

Legal Issues in GME

Part II

Handling Administrative Matters

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Disclaimer

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You will be able to...

- I. Explain types of liability and who is “at risk”
- II. Discuss the “right” to engage in relationships and explore the potential pitfalls to engaging in those relationships
- III. Identify some situations where resident information can be disclosed
- IV. List content that is required in residency handbooks



Liability

An expectant mother was admitted to the hospital for the induction of labor. Instead, the treating resident ordered a contraction test, inappropriately read the results and discharged the woman without contacting the attending physician on-call. Mother delivered a newborn with severe brain damage. Family sued the attending physician for negligent supervision.

Can the attending physician be found liable?



Liability

- Types of Liability
 - Direct
 - Vicarious

Liability

- Types of Liability

- Direct

- Allegations against a physician based upon his or her own negligence

- Vicarious

- The imposition of liability on a person for the negligent acts of another based solely upon the relationship between the two parties

Liability

- Our Focus Today
 - Residents
 - Attending Physicians
 - Hospital/Programs

Liability

- Residents
 - Medical Malpractice

Liability

- Residents
 - Medical Malpractice
 - Standard of Care
 - Generally held to the same standard of care as attending physicians in their respective specialties

Liability

- Standard of Care for Residents
 - Important because residents can be named as defendants and their conduct can extend liability to their supervising doctors and to the sponsoring/employing hospital

Liability

- Standard of Care for Residents
 - Important because residents can be named as defendants and their conduct can extend liability to their supervising doctors and to the sponsoring/employing hospital
 - Case law defining the standard of care with respect to residents is relatively sparse

Liability

- Attending Physicians
 - Medical Malpractice
 - Vicarious Liability
 - Failure to Supervise

Liability

- Attending Physicians
 - Medical Malpractice
 - Remains unchanged regardless of nature of relationship
 - Same sort of risk for care personally delivered
 - Vicarious Liability
 - Failure to Supervise

Liability

- Attending Physicians
 - Medical Malpractice
 - Vicarious Liability
 - Indirect legal responsibility based upon relationship
 - “Captain of the ship”
 - “Borrowed Servant Doctrine”
 - Failure to Supervise

Liability

- Attending Physicians
 - Medical Malpractice
 - Vicarious Liability
 - Failure to Supervise
 - Liable due to negligent oversight
 - Hinges on 2 factors:
 - Formation of doctor-patient relationship
 - Provision of Adequate Supervision

Liability

- Hospitals/Programs
 - Educational Malpractice
 - Breach of Contract
 - Breach of Duty to provide services and supervise care
 - Vicarious Liability

Liability

- Hospitals/Programs
 - Educational Malpractice
 - It is difficult to define what constitutes “reasonable education” so almost universally held to be not cognizable
 - Breach of Contract
 - Breach of Duty to provide services and supervise care
 - Vicarious Liability

Liability

- Hospitals/Programs
 - Educational Malpractice
 - Breach of Contract
 - Courts will hear cases if the educational institution failed to fulfill a specific contractual promise distinct from any overall obligation to offer a reasonable program
 - Breach of Duty to provide services and supervise care
 - Vicarious Liability

Liability

- Hospitals/Programs
 - Educational Malpractice
 - Breach of Contract
 - Breach of Duty to provide services and supervise care
 - Failed to adequately train and supervise the resident in safety and performance of a task
 - Vicarious Liability

Liability

- Hospitals/Programs
 - Educational Malpractice
 - Breach of Contract
 - Breach of Duty to provide services and supervise care
 - Vicarious Liability
 - Indirect legal responsibility based upon relationship

Relationships

Dr. Smith has been an attending physician at Mercy hospital for three years without incident. Last week, however, a complaint was filed by a 1st year resident, claiming she was sexually harassed by Dr. Smith. When questioned, he swears that there was never any harassment. In fact, they are in a committed, monogamous relationship.

← What are the issues in this case? →

Relationships

- Can a member of the faculty engage in a relationship with a resident?



Relationships

- What does the law say
 - The laws against sexual harassment don't explicitly prohibit consensual sexual relationships

Relationships

- What does the law say
 - The laws against sexual harassment doesn't explicitly prohibit consensual sexual relationships
 - Lots of gray area
 - Was formed on coercion or fear
 - Truly consensual turns bad
 - Impact upon 3rd parties

Relationships

- Some Approaches
 - Advisory policies that discourage, but do not expressly prohibit
 - Limited bans where there is direct academic responsibility over the student
 - Complete bans of consensual relationships
 - Hybrid policies that forbid consensual relationships where there is a conflict of interest, but discourages them where no conflict is present

Relationships

“Romance with a student is always dangerous. In some cases it is illegal; in some cases it is immoral or unethical. In many others, it is simply risky.”

Richard Carlson



Disclosure of Information

- Releasing Information:
 - Transferring Residents
 - Reporting Corrective Actions
 - Lawsuits

Disclosure of Information

- Releasing Information:
 - Transferring Residents
 - Ethical and professional obligation to relay information about resident's performance
 - Least amount of risk is for the information to be an accurate reflection of performance
 - Reporting Corrective Actions
 - Lawsuits

Disclosure of Information

- Releasing Information:
 - Transferring Residents
 - Reporting Corrective Actions
 - Most commonly, probation
 - Termination or non-renewal
 - Lawsuits

Disclosure of Information

- Releasing Information:
 - Transferring Residents
 - Reporting Corrective Actions
 - Lawsuits
 - Usually guided by State Peer Review Statutes
 - Potential Unintended Consequences of Portfolios

Handbooks

- Disclaimer
 - Additional information may be required by institutional policies, state employment laws or medical board requirements
 - These are only an outline

Handbooks

- Required Information
 - General Program Description
 - Eligibility and Selection Criteria
 - Appointment and Promotion Policy
 - Requirements for Completion of Training
 - Trainee responsibilities and Supervision
 - Program Curriculum
 - Evaluation Policy and Evaluation Forms

Handbooks

- Required Information
 - Attendance Policy
 - Duty Hour Policy
 - Leave Policies
 - Disaster Policies Moonlighting Policy
 - Grievance and Due Process
 - Disciplinary and Corrective Action Process
 - Employee Assistance Program
 - Key Institutional Procedures
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Handbooks

- Helpful Information
 - Department mission statement
 - Division/department personnel
 - Resident management programs
 - Research opportunities
 - Departmental information
 - Institutional information
 - Local information

A Review...

- I. Explain types of liability and who is “at risk”
- II. Discuss the potential pitfalls to relationships
- III. Identify situations where student information can be disclosed
- IV. List content that is required in residency handbooks



References

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