Legal implications of evaluation procedures for students in healthcare professions

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Evaluation of students is an integral part of teaching and instruction. Evaluations take on added dimensions when students are enrolled in healthcare training programs, such as nurse anesthesia. Not only must students master a body of knowledge, but they also must be able to integrate, process, and apply this knowledge appropriately in a clinical setting on a human patient. Thus, societal and legal issues enter into the training and credentialing of a healthcare practitioner. Conversely, today’s students are more aware of their rights and freedoms and are more willing to appeal to the legal system for satisfaction of their grievances. Thus, evaluation must meet many needs; most important, evaluation must be fair and objective for society, school, and the student. In order to develop and implement a just evaluation system, instructors and administrators should be cognizant of the legal parameters and ramifications of evaluation processes.

Key words: Academic dismissals, clinical training, due process, grievance, student evaluation.

Introduction
Educational institutions providing training in the healthcare professions have an obligation to the community and society to educate competent practitioners.1 Inherent in the educational process is the need for evaluation. Students in the healthcare professions are expected to master course objectives and clinical skills. Evaluation procedures help document whether the student has attained sufficient knowledge and skills for entry level clinical practice. Evaluation procedures also provide feedback in the development of clinical skills.2

While clinical evaluation of student performance is a necessary obligation of clinical faculty, many faculty feel uncomfortable and become reluctant to perform these evaluations. Reluctance on behalf of some faculty to perform clinical evaluations stems from the subjective nature3 and lack of interrater reliability inherent in the process.4 Evaluation of clinical performance is quite subjective, opening the way for evaluator self-doubt and anxiety. Even more distressing and difficult is the evaluation of students whose performance is poor or unacceptable.

Students with serious clinical problems place an increased demand on time and resources of faculty members and support systems. Documentation of progression, or lack thereof, involves additional work. Finding clinical experiences to help with remediation, or lack thereof, involves additional work. Finding clinical experiences to help with remediation is difficult and dependent on patient care opportunities at the clinical site. Yet, even with these intensified efforts, a few students will not be capable of advancing to appropriate levels of clinical practice. “Failing a student in a clinical setting can be a devastating experience for faculty members,”5 as well as for students. Thus, the hesitancy experienced by faculty in giving failing clinical grades is understandable. However, profes-
sional and societal responsibilities mandate that incompetent people be removed from threatening patient safety, causing harm, or both.¹

Both student and instructor may feel an intense degree of failure. The student may be faced with many uncertainties, most notably the lack of future job security and personal well-being in the face of mounting educational and personal financial indebtedness. In these types of environments, many conflicts tend to develop.

Increasingly, students are appealing to grievance committees⁴ and the judicial system for resolution.⁵ Allegations of bias, prejudice, malice, and defamation sometimes are made. These concerns usually are voiced during a formal grievance hearing if previous conferences with faculty, chairperson, and administration have not remedied the situation. Some continue on to the judicial system. Litigation processes can result in significant staffing and monetary losses for the institution. Thus, this article offers a look at legal case law and the implications for clinical evaluation in healthcare educational settings.

Educational litigation

In interpreting case law, educators must understand the structure of the judicial system and its areas of jurisdiction. Generally, state court systems mirror the federal court system in which individual courts maintain jurisdiction over prescribed geographical areas.⁷ Rulings are applicable only to the area of jurisdiction. Thus, rulings given by the state court are applicable in the state district of jurisdiction, and rulings given by the state supreme court have jurisdiction across the respective state. Likewise, federal court rulings are applicable in the prescribed federal district and prevail over state court rulings. The U.S. Supreme Court holds jurisdiction and prevails over all state and federal courts across the nation. There are three levels of courts at the state and federal level. The lowest court is the trial or district court, followed by appellate courts, and then the Supreme Court. An exception is the New York State court system in which the supreme court is the lowest court.

Application of constitutional rights and case law rulings in accordance with the state action doctrine holds public institutions to more stringent requirements than private institutions. However, with due process requirements being very minimal for academic dismissals, some courts will "encourage a rough similarity of treatment by seeking guidance from public-sector precedents when deciding private-sector cases."⁸ Thus, it would behoove private colleges and universities to follow currently defined due process requirements for academic procedures or explicitly state the policy to not provide due process hearings for academic disputes.⁹

