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A Review of the Legal Issues Surrounding Academic Dismissal

Beverly D Fein, PT, MS

ABSTRACT: Among the challenges faced by physical therapy educators is to determine whether students have made sufficient progress in the academic and/or clinical curriculum to merit continuance in the physical therapy program. At times, faculties must make the decision to dismiss a student due to failure to achieve the necessary performance criteria. These decisions are often clouded by fear of lawsuits and confusion about the responsibilities and prerogatives of professional judgments. This article traces the history of case law related to academic dismissal, examining a number of significant cases and the ramifications of these cases for professional programs. Key legal concepts are defined and discussed. Recommendations are provided for preserving the rights of the student to due process while protecting academic institutions.

Jeff, a first-year physical therapist student, scraped through his first academic semester with an unacceptable grade point average, which resulted in his being placed on academic probation. Now, at the conclusion of the second semester of the program, he has failed a course.

Karen is a physical therapist student participating in her final blocks of clinical education. She performed poorly on her first clinical experience due to problems with professional behaviors, responsibility, and communication skills but was given the grade "pass" and allowed to complete her final academic semesters. She is now in the clinic again and is experiencing similar difficulties at another facility. The academic coordinators of clinical education and clinical faculty have met regularly with Karen in an effort to facilitate a turnaround, but the clinical problems persist.

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These scenarios depict common situations confronted by physical therapy academic and clinical faculty at end-of-semester review meetings. Should the student be given another chance? What procedures need to be followed if the student is to be permitted to continue or to be dismissed from the program in order to achieve the best outcome for all? What are the responsibilities of the faculty and of the institution? One of the challenges facing physical therapy faculty is to determine whether students have made acceptable progress in a curriculum for continuance and ultimately for graduation. At times, this includes making the difficult decision to dismiss a student when that student has failed to demonstrate the necessary competency in academic and/or clinical areas. Faculty and administrators may hesitate to candidly evaluate and dismiss students who demonstrate the inability to meet established standards in the academic program due to fear of litigation and ignorance of the courts' decisions in cases of academic dismissal. This article traces the history of case law related to academic dismissal, examining a number of significant cases and the ramifications of these cases for academic and professional programs. While academic challenge cases from professional school dismissal run the gamut, including law school and other graduate programs, the bulk of the case law comes from medical school dismissals. This article focuses primarily on cases involving dismissals from programs for preparation of health care professionals. Suggestions are offered for protecting all parties, including students, faculty, and academic institutions, from lawsuits. As in all legal dilemmas, programs should consult with legal counsel for specific situations.

According to legal precedent, faculties have a duty or obligation to "candidly and critically evaluate students."¹ This duty is owed to three major groups. First, this duty is owed to the student. It is the responsibility of the faculty to provide critical evaluation and feedback to the student so as to facilitate successful academic and professional growth as well as to determine whether the student is able to meet established

thresholds for performance. Second, this duty is owed to the public (ie, to the consumers served by the student and future professional). This entails a responsibility to ensure that the graduate has the necessary knowledge, skills, and behaviors for safe and effective practice. Third, this duty is owed to the profession at large. Faculties have the responsibility to graduate only those students with sufficient qualifications and competency to represent the profession. Academic institutions and professional education programs take these responsibilities seriously, with the result that some students are dismissed for failure to meet the academic or clinical performance standards set by the programs in which they are enrolled. Case law exists from federal and state courts, from suits brought by students in an attempt to regain positions in programs or to win another chance to proceed into the chosen professions. Generally, the case outcomes demonstrate respect for the professional judgment of the faculty regarding academic and clinical performance issues. The courts' opinions have been consistent in overturning an academic decision only if the student failed to receive reasonable notice and opportunity to be heard, or if the institution acted in a manner deemed arbitrary or capricious. The phrase "arbitrary and capricious" refers to a decision made without regard to the facts, based on preference or bias, or made at random.

