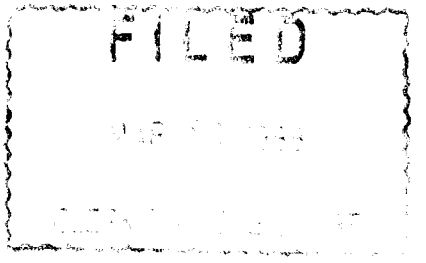
IN THE COURT OF APPEALS OF IOWA

No. 9-120 / 98-0839
Filed March 31, 1999

KHANH PHAN,
Appellant,

vs.

UNIVERSITY OF OSTEOPATHIC MEDICINE AND HEALTH SCIENCE,
Appellee.



Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Judge.

Khanh Phan appeals from the district court's grant of summary judgment in favor of the University of Osteopathic Medicine and Health Sciences on his claim seeking equitable relief from his dismissal from the University. **AFFIRMED.**

Roger J. Kuhle of the Law Office of Roger J. Kuhle, P.C., West Des Moines, for appellant.

Richard G. Santi and Steven L. Serck of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., Des Moines, for appellee.

Heard by Sackett, C.J., and Huitink and Mahan, JJ. Streit, J., takes no part.

HUITINK, J.

Khanh Phan appeals from the district court's grant of summary judgment in favor of the University of Osteopathic Medicine and Health Sciences on his claim seeking equitable relief from his dismissal from the University. We affirm.

I. Background Facts and Procedure.

Khanh Phan began medical school at the University of Osteopathic Medicine and Health Sciences ("University") in 1991 with an expected graduation date of 1995. In late 1994, Phan began clinical rotations at a hospital in York, Pennsylvania. Several on-site physicians who supervised Phan in his clinical rotations sent reports back to the University critical of Phan's performance and alleging character defects such as dishonesty and refusal to accept responsibility. Phan also failed his internal medicine rotation in Pennsylvania. Additionally, in 1995 Phan failed a test offered by the National Board of Osteopathic Medical Examiners with a score ranking him in the bottom two percent nationally. Upon returning to Des Moines in late 1995, faculty at the University observed Phan exhibiting below average knowledge of medicine and a poor attitude toward his education.

The academic performance of University students is evaluated by the Student Promotion and Evaluation Committee ("SPEC"). If SPEC decides dismissal of a student is appropriate, this recommendation is made to the Dean of Academic Affairs

of the University. The Dean may accept or reject SPEC's recommendation. SPEC's procedures are outlined in the University's Course Catalog.[1]

In November 1995, SPEC reviewed Phan's academic progress and the reported deficiencies relating to his clinical rotations. SPEC voted not to dismiss Phan, however, and determined all of Phan's remaining clinical rotations were to be completed in Des Moines so his progress could be closely monitored.

Upon resumption of his clinical rotations, Phan continued to receive poor evaluations. Although he did not fail any rotation, his clinical instructors expressed strong reservations about his basic medical knowledge and ability to provide adequate patient care.

On May 9, 1996, SPEC removed Phan's name from the May 1996 graduation list and initiated proceedings to dismiss him from the University.[2] On August 12,

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[1] The Course Catalog provides, in pertinent part:

> At least quarterly, the [SPEC] evaluates the academic performance of each student. The Committee views both scholastic achievement and character development, including such considerations as emotional stability, integrity, general conduct, reliability, judgment and rapport with patients. When the Committee is satisfied that students have met all requirements, it recommends to the faculty that students be promoted or graduated.
>
> The Student Promotion and Evaluation Committee may recommend that appropriate action be taken if a student continues unsatisfactory work. The final decision rests with the Dean for Academic Affairs. In accordance with the student evaluation mechanism, appropriate action may require that a student . . . (3) be dropped from the college.

[2] SPEC reviewed Phan's record for satisfaction of graduation requirements as outlined in the University's Student Handbook:

> A student who has been promoted to full Year IV status shall be eligible for

1996, SPEC met with Phan and his attorney and afterwards voted to recommend Phan's dismissal from the University because he lacked sufficient moral character and professional promise.[3] On September 21, 1996, the University faculty met and accepted SPEC's recommendation.

Phan appealed the faculty's decision to the Faculty-Student Forum ("Forum"). The Forum rejected SPEC's recommendation to dismiss Phan. The University president, nevertheless, denied Phan's graduation request claiming the Forum lacked

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graduation when all requirements for graduation (see College of Osteopathic Medicine and Surgery current catalog) are fulfilled, including:

1. When he/she has passed all systems, courses, and rotations.

2. When he/she has been recommended for graduation by the Student Promotion and Evaluation Committee to the Faculty and the recommendation accepted by a majority of the full-time Faculty present at the meeting with that as an agenda item.

