



Gurbani v. Johns Hopkins Health Sys.

237 Md.App. 261 (2018) | Cited 0 times | Court of Special Appeals of Maryland | June 1, 2018

Barkha Gurbani v. Johns Hopkins Health Systems Corp., et al., No. 1825, September Term 2016.
Opinion by Arthur, J.

EDUCATION BREACH OF CONTRACT OR NEGLIGENCE IN ACADEMIC DECISIONS

In *Hunter v. Board of Education of Montgomery County*, 292 Md. 481 (1982), the Court of Appeals established a policy of declining to entertain actions for either negligence or breach of contract based on an allegation that an educator improperly evaluated a student. a singularly inappropriate Id. at 487. Although *Hunter* concerned a minor child enrolled in public school, *Hunter* is only a single example of a deep collection of case law that overwhelmingly favors judicial noninterference with academic decisions at all levels of education. Generally, courts may not override an academic decision unless it is such a substantial departure from accepted academic norms that the decision maker did not actually exercise professional judgment.

t is entitled to deference. In this case, a incorrectly assessed her performance could not serve as the basis for a breach-of-contract

claim seeking to recover damages resulting from the allegedly improper dismissal.

Moreover, courts will not entertain contract claims that in fact attack the quality of educational services. T certain educational services, but did so inadequately, could not serve as the basis for a breach-of- contract claim.

Although the resident produced some evidence that the University arguably may have failed to fulfill a few identifiable contractual provisions, those arguable breaches could not serve as the basis for an award of damages resulting from the academic dismissal. Any relationship between the arguable procedural failures and the academic dismissal was too speculative and subject to too many future variables to establish that the alleged breaches caused the alleged damages.

policy against entertaining actions for negligent education also precludes a claim alleging that an educational institution negligently retained and supervised faculty members who allegedly made improper student evaluations.

SUMMARY JUDGMENT EVIDENCE OF BAD FAITH



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Where a plaintiff alleges that a defendant acted in bad faith, the defendant is entitled to summary judgment absent a showing, supported by particular facts, shown in detail and with precision, sufficient to allow a fact finder to conclude that the defendant lacked good faith. The plaintiff here failed to produce sufficient evidence of bad faith by the defendants.

In this case, a dismissed medical resident alleged that certain educators acted in bad faith when they gave unfavorable evaluations of her performance. The resident lacked any direct evidence of animus. Her mere characterizations of supposed hidden motives of her evaluators was insufficient as evidence of bad faith. Although the resident theorized that two evaluators may have had some motive to retaliate against her after she complained about their conduct, the evidence failed to demonstrate the necessary connection between the alleged retaliatory motive and the actions that it allegedly motivated testimony was neither detailed nor precise enough to permit the conclusion that her complaints about her evaluators predated their unfavorable assessments of her performance. Moreover, the challenged assessments were fully consistent with the independent assessments of other medical professionals who observed the resident around the same time. Circuit Court for Baltimore City Case No. 24-C-15-002959 REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1825

September Term, 2016

BARKHA GURBANI

v.

JOHNS HOPKINS HEALTH SYSTEMS CORP., et al. -----

Wright, Arthur, Albright, Anne K. (Specially Assigned),

JJ.* -----

Opinion by Arthur, J. -----

Filed: June 1, 2018



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* Judge Matthew J. Fader did not participate in this opinion for publication pursuant to Md. Rule 8-605.1. In this case, a physician brought an action seeking damages resulting from her

academic dismissal from an orthopaedic surgery residency program at the Johns Hopkins University School of Medicine. After extensive discovery and briefing, the Circuit Court for Baltimore City entered summary judgment against the physician on all of her claims.

We affirm, primarily because of the principle that courts must defer to good-faith academic decisions concerning promotion and dismissal.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Barkha Gurbani, M.D., makes allegations that concern multiple years of her graduate medical education. In connection with the summary judgment motion, the parties submitted transcripts from dozens of depositions, as well as a deluge of evaluations, memos, and emails relating to the residency.

