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# **Remediation of the Struggling Medical Learner Legal Considerations**

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## Background

- In general, the majority of medical trainees successfully complete their residency.
  - It creates, for some, an unrealistic expectation.
- However academic remediation has its limits due to:
  - Time allowed to improve is finite.
  - Durability and scope of the remediation effect.
  - Patient safety should not be placed at risk.



# Considerations

- The program needs to assess if reasonable resources have been allocated to the struggling medical learner.
  - If this is the case then the program needs to determine if a disciplinary action process is the next step
- But before doing so...
  - Documentation is appropriate
    - Fill any gaps.
      - pending evaluations are completed.
  - Make sure it follows a coherent, consistent, sequence.



# Considerations

- Current TTUHSC-EP policy requires a meeting with legal counsel and DIO before action is taken.
- Human resources-related issues:
  - Should be managed by HR
    - Sexual harrassment
- Crime-related issues:
  - Should be managed by the proper authorities.
    - DUI



# Considerations

- Also:
  - Consider the policies of the training sites not under sponsoring institution's governance (hospital)
- Medical Board reporting requirements
  - Use the term “Performance Improvement Plan” over Remediation depending on the intent



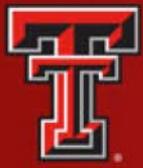
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On the Better Side....



# Legal Principles That Preferentially Support Academic Institutions

- Judicial deference to the professional judgment in reviewing the entire record of the student's performance.
  - An academic decision should be based on the faculty member's professional judgment as long as the faculty reviewed the entire academic record.
- Judicial support of reasoned academic-decision making.
  - The faculty decision cannot be arbitrary or capricious.
  - Regardless of the correctness of the decision, as long as it is within reason, then the court will uphold the decision
- Judicial non intervention
  - Courts are not supposed to be learned in medicine and are not qualified to pass opinions as to the attainments of the student in medicine



Also to Consider...



## Legal Considerations

- The legal framework is that of contract between the trainee and the institution.
  - Breach of contract
    - Students give an implied consent for their evaluations to be used by the school and therefore this is not a breach of contract
- Academic versus Disciplinary actions
  - Academic may include issues of professionalism
  - Disciplinary actions involve academic dishonesty, policy violations, etc.
    - More likely to be subject to judicial reviewing



# Legal Issues

- Unfortunately, no society guidelines exist
  - Most information is based on legal precedent
- Public institutions are (more) required to provide “due process” than private institutions.
- Institution’s legal counsel has a duty to the defend the program/faculty not necessarily the trainee.



## **Due Process in Medical Education: Legal Considerations**

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# Due Process



# Disciplinary Action Due Process

- Three essential components
  - Notification of the deficiencies
  - Opportunity to provide a meaningful response
  - Decision made to be fair and unbiased

**An appeal is not required, but recommended,  
as a component of the due process.**



# Due Process: Court Questions

- Do the institutional rules follow the appropriate due process requirements, specifically, notification of deficiencies, a warning of potential consequences, and an option to respond, with or without a hearing?
- Did the institution follow its own rules?
- Were the procedures equally applied to all students in a similar situation?



## Case

- Resident has repeatedly failed a clinical rotations.
- Despite your remediation interventions and counseling he is unable to reach the expected milestones.
- Your Clinical Competency Committee recommends against promotion to the next academic level.



# Case

- Considerations:
  - Documentation
    - Is this an action to be taken with no background leading this (extreme) decision?
      - If this is the case you may need to reconsider.
    - Do you have documentation of notification/acknowledgement/agreement of the performance issues and consequences by the trainee?
      - Most common response by trainee is “ I did not know”
    - Do you have an explanation for any contradictory information?
      - Glowing faculty evaluations on the trainee on file.
  - Meeting with DIO and Legal Counsel
    - Prior to taking the action
    - Prior to meeting with the resident
  - Develop a clear action plan
    - Agreed by all the players
    - With as much detail as possible
  - Execute



# Conclusions

- Important element to be considered in the remediation process.
- Should not become a deterrent in taking the most proper action.
- Trainees and often faculty are not educated about the process.
- Legal counsel is available as needed.



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