Legal Issues in GME
Part II
Handling Administrative Matters

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Disclaimer

The contents in this presentation are for informational purposes only. It is not provided in the course of and does not create an attorney-client relationship. Also, the information herein is not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.
You will be able to…

I. Explain types of liability and who is “at risk”

II. Discuss the “right” to engage in relationships and explore the potential pitfalls to engaging in those relationships

III. Identify some situations where resident information can be disclosed

IV. List content that is required in residency handbooks
Liability

An expectant mother was admitted to the hospital for the induction of labor. Instead, the treating resident ordered a contraction test, inappropriately read the results and discharged the woman without contacting the attending physician on-call. Mother delivered a newborn with severe brain damage. Family sued the attending physician for negligent supervision.

Can the attending physician be found liable?
Liability

• Types of Liability
  – Direct
  – Vicarious
Liability

• Types of Liability
  – Direct
    • Allegations against a physician based upon his or her own negligence
  – Vicarious
    • The imposition of liability on a person for the negligent acts of another based solely upon the relationship between the two parties

Wegman, 2012
Liability

• Our Focus Today
  – Residents
  – Attending Physicians
  – Hospital/Programs
Liability

• Residents
  – Medical Malpractice
Liability

• Residents
  – Medical Malpractice
  – Standard of Care
    • Generally held to the same standard of care as attending physicians in their respective specialties

Wegman, 2012
Liability

• Standard of Care for Residents
  – Important because residents can be named as defendants and their conduct can extend liability to their supervising doctors and to the sponsoring/employing hospital
Liability

• Standard of Care for Residents
  – Important because residents can be named as defendants and their conduct can extend liability to their supervising doctors and to the sponsoring/employing hospital
  – Case law defining the standard of care with respect to residents is relatively sparse
Liability

• Attending Physicians
  – Medical Malpractice
  – Vicarious Liability
  – Failure to Supervise
Liability

• Attending Physicians
  – Medical Malpractice
    • Remains unchanged regardless of nature of relationship
    • Same sort of risk for care personally delivered
  – Vicarious Liability
  – Failure to Supervise

Kachalia, 2004
Liability

• Attending Physicians
  – Medical Malpractice
  – Vicarious Liability
    • Indirect legal responsibility based upon relationship
    • “Captain of the ship”
    • “Borrowed Servant Doctrine”
  – Failure to Supervise
Liability

• Attending Physicians
  – Medical Malpractice
  – Vicarious Liability
  – Failure to Supervise
  • Liable due to negligent oversight
  • Hinges on 2 factors:
    – Formation of doctor-patient relationship
    – Provision of Adequate Supervision

Kachalia, 2004
Liability

• Hospitals/Programs
  – Educational Malpractice
  – Breach of Contract
  – Breach of Duty to provide services and supervise care
  – Vicarious Liability

Wegman, 2012
Liability

• Hospitals/Programs
  – Educational Malpractice
    • It is difficult to define what constitutes “reasonable education” so almost universally held to be not cognizable
  – Breach of Contract
  – Breach of Duty to provide services and supervise care
  – Vicarious Liability

Wegman, 2012
Liability

• Hospitals/Programs
  – Educational Malpractice
  – Breach of Contract
    • Courts will hear cases if the educational institution failed to fulfill a specific contractual promise distinct from any overall obligation to offer a reasonable program
  – Breach of Duty to provide services and supervise care
  – Vicarious Liability
Liability

- Hospitals/Programs
  - Educational Malpractice
  - Breach of Contract
  - Breach of Duty to provide services and supervise care
    - Failed to adequately train and supervise the resident in safety and performance of a task
  - Vicarious Liability
Liability

• Hospitals/Programs
  – Educational Malpractice
  – Breach of Contract
  – Breach of Duty to provide services and supervise care
  – Vicarious Liability
    • Indirect legal responsibility based upon relationship
Dr. Smith has been an attending physician at Mercy hospital for three years without incident. Last week, however, a complaint was filed by a 1st year resident, claiming she was sexually harassed by Dr. Smith. When questioned, he swears that there was never any harassment. In fact, they are in a committed, monogamous relationship.

What are the issues in this case?
Relationships

• Can a member of the faculty engage in a relationship with a resident?
Relationships

• What does the law say
  • The laws against sexual harassment don’t explicitly prohibit consensual sexual relationships
Relationships

• What does the law say
  • The laws against sexual harassment doesn’t explicitly prohibit consensual sexual relationships
  • Lots of gray area
    • Was formed on coercion or fear
    • Truly consensual turns bad
    • Impact upon 3rd parties
Relationships

• Some Approaches

  • Advisory policies that discourage, but do not expressly prohibit
  • Limited bans where there is direct academic responsibility over the student
  • Complete bans of consensual relationships
  • Hybrid policies that forbid consensual relationships where there is a conflict of interest, but discourages them where no conflict is present

Mack, 2000
Relationships

“Romance with a student is always dangerous. In some cases it is illegal; in some cases it is immoral or unethical. In many others, it is simply risky.”

Richard Carlson
Disclosure of Information

- Releasing Information:
  - Transferring Residents
  - Reporting Corrective Actions
  - Lawsuits
Disclosure of Information

• Releasing Information:
  – Transferring Residents
    • Ethical and professional obligation to relay information about resident’s performance
    • Least amount of risk is for the information to be an accurate reflection of performance
  – Reporting Corrective Actions
  – Lawsuits
Disclosure of Information

• Releasing Information:
  – Transferring Residents
  – Reporting Corrective Actions
    • Most commonly, probation
    • Termination or non-renewal
  – Lawsuits
Disclosure of Information

• Releasing Information:
  – Transferring Residents
  – Reporting Corrective Actions
  – Lawsuits
    • Usually guided by State Peer Review Statutes
    • Potential Unintended Consequences of Portfolios
Handbooks

• Disclaimer
  – Additional information may be required by institutional policies, state employment laws or medical board requirements
  – These are only an outline
Handbooks

• Required Information
  – General Program Description
  – Eligibility and Selection Criteria
  – Appointment and Promotion Policy
  – Requirements for Completion of Training
  – Trainee responsibilities and Supervision
  – Program Curriculum
  – Evaluation Policy and Evaluation Forms

Levine, 2010
Handbooks

- Required Information
  - Attendance Policy
  - Duty Hour Policy
  - Leave Policies
  - Disaster Policies
  - Moonlighting Policy
  - Grievance and Due Process
  - Disciplinary and Corrective Action Process
  - Employee Assistance Program
  - Key Institutional Procedures

Levine, 2010
Handbooks

• Helpful Information
  – Department mission statement
  – Division/department personnel
  – Resident management programs
  – Research opportunities
  – Departmental information
  – Institutional information
  – Local information
A Review…

I. Explain types of liability and who is “at risk”
II. Discuss the potential pitfalls to relationships
III. Identify situations where student information can be disclosed
IV. List content that is required in residency handbooks
References


