

Does Due Process Matter?

Andy Mayer, MD FAAEM
Editor, *Common Sense*



"Virtue is persecuted by the wicked more than it is loved by the good." — Miguel de Cervantes, *Don Quixote*

Does due process matter in your practice, and do you have it? I suspect that many of you, especially younger emergency physicians, do not know if your employment contract provides you with due process and peer review protection under your hospital's medical staff bylaws. Most emergency physicians are so thrilled and excited to finally be finished with their training and eager to enter the real world that they don't read the fine print in their contracts, which is why many of us make poor financial decisions. Contracts are signed without physicians understanding or really caring about the small details that don't directly affect their compensation, and many of these physicians later regret signing their contracts.

This makes me wonder if the Academy's quest for universal due process protection is a good cause or simply tilting at a distant windmill. Time will tell, but I think this is an issue worthy of discussion — especially for members of the Academy. Due process is the fifth principle of the AAEM's mission statement:

The Academy supports fair and equitable practice environments necessary to allow the specialist in emergency medicine to deliver the highest quality of patient care. Such an environment includes provisions for due process and the absence of restrictive covenants.

AAEM created the Emergency Medicine Due Process Petition to promote due process and peer review for emergency physicians. It reads:

We, the undersigned emergency physicians of this country, believe that due process is fundamental to our ethical mandate to care for our patients without being pressured by administrative or other external influences. We serve as direct advocates for our patients, many of whom go to emergency departments because they are vulnerable due to medical, social or financial issues outside of their control. In some cases, such advocacy may conflict with profit-driven or other non-patient-oriented forces. Therefore, we strongly oppose the contractual trend that allows hospitals or contract holders to terminate physicians without a fair hearing, since this hinders our ability to act at all times in the best interest of our patients.

This statement sounds noble, just, and just plain good sense. The board of directors and other members have gone to Capitol Hill to lobby on this issue. Larry Weiss, our past president, and others have spent many hours lecturing and educating on the simple justice of this effort, and on its importance for patients. The Academy has tried to encourage regulatory

support for the requirement of due process rights for all emergency physicians by CMS. This would appear to be a simple issue, which all emergency physicians can wholeheartedly support, and there is a simple link at AAEM's website for signing the petition. To my surprise, I recently learned that only 2,714 emergency physicians have bothered to sign the petition, even though the process takes literally just seconds. I would think the subset of emergency physicians who join AAEM would be the most motivated to do something. Many of us have reasons for joining AAEM that relate directly to due process issues. Are we so burned out or disillusioned that we will not take a few seconds to sign a petition?

The perceived importance of due process rights varies. The idealist will tell you that due process protection is an essential right for all emergency physicians. Due process can be used as a tool to protect our most vulnerable patients when we advocate for better care and coverage. This is clearly demonstrated by what happened to Dr. Wanda Cruz. (www.tampabay.com/news/health/doctor-says-she-was-fired-for-reporting-low-staffing-at-brandonregional/2218497). She was fired by EmCare without any due process or peer review. Most contracts from corporate management groups (CMGs) require you to waive your due process rights. This is

some of the fine print I was referring to above. This allows them to terminate you immediately and without any recourse.

The pragmatist will tell you that it doesn't really matter if you have due process rights or not. If your group, hospital administrator, or CMG wants you gone — you will be gone. Does it matter if you have staff privileges at a hospital but don't have a job there?

This brings me to Don Quixote. Trying to foster more conversation and interaction with my grown children, I challenged them to read two beautiful, leather-bound classics a year. We then discuss the books, which they get to keep. My two sons accepted the challenge. My eldest picked Don Quixote as our first classic. He recently had a "tilting at windmills" experience. He worked for a year in Afghanistan in an inspector general role, trying to ensure the Department of Defense was spending our money well. I think that is why he chose this novel.

Does due process protection "fix" the problems that confront us daily in our struggling emergency departments? Of course not, but maybe it is a symbol of control, which we seem to be losing. I believe that when people feel their actions and opinions are unimportant, they lose their sense of ownership in the process. And owners perform better than renters, as any landlord would tell you. This sense of ownership leads directly to the importance of physician owned and operated practices. When a practice

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is yours, it matters more to you. The department's failure is your failure. I suggest that the loss of due process is really just a placeholder for lost ownership rights, which are an essential tenant of our legal and moral heritage. When you have rights, you also have responsibilities.

What is the remedy for the problems in our emergency departments? Not many of us think more administration/management, patient satisfaction scores, and committee meetings will solve the challenges facing us when we arrive for a shift. It seems to me that lack of control is a major contributor to emergency physician burnout.

Obtaining due process protection is not a panacea for emergency medicine, but I challenge each of you to think about what due process and peer review mean to you, and ask yourself what are you going to do about it? Will standing with 2,714 other emergency physicians in

signing a petition make you happy? Maybe not, but maybe joining your colleagues in a just cause will begin to rebuild your sense of ownership in your practice and profession, and help each of us value ourselves and our hard won careers a bit more. ■

Sign the Due Process Petition at
<http://www.aem.org/dueprocess/petition/>

24th Annual Scientific Assembly
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CALL FOR PAPERS, PHOTOS AND OPEN MIC
 Submission Deadline: 11:59pm CST on November 27, 2017

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- The top 8 abstracts will present orally at AAEM18. All other abstract submissions are invited to display their research as a poster.
- The presenter of the oral abstract judged to represent the most outstanding research achievement will receive a \$3,000 honorarium, while second and third place will receive \$1,500 and \$500 honoraria, respectively.

AAEM/RSA & WESTJEM POPULATION HEALTH RESEARCH COMPETITION

- Submit a research abstract that affects the health of populations of patients.
- The top abstracts will be invited to present orally at AAEM18 and be published in *Western Journal of Emergency Medicine: Integrating Population Health with Emergency Medicine*.

SHOWCASE YOUR PHOTO AT THE AAEM18 PHOTO COMPETITION

- All physicians, residents, and students are invited to submit a photograph for presentation of patients, pathology specimens, Gram stains, EKGs, and radiographic studies or other visual data.

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- Open Mic is a proud tradition within AAEM, it offers a unique opportunity to speak at a national meeting.
- This open-floor format allows 16 "new voices" to be heard and evaluated by education committee members and conference attendees.
- Ten of the time slots will be filled in advance by email. The remaining six time slots will be filled on a "first-come, first-served" basis by signing up onsite.

YPS POSTER COMPETITION - NEW

- New this year, members of AAEM YPS and AAEM members who meet the YPS membership criteria are eligible to submit their research for a poster competition.

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www.aem.org/AAEM18/competitions