FOURTEENTH AMENDMENT DUE PROCESS

Most academic challenge cases from public institutions are brought into federal courts under 42 USC § 1983 and under the Fourteenth Amendment due process clause.² The Civil Rights Act provides a federal mandate for the preservation of rights. In cases of academic dismissal, students typically claim that they have been deprived of liberty or property rights. This violates the right to procedural and substantive due process according to the Fourteenth Amendment. Procedural due process involves the right of the individual to receive adequate notice of his or her deficiencies and to have a reason-

able opportunity to be heard on the matter.³ Substantive due process implies that due process is accorded in a fair and equitable manner without bad faith, arbitrariness, or capriciousness.

In dealing with these cases, the courts typically have several questions to consider: (1) Do students have a liberty or property interest in continued enrollment in the education program? (2) Did the dismissal from the program deprive the student of the constitutional right to procedural due process? and (3) Was the dismissal done in an arbitrary and capricious manner, thereby causing deprivation of substantive due process? These concepts of liberty and property rights and due process are described in greater detail below.

LIBERTY AND PROPERTY INTEREST

Liberty interests in the context of academic dismissals include the freedom to pursue employment in a related field or to be considered without bias for enrollment in another academic institution. A rare case in which a liberty interest was recognized by the courts was the case of *Greenhill v Bailey* (519 F2d 5, 1975). In this case, a medical student was dismissed due to poor clinical performance.⁴ The assistant dean of the medical school reported in written documentation to the Association of American Medical Colleges that the dismissal was due to a "lack of intellectual ability or insufficient preparation." The court held that the student had been deprived of significant interest in liberty because of the denigrating nature of the comments about his intellectual capabilities (rather than his academic preparation). They agreed that this could result in an inability to take advantage of other opportunities for advancement in the medical field.

Courts have often addressed the issue of students' property interest in education. In most cases, the courts have ruled that a property interest in continued enrollment and graduation exists by virtue of the student's payment of tuition and fees and by the implied contract based on the catalog and institutional literature. This property interest does not detract, however, from the right of the academic institution to establish reasonable standards for academic performance or to dismiss students who do not meet those standards.

SUBSTANTIVE DUE PROCESS

The issue of substantive due process was significant in the case *Connelly v University of Vermont and State Agricultural College*.⁵ This case also provided important validation of the role of the faculty in setting academic and clinical

standards and in evaluating student competence. In *Connelly v University of Vermont and State Agricultural College*, the court considered whether a third-year medical student was dismissed unfairly from his medical school. The student, who was dismissed from the College of Medicine after failing a pediatrics/obstetrics clinical rotation, brought suit stating that he was failed based upon bad faith of the instructor. He stated that the decision to award a failing grade was made prior to the completion of the rotation. The college policy required dismissal for failure of 25% or more of the year's major course work. Due to illness, Connelly had missed a portion of the 12-week clinical rotation, which was subsequently made up. Prior to his illness, his grades had been acceptable. Connelly alleged that he had been informed by his clinical instructor (CI) that the CI had decided early in the rotation not to give a passing grade, regardless of the quality of prior work or of performance during the make-up period. When Connelly was advised of his failing grade, he petitioned the college's Committee on Advancement for permission to repeat his third year's work. This request was denied, and he was dismissed from the medical college. The district court found that there was sufficient evidence that the decision to dismiss Connelly was arbitrary and capricious. The court described its role and the academic institution's legal responsibilities in the following statement:

Where a medical student has been dismissed for a failure to attain a proper standard of scholarship, two questions may be involved: the first is, was the student in fact delinquent in his studies, or unfit for the practice of medicine? The second question is, were the school authorities motivated by malice or bad faith in dismissing the student, or did they act arbitrarily or capriciously? In general the first question is not a matter for judicial review. However, a student dismissal motivated by bad faith, arbitrariness, or capriciousness may be actionable...^{5(p159)}

The court described its role and the responsibilities of the school authorities and the student as follows:

The effect of these decisions is to give the school authorities absolute discretion in determining whether a student has been delinquent in his studies, and to place the burden on the student of showing that his dismissal was motivated by arbitrariness, capriciousness, or bad faith.^{5(p159)}

Note that the court was careful to state that academic decisions are best kept in the purview of academicians rather than the judicial system:

...in matters of scholarship the school authorities are uniquely qualified by training and experience to judge the qualifications of a student, and efficiency of instruction depends in no small degree upon the school faculty's freedom from interference from other non-educational tribunals. It is only when the school authorities abuse this discretion that a court may interfere with their decision to dismiss a student.^{5(p160)}

The case of *Connelly v University of Vermont and State Agricultural College* reinforces the importance of fairness and equity in evaluating student performance. The process of evaluating student performance must be clearly defined, and performance issues must be objectively documented. Good communication between the academic institution and the clinical education faculty is imperative in order to ensure substantive due process.

