The Administrative Psychiatric Evaluation

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Case Example

Jenny is a postgraduate year 2 resident in psychiatry with satisfactory rotation evaluations in the middle range of her class, with no incidents. One day, she is asked why she decided to become a physician. She states that she had major depressive disorder as a teenager, and she decided to specialize in psychiatry to help teenagers with similar problems. Her response is relayed to hospital management.

Can the hospital request that she undergo an administrative psychiatric evaluation?

Program directors sometimes request that a resident undergo an administrative psychiatric evaluation to ensure patient safety. Still, what are the laws that apply to these requests?

The Americans with Disabilities Act (ADA) prohibits an employer from requesting psychiatric information from, or requiring a psychiatric evaluation of, an employee unless there is a reasonable belief based on objective evidence that

1. the employee is unable to perform essential job functions because of a psychiatric condition; or
2. the employee will pose a direct threat to safety due to a psychiatric condition.

"Direct threat" is defined as a high risk of substantial harm to self or others in the workplace that cannot be reduced or eliminated through reasonable accommodation.[1] A speculative or remote risk is not sufficient.

These protections apply regardless of whether the employee has a disability. The example above and the questions and answers that follow illustrate these principles as they apply to the resident, Jenny, diagnosed with major depressive disorder, single episode, in full remission. Three additional case examples and further discussion may be found as online supplemental material.

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Editor's Note: The online version of this article contains additional case examples.

Question: Do the ADA laws apply to Jenny if she is no longer depressed?

Answer: Yes. The ADA protects all employees against unwarranted medical inquiries and examinations, regardless of disability or history of disability.

Q: Can the hospital require Jenny to undergo an administrative psychiatric evaluation?

A: No. Jenny's evaluations indicate that she is able to perform the essential functions of her job, and there have been no incidents to suggest otherwise. The mere fact that she had a major depressive episode as a teenager does not provide the hospital with a reasonable belief that she is unable to perform essential job functions because of a psychiatric condition. The assumption that she might pose a direct threat to patients as a result of impaired judgment from depression is based on stereotypes and broad generalizations about her condition rather than objective facts about her current performance.

Even if Jenny is currently experiencing a major depressive episode, to justify an evaluation, the hospital must have direct evidence that she is unable to perform essential job functions, or that she poses a direct threat as a result of that episode.

Q: Could Jenny's program director "advise" her to undergo an administrative psychiatric evaluation?

A: No, not if there is any expectation that the hospital will receive the results, request the results, ask her follow-up questions, or learn whether she underwent the evaluation, or if the evaluation is to be performed by an agent of the hospital. In addition, it may be reasonable to construe "advice" from a director as a disguised order or request.

Q: Is an administrative psychiatric evaluation in Jenny's best interests?

A: No. Referrals for administrative psychiatric evaluations are generally coercive,[2] are not confidential,[2,3] and request sensitive information from mental health providers. By violating the confidential therapeutic relationship, they can seriously compromise mental health care.[4] The evaluations also cost a minimum of $4,500 for the resident.[2]

Case Example Continued

Jenny's program director requests that she undergo an administrative psychiatric evaluation. Jenny is afraid that the evaluation will be used as a "fishing expedition" to discover and/or distort evidence in order to remove her from the program. She is also concerned about what might happen should she need to appeal her removal in front of a grievance panel. She is concerned that her program might misrepresent the evaluation. Jenny refuses the evaluation. Jenny's contract is not renewed, and the grievance panel upholds the nonrenewal. Jenny is told that she will not receive any residency credit unless she signs a waiver of the right to sue the hospital, which she does.

Q: Can Jenny sue the hospital now that she has signed the waiver?

A: Yes. If this waiver was coerced by the threatened withdrawal of credit, it is invalid.[5]

Q: If the hospital grievance panel acted "in good faith," is the hospital protected against ADA liability?

A: No. If Jenny is terminated for refusing to undergo an unjustified psychiatric examination, the hospital will be subject to liability no matter what the considerations of the grievance panel.

