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12 Tips for Remediation and Probation

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Twelve Tips for Remediation and Probation

ABSTRACT

Training programs have the dual responsibility for providing excellent training for their learners and ensuring their graduates are competent practitioners. Despite everyone's best efforts a small minority of learners will be unable to achieve competence and cannot graduate. Unfortunately, program decisions to terminate training are often overturned, not because the academic decision was wrong, but because fair assessment process was not followed or could not be adequately demonstrated. This article outlines twelve steps to follow, from establishing robust assessment foundations to what to do from the beginning of concerns, to established concerns, during formal remediation, during a review and after. With these steps, career-impacting decisions that are both maximally fair for the learner and defensible for programs are possible.

INTRODUCTION

The essential duties of postgraduate medical residency training programs are:

1. to provide the best possible training for their trainees (hereafter called residents), and
2. to ensure that graduates are competent clinicians, able to provide safe, effective, and compassionate care for their patients.

Most residents successfully navigate the developmental steps needed to become independent practitioners. Some, despite everyone's best intentions and efforts, do not. When that happens programs must fairly and compassionately terminate training. This is a complex and difficult process and often legally challenged. Program decisions for termination are often overturned, not because the academic decision was wrong, but because the resident was not afforded a fair process in the steps leading up to that decision or because the documented record of the process was inadequate. This results in the resident returning to training, which is difficult for all, time and resource-intensive, and in some cases a risk to patient safety.

This article is a summary of tips to minimize the likelihood of that happening. It is generated by four people with intimate knowledge of legal challenges to program decisions to terminate training: A former program director (KS) whose program decisions over six years (2012-2018) to end training for six residents (out of a total of 425 residents) were all upheld; the program's lawyer (AR) who has an in-depth knowledge of program actions that either supported or weakened program decisions; the educational institution's internal review/appeal board's lawyer (LN) and the recording personnel (NS), who have first hand knowledge of the issues that have been of most concern to review board members in coming to their decisions, with both lawyers also bringing their knowledge of legal process.

Of note, the program involved is a Canadian Family Medicine program engaged in competency-based medical education (CBME) since 2010. As such, the program now has a well-established robust program of workplace-based assessment, with each resident having numerous assessment data points generated by multiple preceptors over time and across the desired competencies, a portfolio and an academic advisor to review those data with them to make summative assessments, and a committee overseeing decisions around residents' progress (Schultz and Griffiths 2016).

To put this program into further context, all Canadian postgraduate training programs are associated with a university and must follow the university's postgraduate medicine policies. Both the university (hereafter called the institution) and their programs must follow the accreditation standards set by their programs' accrediting bodies—the College of Family Physicians of Canada for Family Medicine programs and the Royal College of Physicians and Surgeons of Canada for Specialty programs. Programs in other countries will report to different bodies but the recommendations within this article can be generalized to other contexts.

The order of these tips is sequential, starting with program foundations through to identification of concerns, legal challenges, and after the legal challenges. They are offered in the hopes of informing a process around career-impacting decisions that is both maximally fair for residents and defensible for programs. They are worded assuming an internal institutional legal appeal protocol that gives residents the right to have an adverse decision reviewed by a neutral third party (hereafter called a review board).

PROGRAM FOUNDATIONS

Tip 1

Ensure your program has robust assessment practices in place. Some institutions, barring a breach of human rights, allow only perceived assessment process flaws or extenuating circumstances to be appealed, not academic decisions. Other institutions may allow academic decisions to be appealed. Regardless, a robust, trustworthy assessment system which demonstrates the substance behind the academic decision positions review boards to be able to trust that academic decision. In the world of CBME, trustworthy means having a robust program of assessment (Holmboe et al. 2010; Van der Vleuten et al 2012; Hays et al 2015; Norcini et al 2018). Particularly scrutinized, given its qualitative nature, will be the workplace-based assessment (WBA) within that program of assessment.

WBA trustworthiness essentially boils down to two things: (i) multiple expert assessors who understand the competencies and standards of performance expected of residents, who are willing to observe resident performance and who frequently document informative formative assessments about those competencies over time. This reduces the risk of individual biases and allows for triangulation of opinion about competency development (Yeates et al 2013; ten Cate and Regehr 2018); and, (ii) a robust system of collation and interpretation of those formative assessment data, identifying patterns of performance and trajectory of development in order to make summative decisions.