Dr. Gurbani seeks to prove that she was improperly dismissed because the program failed to live up to its end of the residency contracts or because of deliberate actions by two faculty members and the program director. The defendants assert that Dr. Gurbani failed to advance because of her numerous, well-documented deficiencies as a surgical resident, and they contend that the decisions of the University faculty should not be second-guessed through a jury trial.

Three main principles guide our examination of this voluminous record. In an the

facts and all inferences drawn from those facts in the light most favorable to the plaintiff.



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See, e.g., *Jackson v. Dackman Co.*, 422 Md. 357, 370 (2011). The inferences drawn in favor of the plaintiff, must be reasonable *Clea v. Mayor & City Council of Baltimore*, 312 Md. 662, 678 (1988) (emphasis in original). Furthermore, a dispute of fact, in itself, will not prevent the entry of summary judgment; rather a court is precluded from entering summary judgment only when the record reveals a genuine dispute of a material fact. See, e.g., *Castruccio v. Estate of Castruccio*, 456 Md. 1, 34 (2017).

A. Residency Program at Johns Hopkins

2004 and a medical degree from the University of California, Los Angeles, in 2009. During her fourth year of medical school, she took an elective course in the pediatric orthopaedics department at Johns Hopkins. At that time, the Johns Hopkins faculty rated in all categories. Because Dr. Gurbani aspired to become an orthopaedic surgeon, she pursued a residency in that field.

A residency is a form of education structured so that a medical school graduate can develop into an independent practitioner in a particular specialty. See Accreditation Council for Graduate Medical Education (ACGME), Glossary of Terms, at 5, 8 (2013), https://www.acgme.org/Portals/0/PDFs/ab_ACGMEglossary.pdf. Residencies in orthopaedic surgery last for five years. ACGME Program Requirements for Graduate Medical Education in Orthopaedic Surgery, at 1 (2017), https://www.acgme.org/Portals/0/PFAssets/ProgramRequirements/260_OrthopaedicSurgery_2017-07-01.pdf. The first-year curriculum focuses on basic surgical skills, and the curriculum for the remaining



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four years is more specialized in orthopaedics. Id. at 16-17.

A medical residency is a requires longitudinally-concentrated efforts on the part of the Id. at 1. Residents develop through a combination of

experiences. Id. at 3. In regular didactic sessions, residents receive formal instruction to

increase their knowledge and understanding of medicine. Id. at 11. Most of a

education occurs in the clinical setting, the health care delivery

system Id. at 1. The resident participates directly in patient care under the guidance

and supervision of the attending physicians on the program faculty. Id. Over time, as the

resident demonstrates growth, the attending physicians delegate to the resident a

progressively larger share of the responsibility for patient care. Id. at 28. The faculty

members also

decisions such as the promotion, remediation, or dismissal of a resident. Id. at 20.

In July 2009, Dr. Gurbani started a residency in orthopaedic surgery at the

University of Pennsylvania. She was placed on probation at the end of her first

postgraduate year. She was reinstated as a resident in good standing as of November

2010, at which point she left that program. In a letter protesting the probation, she

In the present litigation, Dr.

Gurbani seeks to characterize 1

1 The record includes a copy of a letter that Dr. Gurbani wrote in August 2010 to protest her probation at the University of Pennsylvania. Dr. Gurbani acknowledged that

(reporting requirements, interactions with other residents, call coverage protocol, and one

poor course evaluation) contributed to the decision. Presaging some of the events in this Dr. Dawn



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LaPorte, director of the orthopaedic surgery residency program at Johns Hopkins University School of Medicine, spoke with Dr. Gurbani while she was serving out her probation. The University of Pennsylvania disclosed in writing that, although Dr. Gurbani had satisfied the requirements of the first year of her residency, she had been subject to Although Dr. LaPorte knew about the probation, she invited Dr. Gurbani to transfer to Johns Hopkins. Along with the transfer, Dr. Gurbani registered with the Maryland Board of Physicians as an unlicensed practitioner. On her application, she a question that asked whether she had ever been . . . while in a postgraduate residency training program[.] Dr. Gurbani claims that Dr. LaPorte had advised her that she should not disclose her previous probation to the Board of Physicians. Dr. LaPorte denies that she ever advised Dr. Gurbani in that way. When Dr. Gurbani renewed her registration in the following year (without consulting with Dr. LaPorte), she again represented to the Board of Physicians that she had never been on probation during a residency.

