



Understand Your Resident Contract: What You Don't Know May Hurt You

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When I matched into anesthesiology residency in 2002, I assumed that the entire four years of training were guaranteed to me, barring any gross failure on my part. A package deal, essentially. I hadn't heard of anyone not finishing.

For me, residency was exhaustingly tolerable, yet gratefully formative – interspersed with warm camaraderie, the occasional difficult patient or frustrating attending, satisfying progress, and finite episodes of survivable misery. I had a basic understanding of what the program and I promised each other. The specific contract, policies, procedures and accreditation requirements remained in the background. Fortunately, to my program's credit as much as to my own, I never had to explore them. In subsequent years, I've learned that resident experiences can vary widely, that residency programs are

under no real obligation to renew a resident's contract annually, and that a contract may not oblige your institution to the behaviors and protections that you think it does. There is significant space for unpleasant or unfair events to occur.

As medical students applying to residency positions, we assume that “accredited” programs follow the rules and requirements – even if we're not all that familiar with the rules. We take it as implied that we will be treated fairly and predictably. We hungrily sign Graduate Medical Education (GME) resident employment contracts, thrilled to have matched into a spot, on our way to becoming board certified in a specialty. The time and financial investment tied up in the 8+ year process at this point is considerable, with much more to come.

Universities and hospitals that employ residents have investments, risks, and exposures, as well. They must have the commitments from residents and the protections necessary to keep the machinery running, their reputations intact, the pipeline of new safe doctors flowing, their accreditation statuses maintained, and patients well cared for. To those ends, the institutions create policies, procedures and contracts. They also employ their own offices of general counsel and have the funding to outsource legal issues to large, specialized law firms.

What happens if the resident/program interaction doesn't go so well? Or if the institution has poorly-developed GME policies, or doesn't follow them? Or if the accreditation body is unaware of issues, or unable to enforce program compliance with aspects of resident [evaluation](#), [due process](#), probation, remediation or termination? Who is likely to be the loser in these scenarios? What is that power differential? Does the resident contract provide any protections?

I talk to a few residents a month who are in conflict with their programs and facing disciplinary actions – including termination. Admittedly, I get one side of the story, but usually the gist is relatively apparent. Sometimes the resident has just really screwed up and needs some ideas to salvage his training. Sometimes I encounter a resident that may need to be on a different professional path.

Too often, however, the resident recounts an inciting event with an attending who exhibits dysfunctional or discriminatory behavior, followed by some tainted poor evaluations, then a probation. The resident disagrees or appeals, which engenders faculty resentment and heightened scrutiny. Departmental attitudes shift. He becomes the “problem resident.” Evaluations accumulate which reflect

failings or imperfections that may be common or dismissed among his peers but which make him appear inept or unsafe when placed under the spotlight and held to a different standard. Now, he's at risk and has to really start fighting and appealing to save his position. Faculty resentment subsequently grows, rumors spread,... and the spiral typically ends poorly for the resident.

Regardless of fault or fact, there are accreditation requirements, as well as institution-specific policies and procedures, that delineate fair and objective management paths. Sometimes the compliance with these requirements is less than adequate. Sometimes trusting that the system will police itself may be insufficient protection. Hopefully, the resident contract outlines and legally obligates the parties to follow their own promises. But contracts vary. State laws vary. Protections vary.

I recently interacted with a resident representing a group concerned that their GME contract offered insufficient protections for matters of due process and termination. They worry that a new contract demand will lead to retaliation. I recommended that the group find an attorney that could offer legal review and advice. I suggested that they investigate if and how accreditation requirements and institutional policies and procedures are incorporated into their contracts.

To that point, in early June, a federal judge in the Eastern District of Missouri passed summary judgment striking parts of a resident's case against her program. The breach of contract count was dismissed on the basis that GME and accreditation guidelines were not specifically part of the agreement, regardless of what might be implied or referenced in the contract. Although commonly assumed by programs and residents alike that accreditation standards and other policies will be followed, these are not necessarily "incorporated" into GME contracts. The compliances and protections that residents may believe are mandatory are not necessarily legally enforceable if the contract "does not demonstrate a 'clear intent' to incorporate" those policies. "Unlike other jurisdictions, Missouri courts have not recognized any implied contract between students and universities." If a requirement cannot be enforced, is it a requirement, or a false hope?

Signer beware! Does your contract include protections, or pitfalls? Consult an attorney, specifically one that has GME experience. Medical students, prevention is your best approach. Do your homework before you rank residency programs in The Match. Ask residents on your interview trail about due process, disciplinary pathways and learning environments at their institutions. Look online. Many programs provide access to their basic GME contract. Even more fundamentally, make sure that the

institution's own GME policies are accessible, clear and equitable. Then, choose well.

You assume your residency program will be fair. Likely it will be, but do not tacitly rely upon it to your detriment. Review and understand your resident contract. If things were to go sideways for you, it might make all the difference.