



Malpractice/Legal Issues
New Resident/Fellow Orientation
June 2022

University of Tennessee
College of Medicine
Chattanooga

Malpractice Protection

- The UT Attorney based in Knoxville handles any matter involving malpractice and/or potential lawsuits – Josh Walker, Vice President and General Counsel 865.974.3245 or jrwalker@tennessee.edu
- Diana Jo Garner, Paralegal in the Office of the Associate General Counsel 865.974.6583 or dgarner2@utk.edu

Malpractice Protection

- If you are named or threatened to be named in a lawsuit ...
 - Call our GME Department via our main Erlanger phone (423.778.7442, 3899, 3894, 3899)
 - Call Ms. Garner in the UT Attorney's Office at the main UT Knoxville campus (865.974.6583)

Malpractice Protection

- Do not discuss a malpractice case with anyone other than briefly notifying
 - Your Chair or Program Director and
 - GME Director (Pamela Scott, C-TAGME) or
 - GME Staff Members
 - Robbin Williams, C-TAGME, GME Lead Coordinator
 - Jacqueline Hogan, GME Financial Specialist

Malpractice Protection

- Frequently asked questions
 - What is the name of the company insuring UT residents against malpractice?
 - What is the policy #?
- Answers
 - The State of Tennessee is self-insured so there is no malpractice insurance company.
 - Also, it follows that if there is no policy, there is no policy #.

Malpractice Protection

- In 1985 the State of Tennessee became self-insured and established a State Claims Commission with funding to protect the State and its employees from professional liability claims..
- UT places \$ in a State-administered pool that compensates people injured by acts or omissions of the State and/or its employees.

Malpractice Protection

- As residents/fellows – you have immunity from professional liability.
- “State officers and employees are absolutely immune from liability for acts or omissions within the scope of the office or employee’s office or employment, except for willful, malicious, or criminal acts or omissions, or acts done for personal gain.”

Malpractice Protection

- This means you (residents) cannot be sued for things done as part of your employment by the University.
- This does not include acts done outside your residency such as “moonlighting.”
- If you have a full Tennessee Medical License and your program permits you to moonlight, you will need your own malpractice insurance or be covered by your employer.

Malpractice Protection

- The Tennessee Claims Court is a special tribunal that hears claims against the State.
- The State would be named the only defendant in a malpractice suit filed in the Claims Court.
- Resident involvement would be only as a witness in the case – not as a defendant.

Malpractice Protection

- Any judgments made by the Claims Court do not go on your record in the national malpractice database since as a resident or fellow, you are not a defendant.
- No judgment made by the Claims Court can exceed limits of
 - \$300,000 per claimant and
 - \$1,000,000 per incident

Malpractice Protection

- The Claims Court functions like a court but without a jury.
- There are three commissioners, one for each Grand Court District in the State.
- Commissioners hear the case as finders of fact.
- The rules of evidence and procedure are virtually identical to those in a State court.

Malpractice Protection

- The UT Attorney represents the State in malpractice cases involving residents.
- The decisions rendered by the Claims Court can be appealed by either side to the Tennessee Court of Appeals.

Malpractice Protection

- What happens if you (a resident or fellow) are individually named in a malpractice suit filed in a State court?
- Upon your authorization, the UT Attorney will move to dismiss the case against you individually on the grounds that you are immune as an employee of the State.
- You must cooperate with the UT Attorney as he or she prepares a defense for the University.

Malpractice Protection

- If a subpoena or lawsuit is served on a resident, that resident should immediately provide a copy to the GME Office and call the UT Attorney's Office in Knoxville 865.974.6583).
- Upon your authorization, the UT Attorney (assigned either from Knoxville or Memphis) will immediately begin work on a response and a defense.
- Once the resident is served with legal papers, the University has only 30 days in which to file a response.

Malpractice Protection

- What should you (a Resident or Fellow) do if contacted by an outside attorney about a patient or a malpractice case?
- You should tell the other attorney that he or she must contact the UT Attorney regarding the case.

Malpractice Protection

- Do not discuss the case with anyone other than the UT Attorney unless directed by the UT Attorney.
- Especially do not express personal opinions about any case with individuals other than the UT Attorney.

Malpractice Protection

- Remember, the UT Attorney is there to represent the state, gain factual information from you and your involvement in the care of the patient involved, and to advise you.
- When in doubt about a malpractice case, contact the UT Attorney's Office at 865.974.6583.

