TEXAS TECH UNIVERSITY
HEALTH SCIENCES CENTER™
EL PASO
Remediation of the Struggling Medical Learner
Legal Considerations

Armando D. Meza M.D.
Associate Professor of Internal Medicine
Associate Dean for Graduate Medical Education
Texas Tech Health Sciences Center El Paso
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
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

Richard M. Conran, PhD, MD, JD, Carrie A. Elzie, PhD,
Barbara E. Knollmann-Ritschel, MD, Ronald E. Domen, MD,
and Suzanne Zein-Eldin Powell, MD
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.
End