Depending on the make-up of the review board, education about the more qualitative nature of WBA and why this is better suited to competency assessment in the clinical setting than the more quantitative tests used in other settings, may be a necessary part of the program's submissions during the review.

Tip 2

Ensure that you are maximally supporting the resident and that there are both educationally and legally fair assessment processes in place. Maximally supporting the resident, a "success stance", means working to optimize the resident's likelihood of success. In addition to offering developmental opportunities (e.g. more clinical training, simulation courses, other courses, readings, etc.), this means considering the resident holistically and addressing other issues that may be affecting their progress. Do they need counselling, possibly with time off to pursue this before resuming training, a modified part-time residency, extra recovery and/or study time between shifts, or accommodations to address disabilities? If so, provide these, making sure to document what was done and why.

Educationally, a fair assessment process means:

- outlining the expected competencies and standards of performance in clear and direct communications (preferably also in writing) to residents. Making sure a resident has been given the opportunity to understand these expectations throughout the assessment process is often a key focus of review boards;
- providing residents with opportunities to build those competencies;
- direct observation;
- clear, unambiguous feedback outlining strengths and areas for development (preferably in writing), and clearly articulating those that will require improvement for training to be successful. This point cannot be overemphasized: assessments, while they should be supportive rather than discouraging, cannot be 'sugar-coated';
- instruction on how improve performance;
- further opportunities; and,
- more feedback and instruction, repeatedly cycled.

Legally, a fair assessment process is one in which the expected competencies and standards of performance are rationally-based, the resident is clearly made aware of them and then objectively and reliably measured against them. The resident must receive timely, meaningful and substantive feedback so that they understand the deficiencies and have an opportunity to improve. They must be given avenues to voice their opinion and seek clarifications. The more significant or impactful the decision will be on the resident, the greater scrutiny there will be on fairness of the process, and there is nothing more significant or impactful on a resident than terminating their training. As a result, processes must be in place to ensure a high level of fairness in the process, and your program needs to be prepared to demonstrate this in the event of a review.

BEGINNINGS OF CONCERNS

Tip 3

Use the dual lens of patient safety and resident success when you apply a unique approach to a resident's training. Whenever an approach to an individual deviates from that used for the majority, you can expect to face a legal argument that the outcome of their modified educational plan was a foregone conclusion, with no possibility of remediation or success. Review boards will accept departures from the usual if the deviation was for a good reason. They may consider things like educational handover, additional direct observation, and directed assessment of identified deficiencies favourably if framed as being helpful educational continuity for the resident, allowing them to focus on competency gaps, and/or necessary for patient safety. Contemporaneous documentation of any such deviations from usual assessment practice and the rationale for the deviation(s) is critical.

Tip 4

Bring concerns forward to a larger group. This affords the benefit of several people thinking about the best way to individualize a learning plan to maximize the support and opportunities for the resident. It is also part of a fair assessment process. Important career- impacting decisions must never be the result of a single individual's opinion but should be subjected to neutral third-party review of available data for substance and process.

Tip 5

Start a documentation trail early around the above three pillars of robust assessment, fair assessment process, and the support stance for the resident. Ideally, the review board should be able to read timely illustrative documentation and come to their own decisions about these three pillars. In addition to the documentation about assessment practices, process, and support, document all meetings with the resident and preceptor(s). A short half-page, dated summary of those meetings, done as soon as possible after the meeting, lets the review board see that all parties were informed and involved. The dates are helpful in assisting the review board to follow the course of events. In addition, documentation is helpful as an aide memoire when preparing for the review board hearing.

Appeals can happen months, if not years, after decisions were made and sometimes details about those decisions are either forgotten or a change in personnel has occurred. The reality of starting documentation early, when concerns are first surfacing, means that there will be documentation on a good number of residents, most of which will never come to light because supports put in place for most residents facilitate their successful graduation. The extra time doing what in retrospect seems like unnecessary work is more than compensated for when preparing for the subsequent reviews of unsuccessful residents.

It is also key to remember that all communication becomes a part of a record that can, and likely will be, subpoenaed. In most jurisdictions, emails, texts, written communication, meeting summaries, and committee minutes are very often accessible through Freedom of Information legislation. It is important that everyone involved know this and pays attention to wording all communication, even those not directly sent to the resident, professionally and without editorializing or venting emotion. "Write it as if a court will read it" is a good motto.