PROCEDURAL DUE PROCESS

The issue of procedural due process in academic dismissals is considered in many cases. In *Gaspar v Bruton*,⁶ a nursing student was dismissed from a school of practical nursing due to poor clinical performance. While Gaspar had acceptable grades on written classwork, multiple clinical faculty members noted problems with her organization, clinical problem solving, safety, failure to properly perform clinical documentation, and extreme nervousness. Numerous attempts had been made to counsel the student in order to facilitate improvement in clinical performance, without success. She was then dismissed from the nursing program. Gaspar filed suit alleging deprivation of her due process rights under the Fourteenth Amendment. The court held:

Gaspar was provided much more due process than that which we hold must be accorded to cases involving academic termination or suspension. We hold that school authorities, in order to satisfy due process prior to termination or suspension of a student for deficiencies in meeting minimum academic performance, need only advise that student with respect to such deficiencies in any form. All that is required is that the student be made aware prior to termination of his failure or impending failure to meet those standards.^{6(pp850-851)}

The courts restated that the legal system was not equipped to evaluate students' academic performance. The judgment in *Connelly v University of Vermont and State Agricultural College* was reaffirmed. The only reason for

the court to intervene in academic matters would be in cases in which bad motive or ill will could be demonstrated.

In *Stretton v Wadsworth Veterans Hospital*,⁷ a pathology resident was dismissed from a 4-year residency program after 1 year due to incompetence and unwillingness to deal with co-workers in a professional and collegial manner. Stretton had been informed of his inadequate progress by supervisors prior to the dismissal. Following notification of dismissal, he filed suit claiming that his Fifth Amendment rights were abridged when he was not given a full adversary hearing prior to termination. The appellate court found that Stretton had received appropriate due process for dismissal due to academic issues.

These findings reinforce the need for physical therapy faculty to be clear with students about potential academic or clinical failures. Students should be provided with verbal feedback identifying areas of strength and areas of deficiency. Consequences, including the possibility of failure, must be made clear to the student. Routine documentation of incidents and advising adds to the evidence in the event of a student's failure. Where possible, students should be asked to sign and date such documentation in order to demonstrate that they have received the information and feedback described.

CONTRACT LAW

Students have utilized contract law in attempts to regain positions in academic and professional programs. The basis for challenging academic dismissal on contract principles relies on the existence of a contractual relationship between the university and the student. In exchange for payment of tuition and fees, and expenditure of time and energy toward the program of study, the student is entitled to fair and equitable treatment on the part of the academic institution, according to the policies and procedures of the institution.⁸

Contract law was the rationale used in *Mahavongsanan v Hall* (401 F Supp 381k 382; 1975, 529 F2d 448, 1976).^{4,8} In this case, a graduate student attempted to apply contract law in order to be excused from the requirement to pass comprehensive examinations, stating that the requirement for these examinations had been implemented 8 months after her matriculation at the university. (She had already taken and failed the comprehensive examinations twice). Mahavongsanan relied on the university catalog and other official university materials as the official contract. The trial court ordered the university to confer the

master's degree, holding that the requirements at the time of matriculation constituted a binding contract. The court of appeals reversed, stating that universities should have freedom in developing academic degree requirements: "...implicit in a student's contractual obligations to the university is an agreement to abide by the university's rules and regulations, which may rightfully be modified by the university to fulfill its educational responsibilities."^{8(p345)} The court noted that this was especially true in post-graduate degree programs.