In looking at current educational case law, one must appreciate the difference between academic and disciplinary dismissals from an educational institution. "Academic dismissals involve the professional evaluation of a trainee's academic and/or clinical performance."¹⁰ Disciplinary dismissals, on the other hand, involve legal infractions or violations of institutional rules. In matters of academic evaluations and dismissals, courts tend to defer to academic professional judgment. The principle of judicial deference states that academicians possess the "particular knowledge, experience, and expertise" to review academic performance and decide on student retention or dismissal.¹¹ This decision must be based on a thorough review of the entire record but does not mandate that all students be treated exactly alike.¹² The principle of judicial nonintervention underlies the courts' refusal to review academic decisions unless they are proved to be arbitrary, capricious, and given in bad faith.¹³ Last, due process requirements for academic dismissals have been minimized to include only prior notification and an opportunity for a hearing at which students may air grievances and tell their side of the story.¹¹¹¹¹⁵

As early as 1913, the principles of judicial deference to professional judgment and judicial nonintervention were implemented in the legal resolution of educational disputes. In Barnard v Inhabitants of Shelburne, a ninth grade student failed to achieve the required grade point average necessary for progression. At the reversal of the state's lower court decision, the Massachusetts Supreme Court stated that when a "school committee acts in good faith..." in evaluating and grading a student, "... this matter is not subject to review by any other tribunals."¹⁶

The New York Supreme Court reached a similar conclusion in Edde v Columbia University.¹⁷ Upon rejection of his dissertation, Edde, a doctoral student at Columbia University, petitioned the New York Supreme Court to allow a second defense of his dissertation. While Edde had been given the opportunity to revise and resubmit his study, he chose instead to take his dispute directly to court. The New York Supreme Court ruled that it was within the academic realm of the university to reject the dissertation proposal, and the court deferred academic judgment to the university. Likewise, the court refused the request for university review of the research proposal "since the court may not substitute its own opinion as to the merits of a doctoral dissertation for that of the faculty..."
members whom the University has selected to make a determination as to the quality of the dissertation."17(p44)

In 1965, with Connelly v University of Vermont and State Agricultural College,13 the policy of nonintervention with academic matters and deference to academic judgment again was applied. In this case, Connelly, a third-year medical student, requested reinstatement to the College of Medicine after his dismissal due to a failing grade in the obstetric and pediatric rotation. He maintained that his dismissal was capricious, arbitrary, and in bad faith since he had made up the days missed due to illness in his clinical rotation. The United States District Court (District of Vermont) ordered the university to “give the plaintiff a fair and impartial hearing on his dismissal order”18p1610 to determine whether the defendant dismissed the plaintiff arbitrarily, capriciously, or in bad faith. Of particular interest, the U.S. District Court declined to rule on the merit or correctness of the academic decision, invoking the principle of judicial noninterference by stating that academicians “have absolute discretion in determining whether a college student has been delinquent in his studies.”13

Two final cases demonstrate the trend of judicial nonintervention and judicial deference to academic judgment. Keys, a law student at Texas Southern University, filed suit against the president of the university when he was denied re-admission to law school after receiving two failing course grades. In its ruling, the United States District Court (District of Texas) stated that “assignment of grades . . . must be left to the discretion of the instructor” and that instructors “should be given unfettered opportunity” to determine whether a student’s work “attains a standard of scholarship required by that professor for a satisfactory grade.”18p940 In summary, the U.S. District Court stated: “It would be difficult to prove by reason, logic, or common sense that the Federal Judiciary is either competent or more competent to make such an assessment.”18p940 The Arkansas Supreme Court in Coffelt v Nicholson19 likewise reinforced the policy of nonintervention in academic matters when it refused to review a dismissal decision and would only consider charges of “capricious conduct.” Thus, the courts have consistently maintained that they would only enter into disputes of the manner in which judgments were reached and into contractual disputes but not into the substance of the academic decisions themselves.

Yet, lest academic institutions believe they have free reign in the courtroom, the case of Blank v Board of Higher Education of the City of New York20 should be reviewed. In this case, Blank had completed all academic requirements for his bachelor’s degree; however, he had not remained “in residence” for his final semester as required by the university. During the course of the hearing, Blank demonstrated to the New York Supreme Court that he had obtained permission from several of his advisors and faculty members to relocate during final completion of his degree requirements. Because Blank had satisfactorily completed all his academic requirements, the court decided that this was not a case for deference to academic expertise, but, rather, a contractual case between the institution and student.20 Furthermore, the court ruled that since Blank had satisfactorily completed all required course work and obtained permission from faculty and advisors, he had met his contractual obligations and was entitled to the bachelor’s degree.20

Litigation in health education

The healthcare professions are not immune to student legal actions involving academic disputes over evaluations and dismissals. This may be due in part to the competitive nature of successful admission to training programs, the high expectations required in clinical practice, and the increased cost commitment required of students with the rising tuition often experienced at colleges and universities.8

