

## Procedures to follow when dismissing an intern or resident

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**Rarely, interns or residents may be unable or unwilling to perform satisfactorily in a graduate medical education program. In such instances, the director of medical education or residency director (or both) must inform the trainee of his or her deficiency and provide appropriate counseling, generally with the opportunity for remediation. If dismissal becomes necessary, due process must be followed, and the institution must keep documentation that appropriate procedures were followed. These necessary procedures are outlined herein.**

**(Key words: Intern/resident performance evaluation, hospital policy, legal liability)**

In rare circumstances, interns or residents are unable to master the content of the training program, or they may be unwilling or unable to perform their assigned duties, or they may seriously violate hospital rules and regulations in such a way that necessitates their dismissal. Academic dismissals result from a failure to meet stan-

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dards for academic performance and scholarship; disciplinary dismissals occur when institutional standards of conduct are violated. This article reviews the evaluation responsibilities of directors of medical education (DMEs) and residency program directors in upholding high academic standards. The policies of the American Osteopathic Association are reviewed and a distinction is made between academic and disciplinary dismissal. This article also outlines procedures that should be followed when a trainee is being dismissed.

### DME's responsibilities in evaluating intern performance

According to the *Policies and Procedures for Intern Training* handbook of the American Osteopathic Association (AOA), interns must be evaluated regarding clinical experiences, intellectual abilities and skills, and attitudes and interpersonal relationships. Interns must be informed of evaluation policies and appeal mechanisms in the intern manual. This manual should be given to interns at the time of orientation and its receipt should be verified by the intern's signature.

The respective professional staff should evaluate each intern at the completion of each rotation. (See "Guidelines for designing resident rating forms," [JAOA 1992;92:787-790;793-794], for sample forms.) The institution may also have policies regarding the DME's responsibilities in evaluating interns. If so, it is imperative that the DME also comply with these policies.

The assigned trainer must sign these evalua-

ations; the intern reviews and signs the evaluation, and the DME reviews the evaluation as well. This evaluation is kept on file in the DME's office.

The DME and the institution's Education Committee must review the performance of every intern quarterly to ensure that educational objectives are being met. At some institutions, the Education Committee reviews a summary report prepared by the office of the DME. This report contains each intern's performance on rotations for that quarter, highlighting perceived strengths and weaknesses.

Before early termination of an intern's contract, the institution should orally notify the intern of the problem and must provide written documentation of the intern's deficiencies and the institution's attempts to resolve these concerns. It is important to identify these deficiencies as early as possible in the academic year. In this way, a performance improvement program can be developed and implemented that addresses the deficiencies.

Similarly, if early termination of training is recommended, the trainee must be afforded an opportunity for due process through an appeal hearing at the institution. When an intern's contract is terminated early, the DME must provide the intern with documentation regarding which rotations, if any, were satisfactorily completed.

### **Residency program director's, DME's responsibilities for resident performance evaluation**

The *Residency Training Requirements of the American Osteopathic Association* specify that residency directors are required to evaluate resident performance at least quarterly and submit quarterly reports to the DME and administrator of the institution (*Table*). Residency directors are also required to submit yearly reports on each resident to the appropriate specialty college or academy. The general standards also call for a period of counseling before termination of a resident's contract. Written documentation of deficiencies and attempts by the institution to document these concerns must be kept as well. Basic Standards for individual specialties may have more frequent or detailed evaluation requirements.

It is important that residency directors and DMEs work closely together in cases of marginal or failing performance by trainees. Often, the DME will have more experience with similar cases in the institution and with the institutional policies for handling remediation and dismissal.

### **Candid, professional evaluations and high academic standards**

Most osteopathic medical educators are well aware of the need to enhance quality to maintain competitiveness in graduate medical education. The competence of the program's graduates serves as an important criterion by which the quality of the training program is judged. The osteopathic medical training programs must maintain high academic standards to ensure that every graduate has skills and competencies that speak well of the osteopathic medical profession in general and the training program in particular.

Residents or interns in AOA-approved programs may appeal dismissal or denial of credit to the AOA's Committee on Postdoctoral Training (COPT). Such relatively rare appeals usually relate to lack of communication between the institution and trainee; perceived lack of opportunity to remediate deficiencies; or a perceived violation of institutional due process.

### **Legal context for performance evaluation**

Supervising physicians sometimes indicate concern that litigation may result from negative evaluations of trainee performance. After reviewing related court decisions, Irby and Milam<sup>1</sup> conclude:

The courts do not present problems for the frank evaluation and prompt dismissal of problem students and residents. Courts will not overturn academic dismissal decisions that are based upon the faculty's exercise of honest professional judgment, that take into account the student's or resident's entire record, and that follow procedural guidelines of adequate notice and an informal give-and-take between trainee and decision-maker.

