

Dismissing a Physician for Cause: The Case of Mykal Grady, MD

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Sutton Medical Center was just informed through a journalist that the physician they hired was accused of raping two patients. The doctor was given a five year employment contract. In an instant the Center is now going to face bad press and possible legal liability. Students must decide if there is good cause to terminate the physician. Can the Center sue the prior employer for failing to warn the Center? What are the implications to all of the parties involved in the confidential settlement made with the complainant?

John Smith, M.D. is the Chief of Staff for Sutton Medical Center (SMC). On January 9th, 2018, a reporter from *USA Today* met with Dr. Smith to inquire about a physician, Mykal Grady, M.D. who was hired in October 2017 to fill the position as the Director of the Colorectal Surgery Department at SMC. The reporter told Dr. Smith he was doing an exposé on rape and sexual abuse in the medical field and how blatant it is becoming. He was investigating two complaints that were filed against Dr. Grady while he worked at Guthrie Hospital and asked if SMC knew about it? Two of Dr. Grady's patients claimed they were raped by him during examinations conducted at Guthrie Hospital. The reporter stated that he was writing about how these suits always end up as a confidential settlement, which is what happened with one of Dr. Grady's accusers. This information blindsided Dr. Smith. SMC has a very comprehensive hiring process. How could this have been missed in the review process that was set up at SMC? What should be done to minimize bad press and protect the Center?

Dr. Grady worked at Guthrie Hospital for seventeen years prior to applying to SMC. SMC verified Dr. Grady's degrees, medical licenses, and specialty certifications before hiring him. Dr. Grady provided the required five letters of reference. Each person who wrote a reference letter was personally called. Guthrie Hospital was contacted to verify the prior employment and to inquire if there was any reason why SMC should not hire the applicant. In addition, a criminal check was made through local law enforcement and a search was made in the national criminal database. The search revealed no convictions, no arrests,

and no outstanding warrants. The Indiana State Board was contacted and they reported no complaints, suspensions or license cancellations. SMC was thrilled to have Dr. Grady join the team at SMC.

Immediately after talking with the reporter, Dr. Smith had an emergency meeting with Vince Argus, the Director of Human Resources and Sal Maggio, legal counsel for SMC about what next steps need to be taken. A decision was made that Dr. Smith should wait until the article was published before contacting Dr. Grady and setting up a meeting. They agreed to place him on paid leave until SMC completes its own investigation of the facts.

Dr. Smith along with Vince Argus immediately reviewed the personnel file of Dr. Grady. They carefully reviewed each document in the file checking to see if anything was missed in the vetting process. The pre-hiring investigation was performed as required by SMC rules.

The article appeared in *USA Today* on January 11th, 2018. Out of courtesy, the reporter sent it electronically to Dr. Smith the night before it was officially published. Dr. Smith immediately called Dr. Grady and asked him to meet in Smith's office on January 11th at 11:00 a.m. Dr. Smith, Vince Argus, and Sal Maggio all attended the meeting. Dr. Smith confronted Dr. Grady about the rape allegations in the *USA Today* article. Dr. Grady vehemently denied any wrongdoing and stated that he is innocent of both complaints. He stated that he fully cooperated with the police in the investigation and was never arrested, nor were any criminal charges placed by the District Attorney who personally reviewed the case. He pled with the President at the Guthrie Hospital against reaching a settlement on the one suit that was filed. Dr. Grady and the Guthrie Hospital were named as defendants in that civil lawsuit. The hospital CEO said a settlement would keep this out of the news and protect them from bad press. Also, it was cheaper to settle than to pay attorneys to defend the claim. Dr. Grady claimed that he was being falsely framed by these two women, who were really only after easy money. He said he did not mention anything during the hiring process, because, in his mind, nothing happened. Furthermore, he was unsure if he could talk about it since the hospital insisted on confidential settlement with a strict "non-disclosure" clause. Regarding the second complaint, no charges were filed and no lawsuit was commenced. Dr. Grady said that this was proof that nothing really happened. Dr. Grady was then placed on paid administrative leave pending a full investigation by SMC.

SMC hired Sam Shane, a recently retired FBI agent who started his own private investigation firm, to conduct a full review of the matter. They provided Sam with the *USA Today* article and a photocopy of the personnel file and asked Sam to go back and interview all Dr. Grady's references. Sam said he would also check the police files, speak to the District Attorney, and see what he could find out about Dr. Grady from workers at Guthrie Hospital.

