LEGAL ISSUES IN RESIDENCY TRAINING: TOP TRENDS IN RECENT YEARS

Graduate Medical Education Program
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Today’s Topics

- Lawful interviews
- Disability accommodation and medical leaves
- Resident evaluation
- References
Careless Interviewing Can Lead to

- Discrimination claims
- Negligent hiring
- Compliance issues
Protected Characteristics

- Age
- AIDS and related conditions
- Ancestry
- Bankruptcy
- Citizenship or citizenship status
- Color
- Disability (mental /physical)
- Filing a workers’ comp claim
- Garnishment because of a single debt
- Marital status
- Medical condition, including cancer in remission
- National origin
- Political beliefs
- Pregnancy
- Race
- Religion
- Sex
- Sexual orientation
- Union membership
- Veteran status
Reducing Liability in the Hiring Process

Questions should not elicit information that may not properly be considered in making the hiring decision:

• Marital status, children, or family plans
• Ethnicity
• Religion or politics
• Age
• Disability
JOB-RELATED INTERVIEWING:
Define the skills and behaviors required for success in the job

Skills:

- Technical skills
- Academic qualifications
- Relevant experience

Behaviors:

- Work environment
- Work team dynamics
- Work expectations

Outline your questions before you begin. Use a script. Keep your notes for a minimum of three years.
Exercise Due Diligence to Avoid Negligent Hiring Claims

- Look for red flags and follow-up:
  - Attendance at more than one medical school
  - Participation in more than one training program
  - Failure to complete a program
  - Lack of references from particular school / program

- Ask about any prior discipline / probation / terminations
ACCOMMODATIONS & LEAVES
Federal and state laws require employers to reasonably accommodate qualified individuals with disabilities.

A qualified person with a disability is one who is able to perform the “essential functions” of the job, with or without reasonable accommodations.

A reasonable accommodation is “any change in the work environment or in the way work is performed” that enables the person to do the job without changing its essential functions.

Term “disability” is broadly defined and includes common mental health conditions.
The Interactive Process

- An ongoing obligation managed by the GME Office
- Involves input from resident, department, and health care providers
- Requires analysis of essential functions
- Failure to undertake interactive process is separate basis for liability under the law
- Not required to restructure job or modify job
What Are You Expected to Do?

- Don’t ignore comments by residents about needing help, feeling overwhelmed, depressed, etc.
- Document that assistance has been offered
- Tell only those who need to know about the accommodation
Medical Leaves

- Federal and state laws entitle eligible employees with up to 12 weeks of unpaid leave to address
  - Employee’s own serious health condition
  - Birth, adoption, foster care placement of a child
  - Serious health condition of immediate family member
- Additional leave for pregnancy disabilities and for members of the armed forces
- Typically employee requests leave, but employer may need to offer where need is apparent
- Leave is protected
  - Job cannot be filled during leave
  - Employee cannot be penalized for taking leave
  - Training may be extended as necessary
Pregnancy Disability Leave

- GME Program provides 6 weeks’ paid time off as a benefit.

**BUT**

- Pregnancy Disability Leave Act provides up to four months’ leave for those periods that the woman is actually disabled from work due to pregnancy.
  - No minimum service requirement.
Fundamentals of Resident Evaluation

- Essential function of a faculty member is to evaluate the performance of residents in a fair and accurate manner.
- Evaluate based on overall experience, not just one event (unless appropriate).
- Do not inflate ratings … “satisfactory” does not mean “poor”.
When Residents Fail to Progress

- Provide prompt, specific feedback
- Identify unsatisfactory performance and what must be done to remediate it
- Memorialize performance communications in writing
- Consult with GME Office
- Keep process confidential
Key Challenges

- Issues involving professionalism versus quality of care
- Scaling deficiencies consistently
- Misuse of ratings in Medhub
- Addressing concerns promptly
- Achieving some level of consensus on performance
- Talking to each other about the resident’s performance, but not to the resident
- Reluctant faculty evaluators
Employment references receive broad protection under the law

Statements should be:
- True
- Based upon facts that are documented in the resident’s evaluations or file

Avoid statements that are:
- Incomplete / misleading
- Motivated by ill-will
Disclose documented concerns, including probation

Do not disclose information that might indicate the individual’s race, age, disability, or other protected characteristic

If there are any unusual circumstances, seek advice before responding
Best Practices for Providing References

- Discuss with the resident the substance of what you will say.
- Unless you are a program director, you are not obligated to provide reference.
- Provide factual information based upon personal knowledge consistent with how you have evaluated the resident.
- Know that lunch discussions or “off the record” telephone conversations with prospective programs are “on the record.”
- Know that reference recipients won’t hesitate to disclose what you said and point fingers.

Office of the General Counsel
Stanford University
Hey Dr. Colleague, Hope all is well. Sorry to make this such a short email. I'm about to catch a flight.

Joe is the worst resident I've ever worked with. He's lazy, he dumps on other residents, he leaves call early, he shows up for call late, he forgets when he is pulled to other services, and he calls in sick when he isn't sick. I'm chief resident for another month and he has made my life a nightmare this year.

He originally was going to do KM fellowship here but the KM department told him to look elsewhere (but they weren't going to write him any letters of recommendation b/c it would embarrass them). He was trying to work something out with the psych department but word of his laziness got around there too. He is terrible. You do not want him in your program.

I'll forward you just a few emails from this year.

Please email or call me if you have any questions. You can pass any of this on to your program director. Its all true.
Parting Advice

Trust your gut when making hiring / ranking decisions

"Thanks for coming in. We'll get back to you as soon as we lower our expectations."