In 1968, the Alabama Supreme Court was asked to rule on a student’s academic dismissal in Mustell v Rose.11 Mustell, a third-year medical student requested reinstatement and advancement to the senior level at the Medical School of Alabama, alleging that his grade in the medical and surgical rotation was arbitrary, capacious, and given in bad faith. The medicine and surgery instructors noted that Mustell’s classroom performance was satisfactory in contrast to his performance in the clinical area in which he was described as “dishonest” and a “bluffer.” To refute these charges, Mustell was given a special clinical examination. During the examination, Mustell made serious judgmental errors and, thus, failed. The promotions committee denied him advancement to senior ranking. Mustell sought legal recourse. The Supreme Court of Alabama using the principles of judicial nonintervention and deference refused to review grading standards. It did review the case for charges of arbitrary and capricious actions and found none. Appeals to the United States Supreme Court were denied.

In 1975 the Eighth Circuit Court of Appeals convened on Greenhill v Bailey, which involved a medical student who was dismissed for academic failure because the student “lacked intellectual ability.”14(p77) Greenhill filed suit on the grounds that
he did not receive due process, his character was
defamed, and his future in medicine was adversely
affected. The university contended that his failure on national boards and several courses was fair
documentation of his intellectual lack. The lower
district court dismissed the case on grounds of non-
interference in academic matters, but the Eighth
Circuit Court of Appeals reversed this decision and
sent the case back to the university for academic
review, stating that the medical school was: ‘the
best judge of its students’ academic performance and
their ability to master the required curriculum.... But
an ‘informal give-and-take’ between the student and the
administrative body dismissing him... would not un-
duly burden the educational process...’\(^{(14)}\)

Thus, the court reaffirmed its noninterference
policy and acknowledged the right of a hearing to
allow the student an opportunity for rebuttal when
making facts public from a student’s performance
record.

The Tenth Court of Appeals convened on a
similar case, *Gaspar v Bruton*, \(^{(11)}\) in which a practical
nursing student at Gordon Cooper Area Vocational
Technical School was dismissed for failing to meet
clinical nursing course expectations. Prior to dis-
missal, Gaspar was notified of her deficiencies and
informed of the consequences of not improving
her clinical performance. Gaspar was allowed to
rebut evaluations of her clinical competency and
to question faculty.\(^{(11)}\) After her dismissal, Gaspar
took her case to the United States District Court
for the Western District of Oklahoma where a sum-
mary judgment for the school was given. On ap-
ppeal to the United States Tenth Circuit Court of
Appeals, the court once again reiterated its policy
of judicial noninterference. The court found: “that
the Court will not interfere with the legal and academic
standards of School in determining the qualification,
professional standards and ability of a student.”\(^{(11)}\)

Last, in the landmark *Board of Curators of the
University of Missouri v Horowitz*, the United States
Supreme Court ruled as in previous cases. Horo-
witz, a medical student in her final rotations, was
found deficient in her pediatric experiences. While
she was able to maintain excellent grades in didac-
tic class work, she was suboptimal in her clinical
performance, “erratic” in clinical attendance, and
“lacked a critical concern for personal hy-
giene.”\(^{(15)}\) The dean placed Horowitz on proba-

tion and informed her of the deficiencies. She con-
tinued to do well in her classroom studies and na-
tional examinations; however, no improvements
were seen in clinical practice. She was notified that
unless there was dramatic improvement, she would
not be considered for graduation and possibly be
dropped as a student.

Horowitz appealed the decision and was ad-
ministered a special examination by 7 physicians.
Of the 7 examiners, 2 recommended graduation, 2
recommended expulsion, and 3 recommended de-
layed graduation and probation status. During re-
view of the examination, the University Council
on Education noted failing grades on subsequent
clinical rotations and recommended that Horo-

witz be dropped from the program. An additional
appeal to the provost was likewise denied, and Horo-

witz filed a civil suit. Continued unfavorable rul-
ings from the United States District Court for the
Western District of Missouri and the United States

Court of Appeals Eighth Circuit brought the case
to the U.S. Supreme Court, which ruled: “The school
fully informed respondent of the faculty’s dissatisfact-
ion with her clinical progress and the danger that this posed
to timely graduation and continued enrollment. The
ultimate decision to dismiss respondent was careful and
deliberate.”\(^{(15)}\)