ESTABLISHED CONCERNS

Tip 6

Write a legally defensible formal remediation or probation (R/P) plan. At some point, it will become clear that a resident has significant issues. In the CBME world, where key milestones are developmental and not time-based, that will occur when, despite all the extra support and opportunities, the resident's developmental trajectory is flat or regressing. In other settings, it will occur when key experiences, like rotations, are failed.

At this point, a formal R/P is undertaken for competency reasons. R/P may also be required for professionalism breaches. Most institutions will have an Assessment, Promotions, and Appeals policy or equivalent to ensure fair assessment and promotion processes, with avenues for appeal. For programs, it is also a policy that outlines how a program can terminate a resident's training. Many of these policies will include templates for formal R/P plans (generally with a preamble, a place to document identified concerns, objectives for the R/P, resources, timelines, expected levels of performance, assessments to be used and a timeline for interim assessments and meetings).

When completing the plan, it is critical to be very deliberate about wording. Expectations should be clear and unambiguous to minimize loopholes, while also being practical and achievable, with forethought given to the reality of the plan's execution in the busy clinical environment. The R/P plan may contain assurances given to the resident about various items, such as support provided or the frequency of feedback, and you need to be sure that you can fulfill these obligations.

Perfection, when it comes to executing plans in the clinical setting, is nearly impossible. Case law supports that process need not be perfect, as long as fairness is not compromised because of deviation from a plan (Sardar v. University of Ottawa). Any time there is a deviation, the review board must determine if it was significant enough to affect the resident's likelihood of success. Review boards make informed but subjective decisions. Minimizing the need for them to deliberate about any deviations and the extent of the resulting impact, through careful forethought of realistic plan execution, is time well spent.

Tip 7

Ensure all involved review the R/P plan. Set up a meeting with the resident to review the plan thoroughly, with the resident initialling and dating each page and fully signing and dating the last page. This is clear evidence that the plan has been reviewed with the resident. It is helpful to have a series of review items at the end of the plan for the resident to check off and sign (Appendix 1). Give the resident a copy of the plan and document that this was done in a short summary document of this meeting. A meeting (either in person or by phone) with the preceptors, and if that resident has an academic advisor (AA), the AA, should be set up before the R/P starts.

There are important items to consider reviewing with the preceptors, and it is helpful to develop a checklist so as not to miss anything (Appendix 2). A critical part of this review is a deliberate exploration of any concerns the preceptors have with carrying out the plan. If key elements cannot be carried out in their environment, then adaptions (and re-review with the resident) must be made or a new preceptor/setting found. Gaps in executing the plan are invariably characterized (by residents and/or their counsel) as deficiencies in the fairness of the assessment process or as the program's failure to fullfil its obligations to the resident. Minimizing the likelihood of gaps is crucial if the program doesn't want their decisions overturned.

It is also important to stress to the preceptors the critical importance of fulsome and explicit narrative in assessment documents, both as evidence of clear guidance for the resident and so that neutral third parties have illustrative examples of performance that informed final decisions. This will take preceptors more time than usual and may require additional compensation.

Tip 8

Execute the plan, paying scrupulous attention to the required elements of the plan. Interim evaluations and meetings must happen when they are supposed to (again wording is important—not establishing a single date but stating an interval (e.g. "1/3 of the way through the time or as close to as possible" is a helpful strategy). A checklist (Appendix 3) listing necessary steps, dates to be done by, and an administrative process to ensure those are done on time is very helpful. Redundancy of responsibility is helpful for time-sensitive items so that two people (e.g. the program director and program assistant) are checking these happen on time (assume busy preceptors will lose track of time!). This minimizes the risk of these being missed due to vacations, busy periods, etc.

Tip 9

Be aware of how stressful this is for everyone. Understandably, most residents are very stressed going through R/P. Compassionately normalizing and acknowledging this stress, offering support through third party counselling, encouraging residents to reach out to other support networks and their family physician, and asking preceptors to watch for evidence of escalating stress, are all very important. Preceptors are also often stressed. Their role in R/P and its stakes are different from their usual precepting. Contact them regularly, not only to ensure that they continue to feel able to carry out the R/P plan but to offer support around their stress.

It has been helpful for us to take away the ultimate responsibility for a failed R/P from the preceptor by making this the responsibility of our resident assessment committee (preceptors assess the R/P as either "passed" or "requires committee review"). In addition, this is stressful for the program director, again highlighting the importance of bringing concerns to a larger group early, rather than having this sit solely with the program director (Tip 4).

