *At the base of every discrimination/wrongful termination claim was the assertion that the performance did not warrant dismissal*

2. *At the base of every due process claim was the assertion that the institution did not follow or establish minimum procedural safeguards*

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So…what can I do?

4 potentially helpful tips:

i. *Apply procedures consistently*
ii. *Educate residents about and adhere to policies*
iii. *Conduct regular and honest evaluations*
iv. *Don't let the law intimidate you; use it to your advantage!*

Andolsek, Kathryn, MD, MPH, and Robert C. Cefalo, MD, PhD. *Learning to Address Impairment and Fatigue to Enhance Patient Safety*. 2006. Duke School of Medicine

What is worse…

A lawsuit filed by a resident against your institution for a due process violation

Or

A lawsuit filed by the family of a patient that died claiming a misrepresentation of the qualifications/abilities of your resident

What is worse…

At least one court has recognized a cause of action for misrepresentation against a hospital that failed to honestly and accurately disclose information about a physician's performance

References:

1. Andolsek, Kathryn, MD, MPH, and Robert C. Cefalo, MD, PhD. *Learning to Address Impairment and Fatigue to Enhance Patient Safety*. 2006. Duke School of Medicin
2. Levine, Jeffrey L. *Guide to Medical Education in the Teaching Hospital*. Irwin, PA: Association for Hospital Medical Education, 2010. Print.
3. Minicucci, Richard F., and Bryan F. Lewis. "Trouble in Academia: Ten Years of Litigation in Medical Education." *Academic Medicine* 78.Supplement (2003): S13-15. Print.