Schweitzer⁸ described a 1976 physical therapy case discussed in the *New York Law Journal* (August 19, 1976:5) in which Dunmore, a physical therapist student, was dismissed in accordance with her program's rules after she received two D's in the course "Therapeutic Exercise II." Schweitzer wrote, "The court rejected her argument that the requirement of receiving a grade of D or better did not appear in the Hunter College catalogue, noting that all students in the physical therapy program, including the petitioner, had been notified of the requirement in various ways."^{8(p347)} Notification had occurred via bulletin board postings, orally by advisors and at orientation meetings, and directly from the course instructor when Dunmore received her first grade of D.

While payment of tuition does constitute a contract between student and academic institution, the courts have supported the rights of faculties to establish academic and clinical criteria for continued enrollment and progression in curricula. It is advisable that these standards be clearly publicized and widely disseminated. Several authors^{4,8} suggest the prophylactic use of a written disclaimer in catalogs and program literature stating that the institution retains the right to make curricular changes as needed in order to provide the optimal educational program.

SUPREME COURT RULINGS REGARDING ACADEMIC DISMISSAL

Board of Curators of the University of Missouri v Horowitz

The issue of academic dismissals has come before the Supreme Court on two occasions. The first case involved a medical student who was dismissed from medical school during her final year due to problems with her clinical performance. Horowitz had excellent grades in her written work; however she had persistent problems with clinical performance that had been identified in her first year in the program and continued throughout her clinical experiences. She consistently demonstrated poor patient and

peer relationships, problems with attendance and timeliness, difficulty with clinical problem solving, and issues with personal hygiene. After continued clinical performance problems during the final year of medical school, the Council on Evaluation, a body of students and faculty that made recommendations regarding probation and dismissal, recommended that, "absent radical improvement," she be dismissed. The Council's recommendations were reviewed by the Coordinating Committee, a body of faculty, and finally, by the Dean. Seven practicing physicians were asked to spend significant time with Horowitz and to make recommendations as to whether she should be permitted to graduate on schedule, be dismissed, or remain on probation. Of the seven physicians, only two felt that she should graduate on schedule, two felt that she should be dismissed immediately, and the remainder said that she should be kept on probation until she demonstrated significant clinical progress. Based on the entire record, the Council determined that, "barring radical improvement," she should not be allowed to re-enroll. Horowitz proceeded to receive grades of "low satisfactory" and "negative" on the next two clinical rotations, and she was dismissed from the medical school with approval of the Coordinating Committee and the Dean. An appeal to the Provost upheld the dismissal.

Horowitz sued in the US district court alleging that she had been "arbitrarily, capriciously, and in bad faith" deprived of her right to practice medicine and thus had been deprived of both the due process and equal protection clauses of the Fourteenth Amendment. She also alleged that the medical school had broken its contract with her to provide instruction and a degree so long as she remained in good standing academically and paid tuition and fees. The district court determined that Horowitz had received all rights according to the Fourteenth Amendment and found for the defendants. The Supreme Court chose to hear the case in order to consider procedures appropriate for student dismissal in state educational institutions. The Supreme Court found in favor of the university as well.

In the Supreme Court decision, Chief Justice Rehnquist stated that there was no need to decide issues of liberty or property interest or other constitutional protection because Horowitz was given:

...at least as much due process as the Fourteenth Amendment requires. The school fully informed respondent of the faculty's dissatisfaction 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. These procedures were sufficient under the Due Process Clause of the Fourteenth Amendment.^{9(p85)}

The Court spoke to the distinction between academic and disciplinary dismissal. In disciplinary dismissal, a hearing is necessary for fact-finding in order that a student may have the opportunity to present his or her facts in an effort to prevent potential misinterpretation. In an academic dismissal, the process is an evaluative one in which the faculty must make a judgment regarding academic ability and progress in clinical performance.