UNDERGOING FORMAL REVIEW

Tip 10

Prepare diligently for the review board meeting. Think of this as similar to preparing for a critical oral exam. There will be many documents to review, ranging from the resident's legal submissions outlining perceived procedural flaws and extenuating circumstances, to a review of all assessment documents and correspondence.

While reviewing the documents, anticipate questions based on the submissions, the substance behind the three pillars of robust assessment, fair assessment process and the support stance taken towards the resident, as well as the rationale and/or impact of any deviations from the outlined R/P plan. Know the strengths of your program's decision and processes, but, perhaps more importantly, also know the weaknesses and be prepared to address them. Write your answers, making note where the documented evidence is located that can support your answers.

This preparation will take many hours. It cannot be left to the night before. In addition, giving yourself time as you process all the documentation and anticipated questions often subconsciously contributes to your preparation. This cannot be rushed. On the day of the review, realize that these reviews may last hours. Be rested and nourished and avoid all distractions—phones off, off call, etc.

Tip 11

Set your expectations for the tone of the review, understand what the resident's lawyer is trying to do, and remain calm! Review hearings, with legal representation for both the resident and program, are often adversarial in tone because each side desires a different outcome. Most people find this adversarial approach to be unsettling, which can negatively impact their performance. Do not take the tone of the legal challenge to your program's decision personally.

It can be helpful to remind yourself as a program director of your two roles: providing an excellent program and patient advocacy. If the resident is at this stage, then the program has made the decision that this resident cannot safely practice and your patient advocacy role is now paramount. Competently ending training when appropriate is an important role.

In addition to managing your emotions throughout the review board, be attentive. Questions put to you at the beginning of your testimony will feel redundant, as you must restate what is already in the documentation. These are fact-recording questions meant to get evidence on the meeting record. They are generally yes/no answers. At some point the resident's lawyer's questioning will become leading, designed to follow a logical sequence towards a perceived procedural flaw or extenuating circumstance. There will be pressure to continue to answer only yes or no. Realize you can and should elaborate if additional information and/or your concerns need to be brought forward. Stand your ground.

AFTER THE REVIEW BOARD

Tip 12

Use the time after and the lessons learned from the review wisely. Many weeks will likely pass after the review, giving the board time to deliberate and prepare a thoughtful, legally sound decision. Second-guessing your answers during that time is counterproductive! Keeping all documentation is critical as, depending on where you are in your institution's appeal process, further appeals may be launched weeks after the decision is received. Once the decision is received, use the review board's comments to examine and improve your program's process around R/P. Usually something can be done to improve your processes. Use this as an opportunity to do so and to educate others (preceptors, academic advisors, and committees) about lessons learned.

If your program decision has been upheld and the resident's training is now terminated, you may want to consider connecting them with career counselling personnel to explore other career paths besides being a clinician (Bellini et al 2018).

CONCLUSION

Terminating someone's training is a momentous and difficult decision, made only after all reasonable efforts for the resident's success have been exhausted. The three pillars of having a robust assessment system, fair assessment processes, and a success stance towards residents are critical in supporting your residents and your program's decision to terminate someone's training.

Documentation should describe efforts around each of these pillars richly enough so that a neutral third party can understand why the end-training decision was made and what efforts you put into supporting and educating the resident. Being prepared for, and focused and calm during, the review hearing is critical. Using review outcomes to iteratively improve your processes of assessment, fair process, and support is an important final step any time your program goes through a situation such as this.


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APPENDIX 1: REMEDIATION PLAN CHECKLIST

This is an example of a remediation/probation plan summary checklist. Each item should be reviewed and checked off by the resident, with a full signature of the resident and Program (or Site) Director, plus the date.

I understand the following about the remediation program:

- The identified areas to be remediated
- The expected level of performance on remediation objectives
- The nature of the remedial program
- The time-frame of the remedial program
- The assessment techniques to be used
- The consequences of a successful/failed remediation period
- I have been given the chance to clarify all components of this remediation plan
- I have access to an independent mentor and I know how to reach him/her

The Assessment, Promotion and Appeals policy is available as a reference and can be found on the Postgraduate Website at: https://meds.queensu.ca/academics/postgraduate/current/policies/apa

Of note, Section 9.0 of the Assessment, Promotion and Appeals policy details the process for a remediation period.

- I have been made aware of this document
- I have been made aware that further revisions of this plan may be required based on EAB* recommendations.