B. The Initial Resident Contract: July 2011 through June 2012

On July 1, 2011, Dr. Gurbani entered into a one-year contract with Johns Hopkins University through its School of Medicine. Under the contract, she was appointed as a second-year postgraduate resident in the five-year program in orthopaedic surgery. The contract required her to provide clinical services at Johns Hopkins medical facilities in case, Dr. Gurbani disputed reports about her conduct and accused colleagues of unprofessional



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behavior. exchange for a stipend, liability insurance, and other benefits.

The residency contract covered both employment and educational services. It

required Dr. Gurbani to Program. It

supervision for all educational and clinical activities It stated that the program director

and faculty would evaluate

achievement . . . on

The contract a

policy for probation, suspension, and termination

performance to be deficient. It required the University to

mechanism to fairly deal with academic or disciplinary actions

policy. The contract included a list of references to those

written policies, which were available to Dr. Gurbani through

The University expressly disclaimed any commitment to promote Dr. Gurbani at

the end of the one-year term. The contract

the next level of training is in the sole discretion of the Program Director and is expressly

contingent on several factors, including . . . satisfactory completion of all training

components, [and] satisfactory performance evaluations[.] The contract required the

University to give written notice at least four months before the end of the term in the

event that it might decline to renew the appointment. But if the primary reason for the

nonrenewal occurred within those last four months, the contract required written notice as

far in advance The contract stated that, although the parties anticipated that the appointment



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would continue for the one-year term, the University could terminate the contract at any time on the re

to satisfy educational or professional responsibilities as a ground for termination. The contract permitted Dr. Gurbani to pursue a grievance with the University in the event of non-renewal of her appointment or termination from the program.

C. Assessments from Dr. Gurbani Three Rotations

Beginning in July 2011, Dr. Gurbani progressed through a series of rotations focusing on different aspects of orthopaedic medicine at Johns Hopkins. Each rotation lasted for about 10 weeks. Her first rotation was at the Bayview Medical Center, her second was on the Hopkins spine service, and her third was in sports medicine.

Members of the program faculty completed formal evaluations. On mid-rotation evaluations, faculty members used a scale of 1 to 3 to assess whether a resident was meeting expectations in different areas. On end-rotation evaluations, faculty members used a scale of 1 to 5 to assess how often a resident achieved different standards. Other medical professionals who worked with Dr. Gurbani also submitted evaluations in which they rated her performance from poor to excellent in various categories. All types of evaluations included a space for written comments. Once a formal evaluation was submitted, Dr. Gurbani had access to the scores and the comments.

In early evaluations, faculty members commented that Dr. Gurbani needed to

Overall, however, the faculty praised her performance from the first two rotations and noted that she was working hard to improve.



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The faculty members did not always submit their evaluations promptly. For performance on the Hopkins spine service over five months after that rotation ended.

Meanwhile, Dr. Gurbani scored in the 38th percentile among second-year postgraduate students on the Orthopaedic In-Training Examination (OITE), a standardized By all accounts, her

score was adequate relative to other residents in the program.

Throughout the academic year, the attending physicians regularly discussed Dr. meetings by

taking notes that her assistant would later transcribe into a separate electronic document for each meeting. In those memos, Dr. LaPorte recorded the various concerns that faculty members expressed September 2011 meeting states that one doctor had raised memo from

ical skills, and

another observed that she with simple tasks,

In this appeal, Dr. Gurbani relies on those memos to establish certain facts, but she also appears to contend that the criticisms from these memos should be discounted. She

accuses University officials of fabricating the faculty comments long after they decided to dismiss her, but she points to nothing in the record that would support her accusation. 2

In any event, other unchallenged testimony shows that multiple faculty members voiced increasing concerns throughout the academic year. In the words of one faculty member, ter concerns



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Dr. Gurbani began to encounter more serious difficulty after she advanced to the sports medicine rotation in November 2011. In his mid-rotation evaluation, Dr. Andrew Cosgarea determined that Dr. Gurbani was not meeting expectations for basic knowledge of the rotation, critical thinking, and surgical skills. Dr. Cosgarea commented that she e operating room by reading about the surgical

In his end-rotation evaluation, he commented that,

even though he had advised

skills and understanding of anatom Cosgarea gave her a score

of 2 out of 5 in the observed that she

about 20 percent to 39 percent of the time.

