

Comply With Federal Laws Before Checking Institutional Guidelines on Resident Referrals for Psychiatric Evaluations

After providing the *Journal of Graduate Medical Education (JGME)* with detailed scenarios and legal guidelines for program directors to consider before referring medical residents for psychiatric evaluations,¹ I found *JGME*'s recent editorial² on this issue from an associate editor to be disheartening.

Thomas does not recommend that program directors and hospital leaders comply with the Americans with Disabilities Act (ADA) when referring residents for an evaluation. Instead, he encourages them to "review state medical board and institutional guidelines and regulations,"² and other organizational resources.

It is important to remember that state laws and medical board regulations concerning physician impairment are derived from American Medical Association policies, are very different from the ADA, and contain provisions that may result in ADA violations. Under the ADA, program directors cannot implicitly or explicitly refer residents for evaluations without objective evidence that: (1) the employee is unable to perform essential job functions because of a mental health condition, or (2) the employee will pose a direct threat to safety due to a mental health condition.

Direct threat is defined as a high risk of substantial harm to self or others in the workplace. A speculative or remote risk is *not* sufficient.³

How would these ADA provisions apply to the case presented by Thomas at the beginning of his editorial? Although the resident he describes had "not been himself lately," there is little to suggest that he has a mental disorder. We are told that a chief resident says that "the resident currently is late in completing progress notes, and that the notes are much shorter than before."² However, we are not told whether or why the notes are unsatisfactory. Furthermore, it is not stated how this resident's notes compare with those of his training cohort.

Programs could be required to provide residents with summary comparative data on how their

evaluation scores compare with those of their peers in the same year. This might give residents an opportunity to defend themselves in the event that they are dismissed or treated unfairly relative to classmates with similar scores. Furthermore, this may have helped the resident described in Thomas' vignette, who is about to be referred by his program for a psychiatric examination.

While Thomas, a psychiatrist, suggested that referring residents for a psychiatric evaluation would be in their best interest, and that these referrals help prevent physician suicide, there is evidence that being the subject of a complaint or referral actually may have significant adverse effects on a physician's mental health.^{4,5} Would any resident say that being referred for a psychiatric evaluation, performed by associates of his or her program or by an "independent" and "confidential" provider costing thousands of dollars, is in his or her best interest? Probably not. But that will not stop convenient, ungrounded interpretations that these responses simply reflect a resident's own lack of insight or denial about the need for referrals and mental health care, further proving the point about the need for their referral.

In summation, programs should comply with federal laws, even when these may conflict with "state medical board and institutional guidelines and regulations"² on matters of resident referrals for psychiatric evaluations.

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References

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