In response to Horowitz’s request for a formal
panel hearing as guaranteed by the due process
clause of the Fourteenth Amendment, the U.S. Su-
preme Court stated “that there are distinct differ-
ences” between dismissals for academic purposes
and disciplinary purposes. Formal panel hearings
may be required for disciplinary dismissals, but
they are not required for academic dismissals.
Therefore, Horowitz’s request for a formal panel
hearing was denied. Furthermore, the U.S. Su-
preme Court upheld that evaluation of clinical per-
f ormance is as much an academic decision and
right as is assigning a grade to written work and
that “courts are particularly ill-equipped to evalu-
ate academic performance.”\(^{(15)}\)

**Implications for the healthcare professional
educator**

A review of case law shows that the judicial
system consistently defers evaluation of student per-
f ormance in didactic and clinical areas to the edu-
cational institution. The judicial system also has
maintained a policy of noninterference in academic
matters in which professors and educational ad-
mnistrators are considered experts. It will inter-
vene only in matters of academic disputes when
charges of arbitrary and capriciousness can be sub-
stantiated in sharp contrast to disputes over disci-

plinary dismissals or allegations of contract
violations.

Contractual relationships exist between stu-
dents and faculty and are defined by admissions
brochures and applications, college or university
handbooks, course descriptions, and oral commu-
nications made by college or university representa-
tives.\(^{(22)}\)
A recent qualitative study of 4 nursing colleges showed that all the institutions had established policies for student grievance procedures that granted students the right to multiple formal panel hearings if previous contacts with faculty, departmental staff, and, then, administration were unsuccessful in resolving the grievance. However, these multilayered grievance procedures are not necessary to satisfy the due process requirement for academic dismissals as demonstrated by previous court rulings. What may be more appropriate than multiple panel hearings during the grievance procedure is a delineated process whereby students are informed of their lack of performance and the consequences of unimprovement. In addition, due process procedures should demonstrate an institution's commitment to be "careful and deliberate" in its decision-making practices when evaluating student performance.

Students have become more cognizant about their legal rights. The use of the court system to mediate dismissal decisions in academic affairs has been on the rise, and it does not seem that there will be any reduction in the foreseeable future. As such, vigilance in student evaluation procedures would dictate that faculty and administrators become more attuned to the legal and economic ramifications of educational practice, evaluation, and grading. To protect student and institutional rights, evaluation procedures should be clearly written and published in the student and faculty handbooks and distributed appropriately.

If formal grievance hearings are to be provided, clear and orderly procedures that are consistent with university and departmental regulations should delineate the process. These procedures should provide for an expeditious hearing, use an odd number of panel members to avoid a tie situation, and be reviewed and updated as needed.

Standards for classroom evaluation, including course work requirements, penalties for late or absent work, weighting of assignments, and grade scoring should be written and distributed at the first class meeting. Periodic appraisal of the student's performance and progression should be given. In clinical courses, evaluation also should be periodic and specific so that students may be informed of their performance and the improvements needed to satisfactorily complete the rotation. A copy of these periodic evaluations should be supplied to the student and also placed in the student's file. Last, periodic faculty development programs should focus on evaluation, refinement of evaluation tools, measurement theory and practice, and legal issues related to student evaluation and grading.

Despite the adherence to recommended procedures, one will most likely experience an appeal to the grievance committee and the legal system during the course of an educational career. When this occurs, the administrator and faculty member should re-review university and departmental grievance procedures and the student handbook. In these situations, valuable and timely personal legal counsel cannot be underestimated. Early legal consultation is also an important risk management strategy that is designed to prevent additional time, money, and emotional expenditures later. Last, one needs to recognize that "the decision to dismiss a student is never an easy one, and the effect such a decision has on the student's future weighs heavily on all faculty" and institutions. Therefore, appropriate faculty support should be readily available within existent employee assistance programs.

Summary

Evaluating student performance is an integral part and legal right and responsibility of academic faculty. In the healthcare setting, faculty evaluate and grade not only didactic performance, but also clinical performance. The subjective nature of clinical evaluation in its current form contributes to faculty anxiety, self-doubt, and hesitancy, as well as to students' tendencies to seek recourse via the legal system. However, professionalism, patient safety, and a responsibility to society dictate that students whose performance is unsatisfactory be removed from training programs. Some dismissed students have voiced charges of unfairness and bias in their evaluation and presented these complaints to university grievance committees and the civil court system.

During the past 80 years, the judicial system had established and maintained a policy of noninterference and deference to academicians in matters of academic concern when prior notification and an informal hearing has been given the student. The judicial system is willing to intervene only in evaluations that are considered arbitrary and capricious. This trend has been well documented and is not expected to change. Therefore, while the decision to dismiss a student for unsatisfactory performance may be difficult, fear of legal intervention should not alter one's commitment and responsibility to education, the profession, society, and patient safety.

REFERENCES

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