Malpractice Protection

- The GME Office can assist you in contacting the UT Attorney:
 - Pamela Scott, C-TAGME, Director of Graduate Medical Education, pam.scott@erlanger.org, 423.778.7673)
 - Robbin Williams, C-TAGME, GME Lead Coordinator, robbin.williams@erlanger.org, 423.778.3894)
 - Jacqueline Hogan, CAP, GME Financial Specialist, gme@erlanger.org, 423.778.3899)
 - Courtney Orloski, CAP, Medical Student Services Coordinator, mse@erlanger.org, 423.778.7442)
 - Paula Barnett, Special Projects Coordinator, paula.barnett@erlanger.org, 423.778.4886)

Practical Legal Issues

- For non-malpractice related legal issues, one of the Associate General Counsels for the UTHSC Campus in Memphis, Mark Petzinger, Esquire, provides consultation and guidance mpetzing@uthsc.edu or 901.448.4009

Avoiding Common Mistakes

- Professionalism
 - ACGME identifies Professionalism as one of the Core Competency Domains.
 - UT GME has a Social Media Policy (Chattanooga Policy #430) that states that “In posting information on personal social media, Residents may not present themselves as an official representative or spokesperson for a Residency Program, hospital, or the University.”

Avoiding Common Mistakes

- Professionalism
 - “... The University email address should never be used for personal views. Residents should use a personal email address as their primary means of identification on social media sites” and avoid comments about the University, hospitals, and patients.”
 - Twitter “Tweets” and Facebook posts or comments are discoverable FOREVER.

Avoiding Common Mistakes

- Professionalism
 - HIPAA laws prohibit you from disclosing any protected and/or identifiable health insurance information about a patient via any platform.
 - Residents have an ethical and legal obligation to safeguard protected health information. Posting, emailing, or texting patient information including photographs is a violation of the HIPAA statute.

Avoiding Common Mistakes

- Professionalism
 - Posting of patient information on social media will result in disciplinary action up to and including termination.
- EMR/EHR Integrity
 - Never falsify a medical record or any legal record.
 - Period.

Avoiding Common Mistakes

- Professional and Personal Boundaries
 - Review the UT Sexual Misconduct Policy.
 - Follow it – no exceptions.
 - Any UT employee, including Residents and Fellows, is legally obligated to report any known violation of sexual misconduct.
 - The Title IX Deputy Coordinator for GME in Chattanooga is Pamela Scott, C-TAGME, Director of GME (pam.scott@erlanger.org or 423.778.7673).

Avoiding Common Mistakes

- Professional and Personal Boundaries
 - Amorous, sexual relationships between Students, including Residents and Fellows, and Faculty are strictly prohibited.
- Tennessee Medical Foundation and its Physician Health Program work closely with the UT Statewide GME Programs to provide a process for advocacy and help for addiction and other impairment.

Avoiding Common Mistakes

- TMF/PHP -- help for addiction and other impairment
 - The UT GME Aid to Impaired Residents Policy #320 provides a path to assist Residents who admit impairment and agree to seek help.
 - You can contact TMF (Dr. Michael Barron) or go through the GME Office to seek help and advocacy before unavoidable legal issues arise.

Avoiding Common Mistakes

- Employee or Trainee ?
 - As a UT GME Resident or Fellow, you are both a student and a special employee of the University of Tennessee.
 - You may ask – Do I get paid overtime for over 80 hours worked per week (since 80 hours is the average limit for GME training)?

Avoiding Common Mistakes

- Employee or Trainee ?
 - The answer is actually not a GME issue or even a State of Tennessee issue.
 - The Federal Fair Labor Standards Act (FLSA) stipulates that MD's and other professionals such as attorneys are exempt from salary regulations for minimum wage and overtime per federal law. Residents and Fellows fall under FLSA regulations and are not eligible for “overtime.”

Other Questions

- If you have other questions related to your training, you can also contact your
 - Program Director
 - GME Director (Pam Scott, C-TAGME, pam.scott@Erlanger.org, 423.778.7673)
 - GME Lead Coordinator (Robbin Williams, C-TAGME, robbin.williams@erlanger.org, 423.778.3894), & GME Financial Specialist (Jacqueline Hogan, CAP, gme@Erlanger.org, 423.778.3899)
 - Associate Dean/DIO (Dr. Robert Fore in Chattanooga at 423.778.6956 or via email at Robert.Fore@erlanger.org)
 - UT Associate General Counsel (Mark Petzinger, Esq, mpetzing@uthsc.edu) for non-personal legal issues