Like the decision of an individual professor as to the proper grade for a student in his course, the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision making.^{9(p90)}

Horowitz had claimed that her dismissal was arbitrary and capricious in that the school applied stricter standards to her because of her sex, religion, and physical appearance. The court responded:

...we agree with the district court that no showing of arbitrariness or capriciousness has been made in this case. Courts are particularly ill equipped to evaluate academic performance. The factors discussed...warn against any such judicial intrusion into academic decision making.^{9(pp91-92)}

Board of Curators of the University of Missouri v Horowitz raised the need to define "academic" issues. Written course work clearly meets the definition of academic content; however, the Justices diverged in the discussion of academic versus disciplinary issues and clinical performance. Horowitz tried to claim that her dismissal was not for "academic" reasons, but rather for conduct. In an opinion that supports dismissals for clinical performance inadequacies, Justice Marshall stated:

It is well to bear in mind that respondent was attending a medical school where competence in clinical courses is as much of a prerequisite to graduation as satisfactory grades in other courses. Respondent was dismissed because she was deficient in her clinical work as she was proficient in the "book-learning" portion of the curriculum. Evaluation of her performance in the former area is no less an "academic" judgment because it involves observation of her skills and techniques in actual conditions of practice, rather than assigning a grade to her written answers on an essay question.^{9(p96)}

The issue of defining an "academic" curriculum is a particularly relevant one for all professions requiring a clinical education or internship component. In many instances, particularly in lower court cases, the interpretation of clinical performance issues as "conduct" appears to be held. Justice Marshall's opinion above is an important reflection that professional practice includes performance not only of cognitive tasks, but also of psychomotor and affective behaviors. It is important that academic programs clearly define the clinical components of their curricula in terms of academic requirements and expected standards and apply professional accreditation standards and definitions to assist students, faculty, and the community (including the courts) in understanding these professional performance requirements.

Regents of the University of Michigan v Ewing

In 1985, the Supreme Court heard its second case of academic dismissal, *Regents of the University of Michigan v Ewing*.¹⁰ Ewing was a medical student enrolled in the 6-year medical Inteflex Program at the University of Michigan Medical School. Throughout his medical school enrollment, Ewing had demonstrated poor academic performance, earning many C and C- grades and incompletes and carrying reduced course loads during several semesters. The student had received warnings that any further deficiency would result in termination from the medical school. Admission into the final 2 years of the medical school curriculum was contingent upon passing the National Board of Medical Examiners (NBME) Part I examination. Ewing was dismissed from the program after failing the NBME Part I examination. Ewing's score was 235, the lowest ever received by a Michigan student on the NBME Part I examination. The passing score was 345. A score of 380 was required for state licensure, and the national mean was 500.

Ewing brought a civil rights action in federal district court alleging a violation of his substantive due process rights. He sought the opportunity to retake the NBME examination, with reinstatement in the medical school if he should pass. The court found for the defendants. The Sixth Circuit Court reversed on appeal, stating that the university had acted in an arbitrary and capricious manner by not allowing Ewing to retake the test, as shown by the fact that he was the *only* student in 7 years who had not been permitted by the Inteflex Program to retake a failed NBME examination.

Even the university's public relations brochure "On Becoming a Doctor" addressed the school's practice of allowing qualified students to retake the examination. The Supreme Court chose to review the case to determine whether the Sixth Circuit Court had applied incorrectly the doctrine of substantive due process. The Court spoke of the judicial role in review of academic decisions, as follows:

When judges are asked to review the substance of a genuinely academic decision, such as this one, they should show great respect for the faculty's professional judgment. Plainly they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment [footnotes and citations omitted].^{10(p225)}

A unanimous Court found that the university had not acted arbitrarily and remanded the case back to the lower court.

...it nevertheless remains true that his dismissal from the Inteflex Program rested on an academic judgment that is not beyond the pale of reasoned academic decision-making when viewed against the background of his entire career at the University of Michigan, including his singularly low score on the NBME Part I examination.^{10(p228)}

The judgments in the Horowitz⁹ and Ewing¹⁰ cases as well as lower court cases have confirmed the prerogative of academic institutions to dismiss students from professional programs for failure to meet established academic criteria in didactic course work and clinical performance. The courts have repeatedly stated that so long as decisions to dismiss students are neither arbitrary nor capricious, it is within the purview of faculty and academic institutions, rather than the legal system, to determine students' qualifications and competency to enter professional practice. As Schweitzer pointed out,

An obligation to retain them (students with inadequate achievement) indefinitely would destroy the institutions academic standards, and in the case of professional schools, would vitiate the institution's obligation to protect society by requiring that a diploma certify achievement of a certain level of competence and skill.^{8(p363)}

Additional Cases

Since the Ewing case, the academic challenges have continued, particularly from medical school student dismissals; however, the courts have been consistent in applying the

findings of the Horowitz and Ewing cases. The next several cases invoke additional issues that are important to faculty, particularly with regard to clinical education of students. In *Kraft v William Alanson White Psychiatric Foundation*,¹¹ a student accused his supervisors of making defamatory remarks in clinical performance evaluations. *Moire v Temple University School of Medicine*¹² charged violation of the student's due process when the academic institution failed to follow its own rules.