D. The Semiannual Evaluation Meeting: January 26, 2012

The contract

with the Resident a written summary of the evaluations at least once during each six

2

education. The pages of the record extract that she cites in no way support that assertion. Dr. LaPorte met with Dr. Gurbani for their semiannual

evaluation meeting on January 26, 2012, shortly before the end of the sports medicine rotation.

written

evaluations, which she during the meeting. Dr. LaPorte prepared

a memo Resident Semi-Annual Evaluation, which included quotations from those



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evaluations. In her memo, Dr. LaPorte wrote that she informed Dr. Gurbani about concerns that faculty members had expressed about her technical skills and a lack of progression in the operating room. Dr. LaPorte wrote that they importance of making a true effort to improve her technical skills as well as her comfort in the operating room and her knowledge base and to work on increasing her confidence with good board presentations and ability to m

Dr. Gurbani did not receive a copy of that memo. She denies that Dr. LaPorte expressed any concern about her progress or discussed any need for improvement.

According to Dr. Gurbani, Dr. LaPorte

based on her exam score, nd that her

completely acceptable her level of training. Dr. Gurbani claims

that Dr. LaPorte specifically told not to worry her low scores in the sports

n known as a harsh ev

E. Evaluations from the Pediatric Orthopaedics Rotation

In February 2012, Dr. Gurbani advanced to the pediatric orthopaedics rotation.

The head of that division, Dr. Paul Sponseller, determined on his mid-rotation evaluation that Dr. Gurbani was meeting expectations, but he commented

In his end-rotation evaluation, Dr. Sponseller commented that Dr. Gurbani still needed e confidence in her own decisions and skills, but

direction. Dr. Sponseller observed that she was capable of adequate

preoperative planning and technically competent in surgical procedures about 40 percent



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to 79 percent of the time. At his deposition, Dr. Sponseller explained that his evaluation did not mean that she had failed the rotation outright, but that her scores in those categories

Two other faculty members, Dr. John Tis and Dr. Michael Ain, had less favorable impressions of performance on the pediatric orthopaedics rotation. They submitted their formal evaluations within the academic year, but several weeks after the rotation ended in mid-April 2012. Dr. Tis submitted a mid-rotation evaluation on May 11, 2012, in which he did not meet expectations. Dr. Tis commented that Dr. Gurbani 3 In a final evaluation, submitted in June 2012, Dr. Tis gave her scores of 2 out of 5 or below in seven categories.

Dr. Ain submitted two evaluations in early June 2012. His -

3 By the time of his deposition, several years later, Dr. Tis could not recall details evaluation stated that Dr. Gurbani was not meeting expectations in any area. He commented that

, -rotation evaluation, he gave Dr.

Gurbani scores of 1, 2, or 3 out of 5 in every category. He commented that he had

Dr. Gurbani showed failed even to

In a memo from May 4, 2012, Dr. LaPorte recorded that, when she told Dr.

Gurbani that the pediatric orthopaedics faculty voiced concern miss important points in patient evaluation and patient care, Dr. Gurbani responded by

claiming [o]se issues The memo also states that Dr. Gurbani complained that she

it was appropriate for Dr. Ain only



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Dr. Gurbani now maintains actually neve with

Dr. Ain and that he evaluated her performance on the rotation ever directly

She has not disputed that Dr. Tis observed her.