The January 11th news article was quite comprehensive. The article reported that two patients claimed that Dr. Grady raped them. The first rape allegedly occurred on May 11, 2008 according to police reports. The patient reported that she was there for a rectal exam. The patient reported to police that during the examination she was feeling uncomfortable pain, so she turned her head to tell the doctor. That's when she saw him standing there with his pants down fully exposed. She fled from the room half naked and hysterical. She immediately reported it to the nurse on staff and then called the police who did a full investigation. The police used a rape kit and had lab tests performed, all of which proved inconclusive. Dr. Grady consented to a lie detector test which was filed as evidence for the grand jury. The District Attorney declined to present it to the grand jury, stating that there was insufficient evidence. The patient missed the one-year deadline for a medical malpractice suit and filed a civil lawsuit against Dr. Grady and the Guthrie Hospital. This was resolved by Guthrie Hospital with a confidential settlement on behalf of the Hospital and Dr. Grady.

On March 6th, 2009 the second complainant was set to have a hemorrhoid removed. She was brought into the examination room alone by Dr. Grady. In spite of promising her that she would not need anesthesia, he gave her two pills which made her very drowsy. She recalls leaving the Center very groggy. Over the next few years she was having increasing number of flashbacks to that March 6th procedure. The flashbacks increased whenever she had medical appointments. She had feelings of horror and was terrified to leave her apartment after episodes. She contacted the Guthrie Hospital Ombudsman in November 2014 when she was able to piece together flashbacks and remembered being pushed from

behind, and upon turning back saw Dr. Grady fully exposed. She believed she was raped. She reported it to the city police after seeing ads by Guthrie Hospital promoting the Guthrie Hospital and Dr. Grady. The advertising began shortly after she filed her complaint with Guthrie Hospital and that made her really upset. She did not file a civil suit.

On October 1, 2014, the County Court Judge granted a motion on behalf of Dr. Grady to have the police report to be expunged. That order had the effect of erasing almost all of the details of the first incident making it appear as if the incident never existed. The police and District Attorney decided that the second complaint was also too weak to prosecute. While it was the policy of Guthrie Hospital to use chaperones on such exams and procedures, none were used by Dr. Grady on these two events. In a follow-up article, *USA Today* reported that after the second complaint was filed, Dr. Grady was advised that his contract at Guthrie Hospital would not be renewed for another term. That notice was given while Dr. Grady was still on staff at Guthrie Hospital and well before SMC began its search. The contract non-renewal information was never given to SMC by Dr. Grady or the Guthrie Hospital.

Dr. Smith contacted the Indiana State Licensing Board to notify them of the newspaper report against Dr. Grady. Hospitals are required to file a notice of complaint within seven days with the State Board whenever one is filed against a licensed physician. Dr. Smith was not sure if he needed to file, since technically, the complaints were actually filed against Dr. Grady while he was employed at the Guthrie Hospital, but he wanted to be on the safe side. He inquired if Guthrie Hospital filed the notices as required by law. The State Board official reported that they did receive two "Notice of Complaint" forms against Dr. Grady from Guthrie Hospital. One was filed May 12, 2008 and the other one was filed electronically on January 11, 2018. This information did not mesh with the report received by SMC on Dr. Grady during the vetting process in September of 2017. When Dr. Smith asked why the State Board report on Dr. Grady showed no complaints when one was actually filed in May 2008, the state official advised him that it was their policy to expunge a complaint if no criminal charges or no civil judgment is filed on the matter.

Sam Shane's report did not find anything specific against Dr. Grady. His references still respected him and believed that he was falsely accused. The police chief and district attorney believed they could not prove a criminal case beyond a reasonable doubt regardless of whether they believed he did it.

STUDENT ASSIGNMENT

As the attorney assigned to represent SMC, write a memo answering SMC's concerns regarding the following questions:

1. What is the best legal argument in support of terminating Dr. Grady's employment? What is the best legal argument for retaining the physician?
2. If the facts against Dr. Grady are inconclusive, does SMC still have the right to terminate Dr. Grady in spite of his five year employment contract? On what basis would SMC find good cause for termination?
3. In light of the facts of this case, what should SMC do when hiring a physician in the future?
4. Does SMC have any legal claims against Guthrie Hospital?
5. Did Guthrie Hospital handle the two complaints against Dr. Grady properly?
6. As chief operating officer at Guthrie Hospital, what additional protocols would you implement to avoid liability for suits such as the one against Dr. Grady?
7. If Dr. Grady did sexually abuse the patients, what would the claimants need to prove to win the case against Guthrie Hospital?
8. If a patient of SMC reads the stories about Dr. Grady in the newspaper and now files a complaint with SMC against Dr. Grady, what would the patients need to prove to hold SMC liable in a civil suit?
9. Did Guthrie Hospital violate any laws in Indiana on the Dr. Grady matter?
10. Did Guthrie Hospital act ethically?