[3] The Course Catalog sets forth the requirements for graduation:

The University of Osteopathic Medicine and Health Sciences awards the professional degree of Doctor of Osteopathy (D.O.) upon recommendation of the faculty . The Student Promotion and Evaluation Committee reports annually to the faculty the names of students who have met requirements for the doctoral degree. To be graduated, a student must:

1. Have attained the age of 21 years.

2. Pass all prescribed courses, systems, rotations, and examinations.

3. Be of good moral character and emotionally stable.

4. Show professional promise in the judgment of the faculty and receive the faculty's recommendation for graduation.

the authority to reverse the faculty's action on SPEC's recommendation to dismiss Phan for academic reasons.[4]

Phan sued the University in equity claiming (1) the University's refusal to grant him a diploma was a breach of an express or implied contract, (2) the University should be equitably estopped from denying him a diploma, and (3) the University did not have good cause to deny him the diploma. The district court granted summary judgment to the University, finding Phan's dismissal was on academic grounds and that SPEC, the full faculty, and the University president exercised professional judgment in dismissing Phan.

On appeal, Phan argues the University's student handbook created a unilateral contractual relationship which was breached by the University. Phan insists a fact question exists as to whether he was dismissed from the University for academic or non-academic reasons. He contends even if the dismissal was for academic reasons, the dismissal was not reasonable because the University violated its own rules and past practices by not accepting the Forum's decision.

II. Standard of Review.

We review a summary judgment ruling for error. *Gerst v. Marshall*, 549 N.W.2d 810, 811 (Iowa 1996). The district court correctly enters summary judgment when the record shows "no genuine issue as to any material fact and . . . the moving

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[4] The record is unclear as to the exact jurisdiction of the Faculty-Student Forum. However, the Course Catalog makes clear that the final decision concerning academic deficiencies rests with the Dean of Academic Affairs. *See* Footnote 1.

party is entitled to judgment as a matter of law." Iowa R. Civ. P. 237(c). Thus, on review, we examine the record before the district court to decide whether any material fact is in dispute, and if not, whether the district court correctly applied the law. *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 354 (Iowa 1995). In considering the record, we view the facts in the light most favorable to the party opposing the motion for summary judgment. *Gerst*, 549 N.W.2d at 812.

III. The Merits.

Our deference to the judgment of colleges and universities in disputes such as this is well established. *See Lekutis v. University of Osteopathic Medicine and Health Sciences*, 524 N.W.2d 410, 413 (Iowa 1994); *Pflepsen v. University of Osteopathic Medicine and Health Sciences*, 519 N.W.2d 390, 391 (Iowa 1994). The United States Supreme Court has stated the deferential standard regarding academic dismissals as follows:

> When judges are asked to review the substance of a genuinely academic decision, such as this one, they should show great respect for the faculty's professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.

Regents of Univ. of Michigan v. Ewing, 474 U.S. 214, 225, 106 S.Ct. 507, 513, 88 L.Ed.2d 523, 532 (1985). *See also, Harvey v. Palmer College of Chiropractic*, 363 N.W.2d 443, 444 (Iowa App. 1984)("Courts are reluctant to intervene in cases involving dismissals for academic deficiency since such decisions are within the expertise of the school. . . ."); *Jansen v. Emory University*, 440 F. Supp. 1060, 1063

(D.C. Ga. 1977)("a medical school must be the judge of the qualifications of its students to be granted a degree; courts are not supposed to be learned in medicine and are not qualified to pass opinion as to the attainments of a student in medicine").

The gist of Phan's argument is that his academic dismissal was a pretext. He contends the University's real reasons for dismissing him were non-academic and the President was accordingly obliged to honor the decision of the Forum allowing him to graduate. Phan argues the September 21, 1996 decision to dismiss him from the University was based upon the same academic concerns SPEC addressed in November 1995, when it voted to allow him to continue his work toward graduation. Because these concerns were insufficient to justify dismissal then, Phan claims the only remaining reasons for his dismissal were non-academic. The summary judgment record fails as a matter of law to support Phan's contention.

Phan's argument ignores *academic* evaluations made following SPEC's November 1995 recommendations. These evaluations continued to be highly critical of his medical knowledge, practical medical skills, and professional promise. An evaluation, given by Dr. Victor Kaylarian on May 13, 1996, reads, in pertinent part:

> [Phan] is one of the poorest fourth-year students that I have had a chance to work with. His basic fund of medical knowledge and ability to correlate that knowledge in a clinical situation is unsatisfactory. In short, I feel that he is a grossly inept individual and deserves close scrutiny.

We find this evaluation, in addition to undisputed evidence of other academic deficiencies considered by SPEC in November 1995, support the University's

decision to dismiss Phan for academic reasons. Even if Phan's complaints of procedural irregularities are correct, we do not believe the presence of non-academic concerns precludes dismissal for academic reasons if those reasons are otherwise undisputed.

We have considered Phan's argument that the University's student handbook and course catalog created a unilateral contract which the University breached by failing to follow the proper procedures for dismissing a student. Our review of the student handbook and the course catalog reveals both documents contain clear disclaimers evidencing the University's intent not to make an offer to follow the policies contained in the handbook and catalog. *See Phipps v. IASD Health Services Corp.*, 558 N.W.2d 198, 204 (Iowa 1997)(finding with regard to employee handbooks, the essential purpose of a disclaimer is to claim at-will status for the employment relationship by repudiating or denying liability for statements expressed in the handbook); *Anderson v. Douglas & Lomason Co.*, 540 N.W.2d 277, 287 (Iowa 1995). We therefore find Phan's position to be without merit.

IV. Conclusion.

We find the district court properly deferred to the University's academic judgment in dismissing Phan and accordingly affirm.

AFFIRMED.