F. Orthopaedic Trauma Rotation with Dr. Osgood and Dr. Hasenboehler

By mid-April 2012, Dr. Gurbani had moved on to the orthopaedic trauma service

for the final rotation of the academic year. She worked primarily with Dr. Greg Osgood

and with Dr. Erik Hasenboehler, the two faculty members whom she would later name as

defendants in her lawsuit (alongside the program director, Dr. LaPorte).

Sometime around early May of 2012, Dr. Gurbani complained orally to Dr. LaPorte about the way she was being treated on the trauma rotation. Dr. Gurbani claims

that she reported several instances of sexist or inappropriate behavior by the two

attending physicians. Dr. Gurbani does not remember exactly when she made particular

reports, except to say that she started complaining very early in the rotation and then

continued to make throughout the rotation. 4

Dr. Gurbani says that Dr. Osgood displayed a calendar in the operating room that

featured the musical artist Taylor Swift . Dr. Gurbani says that

some music that Dr. Osgood played in the operating room was bscene because the

sically allud[ed] Dr. Gurbani says that Dr. Osgood repeatedly

made innuendo while discussing procedures involving male genitalia. 5

Dr. Gurbani says that, once while she was present in a clinic, Dr. Hasenboehler

passed around a phone to other residents to show them female Dr. Gurbani also says that Dr.



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told her

Although female colleagues sometimes told her that she

would need [a] male dominated

4 In her brief, Dr. Gurbani asserts that she documented her complaints about the

nothing from the record that would support her assertion.

5 In his deposition, Dr. Osgood admitted that he displayed a Taylor Swift calendar but he denied the music in the operating room, but said that he would always change the selection Dr. Gurbani felt that comment was inappropriate in light of

his other behavior.

mos and a , show that

their first meeting during the rotation occurred on May 4, 2012. 6

Hasenboehler, both of who

orthopaedic trauma service, but it does not mention that Dr. Gurbani complained about

either of the two attending physicians.

A Dr. Gurbani did not report instances of

at the meeting on May 4, 2012, but she expressed a more general belief

that she was being treated unfairly or differently from other residents. Dr. LaPorte

says that she investigated the situation by speaking to the senior resident, who opined that

Dr. Gurbani was being treated like any other junior resident. Dr. LaPorte says that she

also sought more information from Dr. Osgood, who explained that he had been limiting

so that she could focus on improving her basic

knowledge of patients and diagnoses.



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According to Dr. Osgood, he was not aware during the rotation that

6 Dr. LaPorte was unavailable at the time. Her timeline also shows that she interacted with Dr. LaPorte on April 29, Dr. Gurbani had made allegations about mistreatment. Similarly, there is no evidence

indicating that Dr. Hasenboehler was made aware of complaints against him at that time.

At some point during the rotation, an operating room nurse independently reported to Dr. LaPorte that Dr. Gurbani had a rough day in the OR and the trauma faculty were in response,

and tell her to Around this time, other colleagues reported that Dr.

Osgood would have occasional outbursts of anger in the operating room. Those reports prompted the chair of the orthopaedic surgery department to warn Dr. Osgood in the summer of 2012 that he needed to improve his self-control.

G. The Decision to Place Dr. Gurbani on Academic Probation

The faculty met on May 24, 2012, as she

approached the end of the academic year. The memo for that meeting states that eight doctors expressed concerns : Dr. Osgood noted that she

uently w[ould] miss a diagnosis and did not see the gravity of missing important points in patient care, and he had not observed after he tried to give

; Dr. Hasenboehler, Dr. Ain,

and Dr. Cosgarea each expressed doubts about whether she could complete the residency program; two other doctors expressed disappointment with her contributions to a research proposal; another doctor reported instances of her poor communication in the pediatric



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emergency department; and another doctor reported that she had missed a diagnosis of pediatric compartment syndrome.⁷ Dr. LaPorte concluded

consider changing specialties and does not show improvement during the trauma rotation,

I will likely

One week later, Dr. LaPorte informed Dr. Gurbani that the faculty had serious concerns about her future in the program and asked her to consider another specialty. At their next meeting, another week later, Dr. LaPorte presented two options. The first option was to resign, which Dr. Gurbani refused to do. The second option was to repeat another year at the second-year postgraduate level, beginning with a four-month probation period, after which the faculty would decide whether she could continue in the program. Dr. LaPorte stated that when she leaves

the office today I will be officially putting her on probation.