The case of Kraft involved a psychologist who failed to receive a certificate of satisfactory completion of a 2-year program in child and adolescent psychotherapy from a clinical institution due to unsatisfactory clinical work. Kraft charged breach of contract and also that certain clinical faculty had "made libelous and slanderous statements about him, specifically in written materials reflecting their opinions of his work, where they described what they perceived as his weakness in the clinical component of the training program."^{11(p1147)}

This case raises the issue of whether documentation of clinical performance describing areas of weakness and making recommendations for areas of improvement can be considered defamatory. The court found that by enrolling in an educational program, a student implies consent for intra-school publication of evaluative statements: "A person who seeks an academic credential and who is on notice that satisfactory performance is a prerequisite to his receipt of that credential consents to frank evaluation by those charged with the responsibility to supervise him."^{11(p1149)}

Schweitzer⁸ stated that academic challenge cases in which the student argues that the university failed to follow its own rules are frequently unsuccessful. He related the case of Moire, in which the student was required to repeat her third year of medical school due to failure of a psychiatry rotation. Moire brought a federal civil rights action alleging substantive due process violation and also breach of contract. She argued that the medical school had failed to follow its own procedures, which, in turn, violated her procedural due process rights. The court ruled that procedural due process was served, adding that even if a university had not complied completely with its own procedures, there would have been no violation of procedural due process if the student received some sort of hearing and the process was fundamentally fair. Based on this example and others, academic institutions can feel more

comfortable in dismissing a student having significant deficiencies even if the policies and procedures were deviated from slightly. Of course, clarification of policies and procedures for academic probation and dismissal and appropriate dissemination of this information will help to prevent litigation.

APPLICATION TO PHYSICAL THERAPY EDUCATION

How can the lessons of the cases of Horowitz and Ewing be applied in physical therapy education? The primary issues in academic dismissal cases focus on violation of procedural and due process rights. It is imperative, therefore, that programs ensure careful and deliberate evaluation of students' academic and clinical performance. Students must be provided with adequate notice of deficiencies, an opportunity to be heard, and opportunity to improve where appropriate. The following suggestions have been offered to academic institutions for prevention of academic challenge suits:^{2,3:}

1. *Identify academically inadequate students early:*

Most of the legal cases examined involved students who had invested significant time, money, and energy into the educational process. Usually the deficiencies in performance had been evident early in the curriculum, as evidenced by multiple failures, warnings, probation, and the like. By allowing a student with clear deficiencies to continue, the school reinforces the belief that the student can and will earn the credential. The likelihood of a lawsuit has been shown to increase with the duration of time the academic institution allows the student to remain in the program.³ A student dismissed early in the educational process has less of an investment in completing the program—financially and emotionally. This individual is more likely to move on to other opportunities. It is, of course, important to be fair in considering extenuating circumstances and to evaluate each case individually.

Milam and Marshall⁶ believe that there is a decreased incidence of lawsuits among students dismissed early from a program. They cited a number of cases of early academic dismissal that illustrate that academic decisions were upheld. These cases include *Patti Ann H v New York Medical College* (99 AD2d 296, 453 NYS 2d 196, 1982), in which a student was dismissed after failing four of her six first-year classes in medical school, and *Watson v University of Southern Alabama College of Medicine* (463 F Supp 270, 1979), in which the federal district

court upheld the academic dismissal of a student who had failed a significant portion of his first-year medical classes.^{2(pp347-348)}