Resident Signature	Program/Site Director Signature
Date	Date

* EAB: The Education Advisory Board is the committee that reviews all remediation and/or probation plans and makes suggestions for improvement before their implementation.

APPENDIX 2: PRECEPTOR CHECKLIST

This checklist is designed to ensure that all key aspects of a remediation/probation plan are reviewed with the preceptors.

- ☐ Review the remediation/probation (R/P) plan including objectives on which to focus, expected standards of performance, and timelines for assessments and meetings
- ☐ Preceptors are to discuss objectives with the resident early in the experience
- ☐ Need for daily assessments focused on R/P objectives
- ☐ Discussion about importance of plain constructive language. Do not try to "soften" things
- ☐ Emphasize the importance of rich narrative descriptions so that any patterns of performance and trajectory will be clear to anyone else looking at the documentation
- ☐ If resources have been identified in a plan, stress the importance of providing them. (Electronic resources are ones that residents can access themselves.)
- ☐ Interim summative assessments must be done on time. Go over the schedule, clearly identifying who will do the assessment. Discuss the need for these to be dated and signed by the resident. The resident should be given opportunity to give input about the assessment. There should be a document completed as soon after the meeting as possible that summarizes each of these meetings. It is sent to the resident, Program Director, and Program Administrative Coordinator
- ☐ Remind preceptors of the importance of how they word things in emails, texts, etc. as all may be used at review boards and/or tribunals (Freedom of Information and Protection of Privacy Act)
- ☐ Forewarn team that 360-degree feedback will be sought for final assessment
- ☐ Review the process for remediation/probation. The Competency Committee will make the final decision
- ☐ Review what happens in the case of a failure. The resident has a right to an appeal process (and will likely appeal) which then results in third parties (review board/ tribunal) looking at evidence to substantiate the failure decision and ensure a fair process for the resident. Highlight again the importance of rich narrative and lots of clear feedback, instruction, and further opportunities.
- ☐ Review support resources available for the resident at both the program and university level and ask preceptors to contact the program if they are worried about the resident's well-being.
- ☐ Ask if there are any concerns about being able to follow the plan
- ☐ Outline support for preceptors and stress the importance of contacting the program if there is any concern about following the plan and/or if there are deviations from the plan

APPENDIX 3: WORKFLOW PLAN

This is an example of a workflow plan to ensure that all key process issues are completed and that time-sensitive processes are completed when needed. Note that key dates have two people assigned to them in order to ensure overlap for these key time-sensitive items.

To Do	Who	When	Done (Date)	Comments
Prepare R/P plan and daily evaluation sheet. Be sure to mirror the objectives in the R/P plan and have standards of performance included	PD/ASP			
Determine preceptors	PD/PA			
Send email to resident to arrange a meeting to discuss support and next steps (copy AA)	PD			
Send letter to PGME requesting extra residency time (and funding if resident is an IMG requiring extra supervision)	PD/PA			
Review at RAC/CC	PD			
Involve academic support person in extra supervision and remediation	ASP	At RAC/CC meeting		
Send plan to EAB	PD			
Revise plan as needed after initial EAB comments	PD			
Discuss any revisions at RAC/CC	PD			
Review plan with resident, have them initial each page, tick check-boxes, sign and date	PD			
Send signed plan to PA	PD			
Send signed plan to PGME	PA			
Send revised plan, evaluation sheets, and meeting template to preceptors (copy AA)	PD			
Set up meeting with preceptor(s) to discuss upcoming R/P	PD			
For a probation, inform the team that a 360 degree evaluation will be sought for the final evaluation. Allied health professionals and office staff may be asked for their opinions so they should be aware of this	PD			
Add all key dates to PD and PA calendars for follow-up	PD/PA			
Send revised plan to resident asking them to review with preceptors at beginning of rotation and to plan meeting times with preceptors and AA and SD/PD	PD /PA			
Set system to send interim and final ITERs	PA			
Email preceptor if ITERs and meeting records not in within 2 days of timeline	PA/PD to check			
Review outcome at RAC/CC	PD			
Outcome document to EAB	PD			
Revise processes and documents	PD			

LEGEND:

PD	Program Director
SD	Site Director (For distributed programs)
PA	Program Assistant
ASP	Academic Support Person
RAC/CC	Resident Assessment Committee/Competency Committee
AA	Academic Advisor
EAB	Education Advisory Board
PGME	Postgraduate Medical Education Office
R/P	Remediation/Probation

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