

Padmore JS, Andolsek KM, Iobst WF, Poulin LJ, Hogan SO, Richard KM. Navigating academic law in competency decisions. *J Grad Med Educ.* 2021;13(suppl 2):102–108.

Supplementary Data

TABLE

Key Legal Cases Supporting Professional Judgement in GME

| Case | Court | Year | Issues | Implication |
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| University of Missouri v. Horowitz (1978) Board of Curators of Univ. of Mo. v. Horowitz, | US Supreme Court 435 U.S. 78, 98 S. Ct. 948, 55 L. Ed. 2d 124 | 1978 | <p>Academic due process: Ms. Horowitz excelled in first two years of medical school but received faculty criticism as she began clinical rotations. She was provided feedback on rotation evaluations regarding attendance, slovenly appearance, hygiene, and bedside manner. Despite feedback, her behavior did not improve. The school’s faculty evaluation committee recommended dismissal from medical school. She appealed the decision to the Dean. The Dean provided her the opportunity to be evaluated by seven independent physicians. At the conclusion of those rotations, the faculty feedback was varied. The Dean upheld the dismissal.</p> <p>The Supreme Court supported the University’s decision based on</p> <ul style="list-style-type: none"> • Ms. H. was provided notice and opportunity to cure her deficiencies through private verbal feedback and rotational evaluations. • The decision was made carefully and deliberately, evidenced by the regularly scheduled faculty meeting, called for the specific purpose of evaluating academic performance • The opportunity to rotate with additional physicians to hear their feedback was much more process than was due. | <ol style="list-style-type: none"> 1. Programs must provide the learner with a <ul style="list-style-type: none"> • Notice of deficiencies (what needs to be improved) • Opportunity to “cure” (or remediate deficiencies) 2. Regularly called faculty meeting for the purpose of evaluating academic performance by faculty expected to evaluate performance was felt to be a reasonable decision-making process to satisfy making the decision carefully and deliberately |
| University of Michigan vs. Ewing, | Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 106 S. Ct. 507, 88 L. Ed. 2d 523 (1985). | 1985 | <p>Mr. Ewing was enrolled in the six-year BS/MD program. After 4 years, he failed the NBME Step 1 exam and was subsequently dismissed from medical school. He sued, citing at least 11 other students who failed the exam and were allowed to stay enrolled and retake the test; some were allowed to retake the exam 3-4 times. The decision to dismiss Mr. E. was made by the faculty committee charged with reviewing academic performance. They reviewed Mr. E.’s entire academic record and determined that based on his overall performance (including several incompletes, required repeats of courses, and the lowest score on the NBME exam at this school), he did not demonstrate the ability or aptitude required and thus had no chance of succeeding. The Court sided with the school noting:</p> <ol style="list-style-type: none"> 1. “The narrow avenue for judicial review of the substance of academic decisions precludes any conclusion that such decision was a substantial departure from accepted academic norms as to demonstrate the faculty did not exercise professional judgment.” 2. The decision was “conscientious and made with careful deliberation,” citing the regularly called faculty meeting structure, and the Promotion and Review Board. | <ol style="list-style-type: none"> 1. Deference to faculty judgement 2. Use of the regularly called faculty meeting structure and Promotion and Review Boards for decisions “conscientious and made with careful deliberation,” 3. Importance of reviewing the entire academic record, not just the current year of enrollment, a single test, rotation, or incident. |

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| | | | 3. The faculty rightly reviewed Mr. E.’s entire academic record, not just a single test, rotation, or incident, to provide context to their decision. | |
| Greenhill v Bailey, 519 F.2d 5 | United States Courts of Appeal, Eighth Circuit (1975) | 1975 | <p>Mr. Greenville transferred to the University of Iowa College of Medicine for his junior year. He failed two major clerkships. The school’s Promotions Committee recommended suspension, subsequently upheld by the school’s Medical Council and Executive Committee. The school submitted a “change of status form” to the AAMC’s Liaison Committee on Medical Education indicating that he had been dismissed “due to poor academic standing” due to “lack of intellectual ability or insufficient preparation.” This information would be available to any LCME school to which he applied.</p> <p>Though the student was able to appeal in writing the suspension, he was not made aware in writing of the perception of “his lack of intellectual ability” nor that the school would report this judgement to the LCME.</p> <p>The school’s “denigration” of his intellectual ability went beyond presenting the factual issues that he had failed his junior year or reporting all of his junior year grades including the two failures. The Court found that the school “imposed a stigma or other disability that foreclose(s) his freedom to take advantage of other...opportunities.”</p> | <p>When making performance decisions, the learner should be aware of all issues leading to that decision. Failure of the school to inform Mr. Greenville of his “lack of intellectual ability” as a basis for dismissal denied his right to “notice” and “opportunity to cure” on that issue.</p> <p>When reporting performance to an external entity, report factual information that was relied upon to make reportable decisions (i.e. “failed rotation X and Y,” not “lacks ability”)</p> |
| Kraft v. William Alanson White Psychiatric Foundation, 489 A.2d 1145 (| (DC App. 1985). | 1985 | <p>Kraft sued his school for defamation, citing negative comments in his performance evaluation. The school demonstrated the comments were factual, and an accurate representation of his performance by the program faculty.</p> <p>Negative comments in an evaluation are not considered defamatory, as residents give implied consent to be evaluated.</p> | <ol style="list-style-type: none"> 1. Negative comments on their own are not defamatory as long as they accurately represent performance. 2. Residents give implied consent to be evaluated by virtue of their enrollment in an academic program for which they are seeking a credential. |
| In Davis v. Regis College | Colorado Court of Appeals, Division 1 | 1991 | <p>Nursing student who failed pediatric course and clinical experience was unable to be promoted to the next year.</p> | <ol style="list-style-type: none"> 1. In addition to written rotational evaluations, anecdotal notes were accepted as documentation of inconsistent, suboptimal performance |
| Stretten v. Wadsworth Veterans Administration Hospital | US Court of Appeals Ninth Circuit | 1976 | <p>First year pathology resident dismissed at the end of his first year, beginning of his second year for “abrasiveness”. He was the first resident in 20 years to be dismissed.</p> | <ol style="list-style-type: none"> 1. Non cognitive competencies, such as communication, teamwork, and professionalism, are essential in medicine, where the profession necessitates “close coordination” with others among a “highly interdependent” group or team. 2. If patient welfare is at risk, institutions can remove the learner from the environment pending a review. Immediate termination can occur with a review of due process after, assuming the institution would in good faith consider reinstatement if the facts supported it. Options might also include suspension until hearing could be held. <p>https://www.casemine.com/judgement/us/5914c605add7b049347d83c9</p> |

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| Marmion v Mercy Hospital/Medical Center | Appeals Fourth District, Division One | 1983 | Final year ob/gyn resident was dismissed due to failure to remediate deficiencies in communication, honesty, conference attendance, morale and failure to engage with supervisor. | <ol style="list-style-type: none"> 1. It is not necessary to wait until a patient is harmed or has adverse event to take an adverse action on a resident 2. Fair process in allowing the resident to respond does not require the formalities of a court trial; a variety of fair processes may provide residents the opportunity to present their position |
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