When remediation fails: When & how to withdraw life support
Disclosures

- No disclosures to report from either Dr. Cosco or Dr. Edson
Overview

- Prevalence of struggling learners (SL): 3-7%
- Little data on percent of SL receiving remediation
  - 38% in one large series (Dupras, Edson)
- Scarce data on remediation outcomes, terminations
- Guerrasio et al: 90% success, no terminations
- Dupras, Edson et al: 12.6% probation, 4.7% termination, 7.9% resignation
- Dismissal of resident is dramatic, traumatic and may be underutilized

Learning objectives

- Recognize remediation failure and predictors of failure
- Recognize when immediate termination is indicated, even in the absence of remediation efforts
- Understand the key components of preparation prior to termination meeting
- Develop an essential “checklist” for the termination meeting with the trainee
Secondary cause checklist

- Distraction
- Deprivation (sleep, support)
- Disability (learning, ADHD)
- Disease
- Drugs
- Depression or other affective disorder
- Disorder (personality)
- Disastrously wrong career choice (our addition)

Lucey and Boote, Practical guide to the evaluation of clinical competence
[edit Holmboe, Hawkins]
Key Elements in Letters

- Details of Performance/Behavior
- Institutional Policies
- Interventions
- Assessment/measurement
- Timelines
- Consequences
- Acknowledgment/Signatures
TERMINATION
Predictors of remediation failure

- Learner not engaged in the remediation process: poor insight, “ownership”
- Egregious and/or recurrent professionalism issues
- Learner not making progress despite full engagement, assuming no mitigating factors
- Incomplete or non-adherence to interventions for:
  - Psychiatric, substance, physical/neurocognitive disorders (e.g., ADHD)
When remediation doesn’t work

- Follow due process
- Document, document, document ....
- Know your institutional policies
- Involve legal early – follow policies
- Non-renewal – ACGME Notification Deadline
- Termination/dismissal
  - Rational Basis Test – “not arbitrary or capricious”
  - Careful, reasoned, deliberate, conscientious
Dismissal/termination decision

- Supported by clearly documented* timeline of inadequate or failed remediation
- May be immediate even in absence of remediation: gross negligence, egregious professionalism breach
- Decision must balance learner needs with negative impact on institution, patient safety, morale, etc.
- PD decision BUT with input from CCC, DIO, legal, HR, department chair

* Documentation of verbal comments also valid
Termination decision

Preparation is essential

- Review institutional policies on remediation, probation, dismissal and appeals process
- Careful review of remediation documentation
  - Clear documentation of remediation plan, CCC minutes, follow up, timeline and consequences of failure to meet explicit expectations
  - Transparency is of the essence!!!
- Inform, review and discuss in advance with DIO, legal staff, department chair, HR
The termination meeting

- ALWAYS have a witness
- Stick to the facts, keep a cool head
- Review previous discussions with trainee, details of the remediation plan, timeline and consequences of not meeting expectations
- Must discuss
  - Specific date of termination, benefits, etc.
  - Right to appeal (per institutional guidelines)
  - Number of months credit given
  - How program will respond to future letters, inquiries
- Should discuss career counseling
Dismissal/termination tips

- Prepare for potential litigation, though courts tend to favor educational institutions in matters of academic deficiency (see Acad Med 2003;78(10):S13-15)

- Avoid “Slow Code” dismissal process
  - Allowing trainee to finish rotation, finish year based on coverage, call schedules, etc.
  - Sends mixed message: not good enough to remain in program, but good enough to “hang around”, compromise patient care?

- DO NOT provided any information about dismissed trainee without signed release
Legal Ramifications

TO LIFE,
LIBERTY
AND THE PURSUIT OF

LAWSUITS
Litigation in Medical Education

- 329 cases in 10 year span, 171 involved residents
- 40% of claims named faculty members as co-defendants
- 80% of claims challenged institutional actions (rejection, demotion, dismissal)
- More than half alleged discrimination

Minicucci R, Lewis B. Acad Med 2003;78(10):
Ensuring “Due Process”

1. Did the resident know the program expectations?
2. Were expectations the same for all residents?
3. Did the resident know the consequences for not meeting expectations?
4. Were warnings documented?
5. Was there sufficient time for remediation?
Due Process

- Courts will review the documentation presented and ask 3 questions:
  1. Do the institutional rules follow the appropriate due process by providing notification of deficiencies, a warning of potential consequences, and an option to air their grievances (with or without a hearing)?
  2. Did the institution follow its own rules?
  3. Were the procedures equally applied to all students in a similar situation?
- If yes, the courts consider 3 principles...
Principles

- Principle One: Judicial deference to the professional judgment in reviewing the entire medical record of the student’s performance.
- Principle Two: Judicial support of reasoned academic decision-making.
- Principle Three: Judicial nonintervention.
Translation of Principles

1. Courts will not reverse a decision as long as the faculty reviewed the student’s entire academic record.

2. The faculty decision cannot be arbitrary or capricious, but based on facts and reason. (Students hold burden of proof)

3. Courts will not overturn faculty decisions unless there is clear evidence of arbitrary and capricious action.
Useful references

**Dismissal**
- Schenarts P, Langenfeld S. American Surgeon 2017;83:119
- Domen RE. Am J Clin Pathol 2014:141:784-

**Remediation**
- Guerrasio J. Acad Med 2014;89:352-

**Consequences of “failing to fail” trainees**
- Roberts NK. J of Grad Med Ed. 2011;Jun 3(2):127-

**Legal Aspects**
- Minicucci RF Acad Med 2003;78(10):S13-
- Irby DM. Acad Med 1989;64:639
Food for thought......

“If I cannot drink bourbon and smoke cigars in heaven, than I shall not go.”(Mark Twain)
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- Yao DC, Wright SM. National survey of internal medicine residency program directors regarding problem residents. JAMA 2000 Sep 6;284(9):1099-104.
Bibliography

- Yao DC, Wright SM. National survey of internal medicine residency program directors regarding problem residents. Jama2000 Sep 6;284(9):1099-104.
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- Guerrasio J, Aagaard EM. Methods and outcomes for the remediation of clinical reasoning. JGIM 2014 Dec;29(12):1607