2. *Notify students of performance deficiencies:* Provide the student with clear and honest feedback about the quality of performance in academic and clinical education. Identify specific areas that need remediation and provide a temporal element for improvement. Ongoing feedback, both written and verbal, will keep the student apprised of progress. Instruments such as the Generic Abilities Assessment¹⁷ and the American Physical Therapy Association's Student Clinical Performance Instrument¹⁴ as well as other clinical education evaluation tools are useful for formative and summative feedback. In clinical education, specific written feedback such as critical incident reports and anecdotal records may be useful.¹⁵

3. *Establish and enforce clear expectations for minimum performance:* Clearly defined expectations in cognitive, affective, and psychomotor domains should be provided to all students in the form of catalogs, manuals, and course requirements. In the event of student difficulties, the development of a contract specifically defining the remediation plan and the consequences if expected outcomes are not met may be helpful. Problems are most likely to occur when schools fail to enforce criteria consistently. Students may then perceive that they are being judged more harshly than their peers, and may bring lawsuit.

CONCLUSION

The issues relating to dismissal of students from professional education programs based on academic issues have been examined by the courts at many levels. Academic challenges will continue to exist as students invest much of their energies, emotions, time, and money pursuing educational and professional aspirations in this litigious time. Physical therapy faculty and higher education administrators can take comfort in the history of court rulings in favor of the professional judgment of the academician, but must still be prepared for the prospect of litigation from disappointed students. Physical therapy educators have a duty to provide careful and frank evaluation of students. This duty is owed to the student in order to ensure a good education provided in a fair and appropriate manner. The student is also owed fair and candid feedback about his or her capacity to succeed academically in an academic program. It is unfair to allow a student to persist in vain when early evidence clearly demonstrates that the student is unable

to meet academic standards. Physical therapy educators owe to the consumer the right to be treated by students and graduates who are competent in their field. Faculty also have a responsibility to graduate individuals who will exemplify professional abilities and competencies, as these alumni will represent the profession and the academic institutions from which they graduate. The courts have been shown to support the professional judgment of academicians:

An obligation to retain [the students] indefinitely despite their poor performance would undermine and eventually destroy the institution's academic standards and, in the case of professional schools, would vitiate the institution's obligation to protect society by requiring that a diploma certify achievement of a certain level of competence and skill.^{8(p363)}

REFERENCES

1. Milam S. Senior Counsel and Assistant Attorney General, Health Sciences and Medical Centers, University of Washington. *Legal Issues in Clinical Education of Physical Therapy Students* [course materials]. March 1995.
2. Milam S, Marshall R. Impact of *Regents of the University of Michigan v Ewing* on academic dismissals from graduate and professional schools. *Journal of College and University Law*. 1998;13:335-352.
3. Scott R. *Promoting Legal Awareness in Physical Therapy and Occupational Therapy*. Philadelphia, Pa: Mosby; 1997:180.
4. Kaplan WA, Lee BA. *The Law of Higher Education*. 3rd ed. San Francisco, Calif: Jossey-Bass Inc Publishers; 1995:491-492.
5. *Connelly v University of Vermont and State Agricultural College*, 244 F Supp 156, 1965.
6. *Gaspar v Bruton*, 513 F2d 843, 1975.
7. *Stretton v Wadsworth Veterans Hospital*, 537 F2d 361, 1976.
8. Schweitzer TA. Academic challenge cases: Should judicial review extend to academic evaluations of students? *American U L Review*. 1992;41:267-367.
9. *Board of Curators of the University of Missouri v Horowitz*, 435 US 78, 1978.
10. *Regents of the University of Michigan v Ewing*, 474 US 214, 1985.
11. *Kraft v William Alanson White Psychiatric Foundation*, 498 A2d 1145, 1985.
12. *Moire v Temple University School of Medicine*, 613 F Supp 1360, 1985.
13. May WW, Morgan BJ, Lemke JC, et al. Model for ability-based assessment in physical therapy education. *Journal of Physical Therapy Education*. 1995;9(1):3-6.
14. *Student Clinical Performance Instrument*. Alexandria, Va: American Physical Therapy Association; 1998.
15. *Voluntary Training and Credentialing Basic Clinical Instructor Workshop, Trainers Manual*. Alexandria, Va: American Physical Therapy Association; 1997.