Dr. Gurbani claims that, during that meeting, she requested some her probation.⁸ Dr. LaPorte told Dr. Gurbani that she could seek an

their evaluations. Dr. Gurbani says that she tried to reach Dr. Osgood and Dr. Hasenboehler, but that they did not respond.

In that process, Dr. Gurbani communicated with Dr. Tis, who had given her poor

⁷ In his deposition, the doctor could not recall details about that incident. He failure to diagnose it could result

⁸ both an informal request for faculty members to reconsider a decision and a formal grievance heard by an appointed panel. evaluations from the earlier rotation in pediatric orthopaedics. Dr. Tis



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emailed Dr.

LaPorte to explain with Dr. Gurbani about

she

difficulty realizing what her shortcomings are, specifically difficulty applying basic knowledge to clinical situations such as assessment of the patient, initiation of basic orthopaedic care in the [emergency department], and communication of this assessment

Although Dr. Gurbani received a copy of the email, she claims that Dr.

Tis never spoke with her about any of her shortcomings.

Dr. LaPorte informed Dr. Gurbani that she could challenge the probation decision through Dr. Julia McMillan, the associate dean of graduate medical education.

According to Dr. Gurbani, Dr. McMillan told [] department was refusing [her] the ability to the probation decision. 9

On June 14, 2012, Dr. Gurbani learned that Dr. LaPorte had announced in front of the entire residency class that she had been placed on academic probation. Dr. Gurbani asserts that this -retention policy, which states that

As Dr. Gurbani completed the final weeks of the orthopaedic trauma rotation, Dr.

Osgood had not yet submitted either of his written evaluations. On or after June 15,

9 Although her deposition testimony was vague, Dr. Gurbani appears to claim that she reported to Dr. McMillan the same allegations of misconduct by the trauma faculty that she says she had been making to Dr. LaPorte. Dr. McMillan testified that she was not aware of those allegations at that time. 2012, Dr. Osgood asked Dr. Gurbani to meet him at a bar for an evaluation meeting. Dr.



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Gurbani did not agree to do so. She made her feel uncomfortable.

On June 27, 2012, Dr. Gurbani received a letter from Dr. LaPorte outlining the her probation. The letter informed Dr. Gurbani that she would spend another two months on the pediatric orthopaedic service, followed by another two months on the orthopaedic trauma service. The letter stated that she would meet every week for formal verbal feedback from at least one attending physician, that she would confer with Dr. LaPorte every two weeks, and that she would receive written feedback every two to four weeks. A five-member committee (Dr. LaPorte; Dr. Sponseller and Dr. Ain from pediatric orthopaedics; Dr. Osgood from orthopaedic trauma; and another attending physician from a previous rotation) would evaluate her progress after two months. After the full four months, the committee would decide whether to promote her, to allow her to continue at the second-year postgraduate level, or to dismiss her from the program. The letter included an extensive list of deficiencies and performance criteria.

On July 1, 2012, Dr. Gurbani signed a new residency contract under which she was reappointed at the second-year postgraduate level, but not promoted to the third-year level. The contract stated that it would be in effect for a maximum of 12 months, expiring at the end of June 2013. The terms generally were similar to those of the first contract, although some terms and policy documents had been updated. H. Probation and the Dismiss Dr. Gurbani



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Dr. Gurbani repeated the pediatric orthopaedics rotation in July and August of 2012. On his evaluations, Dr. Sponseller reported improvement in some areas, but continued to identify weaknesses in her technical surgical skills, particularly her motor skills. Dr. Ain submitted an evaluation that, while more favorable than his previous ones, reflected that Dr. Gurbani continued to fall below his expectations for critical thinking and patient presentation skills.