Q: If Jenny appeals to the Accreditation Council for Graduate Medical Education (ACGME), will it investigate whether the hospital violated the ADA?

A: No. The ACGME does not adjudicate disputes between individuals and programs and does not address issues of contract, credit, discrimination, promotion, or dismissal.[6]

Discussion

The situations of residents like Jenny who are subjected to an unwarranted evaluation are compounded by the lack of acknowledgment that they exist within medicine. One of the authors (N.D.L.) met recently with the director of a physician health program who had denied the existence of improper referrals; yet, this director was unaware of the legal requirements for referrals. Once informed of the law, however, the director freely acknowledged accepting referrals that did not hold up to the required legal standard.

It is important to note that these laws alone cannot ensure equal rights and treatment of the residents affected without the active involvement of the medical community. Despite the illegality of events, how will Jenny find another residency program, and who would believe her story? Schroeder and colleagues[7] reported that in 2005, 96% of state medical licensing boards asked applicants about medical or psychiatric conditions, and 69% contained at least 1 question likely inconsistent with antidiscrimination laws.

BOX Guidelines for Determining the Legality of a Request for an Administrative Psychiatric Evaluation of a Resident

The presence of any 1 of the following suggests that a request for administrative psychiatric evaluation could potentially be unlawful, and programs should consult with a legal expert (preferably from the US Equal Employment Opportunity Commission) before taking further action:

1. The resident is obtaining all-satisfactory ($\geq$ 4 on a 1 to 9 scale) rotation evaluation scores in the core competency areas, as research suggests this is a significant predictor of resident standing.[8]
2. The situations of concern involve relatively low patient risk. For example, the observation of a resident with a tremor may cause more concern for patient risk in general surgery than neurology.
3. The resident is suspected of conditions *other* than the substance use disorders, which are believed to account for roughly 75% of the cases of physician impairment.[3,9]

It is difficult to challenge these questions. State licensing boards are not employers, employment laws may not apply, and courts have traditionally deferred to academic medicine on training issues.[10] Many sources have raised the concern that such licensure questions may actually increase patient risk by preventing trainees from seeking needed care.[7,11,12] Yet the number of applications with potentially discriminatory questions has increased.[13] This may be related to the beliefs of state medical board executive directors, as 37% believe that just the presence of a mental health diagnosis is sufficient to impose sanctions on a physician.[14]

Why does this happen in such a knowledge-driven profession like medicine? And why are residents who disclose mental health diagnoses likely to experience significant stigmatization and discrimination, including dismissal,[15] when 58.7% of the US population aged 18 to 29 years has already met criteria for at least 1 mental disorder?[16]

Unfortunately, research indicates that the stigma of mental health conditions has persisted in spite of improved public knowledge about the conditions themselves.[17] Employers are more reluctant to hire those with mental health conditions than almost any other group,[18] and the majority of the public is unwilling to have them in positions of authority.[17] It may be in professions of authority, such as medicine, law, or public office, that those with mental health conditions are most likely to encounter such resistance.

The problem is made worse by poor education about mental health within the medical field. When we are taught that physicians with "irritability," "trembling," or other "signs of mental illness" should be reported or referred in the name of patient safety,[19] discrimination is more likely to happen. The best measure of ability to work is performance.[20] Yet some programs may encounter a situation with a resident in which they feel the need to pursue additional information. The authors believe that the following guidelines may be helpful in determining the legality of a request for administrative psychiatric evaluation (BOX).

We believe that the majority of program directors are beneficent professionals who have the best interests of their program and trainees in mind. Their role is complex, and often complicated by competing demands and ethical responsibilities. Nevertheless, directors, corporate compliance officers, hospital administrators, fellow residents, and faculty all need to be aware of the requirements under the ADA in order to safeguard the equal rights and treatment of residents.

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The analysis presented here is an informal discussion of the issues raised and does not constitute an official position of the US Equal Employment Opportunity Commission. The views and opinions of this article reflect only those of the authors, as cited. The article considers residents to be employees for legal purposes.

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