

# Executive Summary

# Legal Issues

## Introduction

Decisions regarding resident/fellow performance (promotion, extension of the educational program, denial of academic credit, dismissal, and/or competency-based assessment) can, when “adverse,” lead the learner to engage in legal action against the institution. Programs and institutions should clearly understand the role of the Clinical Competency Committee (CCC) in the decision-making processes surrounding resident/fellow performance and academic achievement and carefully select their respective processes.

## History

In the landmark Supreme Court decision Missouri versus Horowitz (1978), the court defined academic due process as having three prongs: (1) Notice [of performance]; (2) An opportunity to cure [deficiencies]; and (3) A reasonable decision-making process. All three components of academic due process are integral to the CCC’s review and recommendations regarding resident/fellow performance. Thus, the CCC can serve as a foundational determinant and defense to institutions when challenged legally by residents/fellows.

Missouri versus Horowitz (1978) and a second Supreme Court case, Michigan versus Ewing (1985) together define the construct of a reasonable decision-making process—a core component of academic due process—through the court’s recognition of “a regularly called meeting of the faculty for the purpose of evaluating student [resident] performance.” This regularly called meeting of the faculty is, in modern day, graduate medical education context, the CCC. CCCs must rely upon a wide variety of inputs to assess resident performance. These inputs are written and verbal, solicited and non-solicited, observed and non-observed, structured and unstructured. Programs must educate residents/fellows that performance feedback comes in many forms, not just rotational evaluations. Feedback is not “weighted,” for example; rotational evaluations do not hold more weight than other forms of assessment. CCCs must evaluate feedback in its entirety to reach consensus on performance recommendations that include promotion/advancement, progress on the Milestones, and the need for individualized learning, including additional education and/or training.

## How-To and Noteworthy Practices

Do:

- Utilize all feedback, written and verbal, in decision-making processes.
- Allow the CCC to gain comfort in using verbal feedback from faculty members/other evaluators.
- Empower the CCC to solicit additional information when needed.
- Reach consensus on each learner; if there is disagreement, that information is important for the program director to understand.
- Focus on performance.
- Keep a confidential record of the CCC's discussion of each learner.
- Work with the designated institutional official (DIO) and institution's Legal team to understand the state's peer review laws and the institution's position on whether or not the CCC proceedings are peer review-protected.

Don't:

- Vote. The CCC should reach consensus and make a recommendation to the program director for final decision-making.
- Lose sight of the need to focus on performance. The CCC should not be evaluating resident/fellow health or medical conditions as reasons for suboptimal performance.
- Breach confidentiality. Discussions of the CCC should be directed outwardly only when part of an approved process (e.g., individual feedback or follow up to a resident/fellow).
- Discount feedback that is not in writing.
- Provide Milestones information to external groups for high-stakes decisions (such as licensing or credentialing entities).

## Long-Term and Short-Term Actions/Goals

The CCC can be one of the most important aspects to a program meeting academic due process requirements. The CCC should be structured in a way that supports the "reasonable decision-making process" as recognized by courts. Working with the DIO and local Legal counsel is important to properly structure CCC policies and processes, and to fully understand local and state laws specific to peer-review privilege.

## Useful Articles and Reports

Accreditation Council for Graduate Medical Education. "[Use of Individual Milestones Data by External Entities for High Stakes Decisions - A Function for Which they Are not Designed or Intended](#)"

For more information, see the full Clinical Competency Committee Guidebook and additional references on the [Milestones Resources](#) page of the ACGME website.