



President's Message

AAEM's Commitment to Due Process: The Wanda Cruz Story

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Due Process — the universal guarantee of due process is in the Fifth Amendment to the U.S. Constitution, which provides “No person shall ... be deprived of life, liberty, or property, without due process of law,” and is applied to all states by the 14th Amendment.

Recently at the Association of Academic Chairs in Emergency Medicine (AACEM) meeting in Phoenix, at the Florida AAEM Scientific Assembly in Miami, and at the EM Organization meeting at SAEM, I recounted a story that should energize AAEM's efforts to make due process an undeniable right for all EM physicians.

In Florida, an EM physician arrived for her shift to find the ED waiting room overflowing with patients with extensive wait times of several hours. In times past, this ED had some double coverage during the busy season (as commonly occurs in Florida) and even a contingency plan for on-call coverage for such situations. However the contract for this ED had recently been taken over by one of the well-known national corporate medical groups. With profit as their bottom line, the CMG had of course cut back to single coverage and done away with the on-call physician, leaving this single physician to deal with a certainly unsafe situation. Quite unfortunately, in that plethora of waiting room patients, was a mistriaged gentleman who was having a stroke. By the time he was seen, he was now outside the window for intervention and needless-to-say his outcome was less than optimal. The EM physician was devastated. The next morning at the end of her shift, she walked past the hospital CEO who noted that she wasn't her usual cheerful self and inquired how her nightshift had been. She noted what a terrible shift she had just endured and asked if they could speak the next day. Their discussion focused on patient safety and the significant cutback in coverage. The CEO called the CMG to discuss the situation. The very next day the EM physician was FIRED. No hearing. No explanation. NO DUE PROCESS. This is the Wanda Cruz Story.

Unfortunately this is not a new story. Remember the 60 Minutes episode by Steve Kroft, “The Cost of Admission,” which focused on a hospital corporation that demanded their EM physicians order unnecessary tests as well as admit a minimum percent of patients or face termination? (www.cbsnews.com/news/hospitals-the-cost-of-admission-03-12-2012)

That was 2012. In Becker's Hospital Review on May 25th, they cite a whistleblower lawsuit that the Department of Justice has intervened in alleging fraud associated with unnecessary admissions. The DOJ cited multiple witnesses who allege that the President and Chairman of the hospital corporation would criticize ED physicians and demand their termination if he decided they were passing up opportunities to admit Medicare beneficiaries to the hospitals. ED physicians who had admitted more Medicare beneficiaries were preferentially scheduled to work more hours while those with a relatively low rates of admission were cut back. (www.beckershospitalreview.com/legal-regulatory-issues/feds-join-former-executive-s-50m-false-claims-suit-against-prime-healthcare.html) Sound familiar to anyone else?

AAEM's White Paper on due process states,

“As a matter of public policy and medical ethics, all physicians require due process rights in hospitals. Physicians have a duty to advocate for their patients, even when such advocacy requires opposition to hospital interests. Due process rights protect physician autonomy, serve as a mechanism to protect patients, and assure physicians that they will not lose their practice rights for unfair reasons. Physicians denied a fair hearing, or those physicians who disagree with the outcome of a fair hearing, shall have a right of appeal and further redress through the courts. Furthermore, provisions in a contract denying due process rights to physicians **do not preempt** medical staff bylaws and have no effect because of the public policy protecting the welfare of patients.” *J Emerg Med 2007; 33:439-440.*

At the recent BOD Strategic Planning Meeting two weeks ago, the BOD reconfirmed its number one priority as working to insure workplace fairness for EM physicians, specifically due process. AAEM continues to work with both Congress and CMS to make due process an undeniable right under the Rules of Participation for Medicare that cannot be waived/signed away. This would remove the continuous threat from the CMGs and/or hospitals involved in Joint Ventures that force EM physicians to practice under their economically driven (read “money making”) guidelines or fear termination. This is not only a patient safety and quality of care issue, I believe the exploitation and abuse of EM physicians in the workplace is a significant contributor to “physician burnout.”

I encourage every member to do three things:

1. **Listen to Larry Weiss's Podcast on Due Process** located on the website under Publications/Podcasts tab.
2. **Sign the AAEM Due Process Petition located under the Advocacy/Due Process Petition tab.** Your support of this petition will back both our advocacy efforts in D.C. with Congress/CMS as well as individual legal battles in due process cases such as that facing Wanda Cruz.
3. **Consider a contribution to the AAEM Foundation.** At the discretion of the Foundation's BOD, Foundation funds have/will be used to defray legal expenses incurred by individual EM physicians fighting termination without due process cases.

As for Wanda Cruz, she has filed a lawsuit against her former employer for wrongful termination which AAEM has agreed to support in every way possible. Recognizing the lack of due process is not just an individual but a national dilemma, Wanda decided to dedicate her energies to fighting for due process for all EM physicians. To that end, she recently ran for and was elected to the Florida AAEM BOD! ■