We therefore encourage faculty to document performance problems candidly and in detail. They should do so on the basis of their best professional judgment and not retreat even in the face of threatened litigation.

Performance evaluations should address those *observable* professional skills and behaviors. These observed behaviors should be noted separately

**Table**

**DME's and Residency Program Director's Responsibilities for Trainee Evaluation and Dismissal**

<b>Must measures</b>	<b>Suggested measures</b>
<ul style="list-style-type: none"><li>• Evaluate interns on each rotation and residents every 3 months; maintain documentation that such evaluations took place.</li><li>• Have evaluation forms signed by both the person completing the form and the trainee; DME reviews forms.</li><li>• Offer due process and appeal; provide trainees with a copy of these procedures.</li><li>• Before academic dismissals, provide written documentation of deficiencies, appropriate counseling for remediation off deficiencies and an opportunity to improve.</li><li>• Follow the procedures—if any—established at the institution in addition to meeting AOA requirements.</li></ul>	<ul style="list-style-type: none"><li>• Require that evaluations be completed within 1 week of completion of rotation.</li><li>• In cases of marginal or failing evaluations, notify the trainee that he or she failed, or that credit is contingent on successful performance on a designated future rotation; outline plans for remediation.</li><li>• Notify trainees of marginal or failing performance in writing <i>and</i> in a meeting in which performance and remediation are discussed.</li><li>• Keep detailed notes regarding any discussion or dismissal.</li></ul>

from *interpretations* of these behaviors. (“Suggestions for clinicians providing—and residents seeking—feedback,” [JAOA 1992;92:1041-1046] provides further information in interpreting and documenting trainees’ behavior.) Evaluations must *not* include comments suggesting prejudice or malicious intent; they must be communicated only to those persons on a “need-to-know” basis and not third-party persons who are not involved in the evaluation.

Irby and Milam<sup>1</sup> describe the degree of documentation the courts expect. They note the need for trainee access to evaluations and assistance with remediation and the faculty’s obligation to act promptly to dismiss trainees who fail to meet performance standards.

“The law provides faculty with the liberty and freedom needed to uphold high academic standards. Let us use that freedom wisely and courageously,” they conclude.

#### **Timely submission of evaluations**

The DME’s office should require that evaluation forms be returned immediately after each rotation. The forms should be completed on the last day of rotation and submitted to the DME’s office

within that next week (*Table*).

If a review of “marginal” is received, the DME’s office should immediately make a decision whether the trainee passed or failed the rotation and if credit will be granted only on successful completion of a related rotation. These latter two decisions must be documented in writing, outlining plans for remediation of the marginal or unsatisfactory performance. A copy of this report is given to the trainee.

We strongly advise a meeting between the trainee, evaluator, DME, and residency director to review this plan. This meeting need not be adversarial, but must be very clear regarding the trainee’s expected performance and those criteria for meeting these standards.

#### **Academic versus disciplinary dismissal**

Academic dismissal is handled differently than dismissal for violation of hospital policy. Steps taken in the dismissal of residents because of substance abuse violations or sexual harassment, for example, must carefully follow the due process outlined in hospital policy. Specifically, any time lines for this action must be rigorously adhered to; formal hearings may be required if outlined in the

institution's policy. All actions taken by the institution should be documented with the expectation that the intern or resident will sue for reinstatement and damages.

As mentioned earlier, the courts strongly support the academic judgment of the professional faculty; unless evidence of discrimination or other wrongdoing by the faculty exists, the courts do not interfere with the faculty decisions regarding academic performance.

However, when it comes to disciplinary action, the courts are more likely to believe that they *can* determine if due process was followed. Therefore, such dismissals are more subject to legal challenge.

### Comments

The hospital and department must have clearly defined procedures for academic and disciplinary action. Whether the dismissal stems from academic or disciplinary action, the trainee should be notified orally and in writing of the deficiency. A probationary period, involving a performance improvement program, is recommended for academic deficiencies. With either dismissal, a mechanism for appeal and a hearing should be available and enforced. Finally, institutional policies should be issued to all contracted trainees at the time of entry into a program, and their receipt verified with the trainee's signature. Although not guaranteed to prevent litigation by the trainee, these measures will help to protect the rights and reputation of both the institution and the trainee.

**For further information on related policies,  
the AOA offers these publications:**

*Policies and Procedures for Intern Training of  
the American Osteopathic Association*

*Residency Training Requirements of the American  
Osteopathic Association*

They are available by contacting the American Osteopathic Association, Division of Postdoctoral Education, 142 E Ontario St, Chicago, IL 60611; (800) 621-1773, ext 5846, or (312) 280-5846.

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### Reference

1. Irby DM, Milam S: The legal context for evaluating and dismissing medical students and residents. *Acad Med* 1989;64:639-643.