During this rotation, Dr. Sponseller reported 10 in what should have been procedure. At his deposition, Dr. Sponseller explained that he remembers the incident dard practice and from what [he] would expect and trust in a Sponseller explained that he and Dr. Gurbani were standing on opposite sides of the patient while he was her surgical skills. He recalled that, fluid coming out on her side even though there wa

According to Dr. Sponseller, surgeons sometimes but en someone cause a dural tear while wor . Although he was able to repair

10 dura or dura mater MERRIAM-WEBSTER DICTIONARY ONLINE, <https://www.merriam-webster.com/dictionary/dura%20mater>. the tear without complication, the incident indicated to him that Dr. Gurbani was

aware of how to use [her] hands and have a good sense of surgical skill and

Dr. Gurbani admits that she was present during that procedure, but professes not



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to believe that she caused the dural tear.

Midway through the probation period, Dr. LaPorte consulted with Dr. Sponseller and Dr. Ain, but did not convene the entire probation committee. Afterwards, Dr. LaPorte and Dr. Sponseller met with Dr. Gurbani to discuss her progress and to advise her about the upcoming rotation. On behalf of the pediatric orthopaedics faculty, Dr. Sponseller emailed Dr. Osgood and Dr. Hasenboehler to say that they believed that Dr. Gurbani was -year resident,

confidence and common sense in planning and 11

At the time that Dr. Gurbani started her second attempt at the orthopaedic trauma rotation, Dr. Osgood belatedly submitted his evaluations from her first attempt earlier in the year. Dr. Osgood identified weaknesses in Dr. and noted that she had difficulties ing them effectively in surgery. He commented that he had observed

with some motor skills by the end of the rotation but that id not

improve significantly in the ways [they] discussed were most important for progress and

11 Over a month after the second rotation in pediatric orthopaedics, Dr. Tis submitted an evaluation more favorable than his prior ones. Dr. Tis observed that Dr. avanceme she

Although the probation letter stated that Dr. Gurbani would receive formal verbal feedback every week, neither Dr. Osgood nor Dr. Hasenboehler met with her for feedback sessions outside of their clinical interactions. They nevertheless continued to convey their impressions to Dr. LaPorte, who continued to meet regularly with Dr. Gurbani. After two weeks, Dr. Gurbani complained to Dr. LaPorte that she was



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frustrated about the lack of formal feedback. A week later, Dr. Osgood did meet her for one feedback session, in the cafeteria.

Dr. Gurbani continued to complain to Dr. LaPorte that the members of the trauma faculty were not allowing her to operate as frequently as she had during previous rotations. She complained

Dr. Gurbani says that, at these meetings, she complained that she felt that she was

Hasenboehler, in that they apparently with little justification or use

In her memos, Dr. LaPorte wrote

that Dr. Gurbani believed two attending physicians or the senior resident .

The committee met on October 11, 2012, ten days before the scheduled end of the

probation period. The meeting memo states that Dr. Sponseller, Dr. Ain, Dr. Osgood,

and Dr. Hasenboehler each identified a different combination of deficiencies in her medical knowledge, motor skills, decision-making, communication skills, and

professionalism. T she a

The committee concluded that . . . a significant change in

her performance after four months where she had

The committee immediately informed Dr. Gurbani of

its decision to dismiss her from the program.

Dr. Osgood and Dr. Hasenboehler did not submit written evaluations of Dr.



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her second orthopaedic trauma rotation until over a month

after her dismissal from the program. Although they highlighted different details, both of them described deficiencies in her knowledge and technical skills as a surgeon.

orthopaedic surgery department, who upheld the decision after meeting with her and reviewing her evaluations.

I. ment in the Program

After her dismissal from the residency program, Dr. Gurbani explored the possibility of pursuing other medical specialties at Johns Hopkins. While looking into background, a professor from another department discovered that she had made false statements to the Board of Physicians by failing to disclose the prior probation from her residency at the University of Pennsylvania. Dr. LaPorte and Dr. McMillan then told Dr. Gurbani that they were aware of her false statements to the Board of Physicians. Soon thereafter, Dr. Gurbani wrote a letter to the Board of Physicians to report on her registration forms. Dr. Gurbani wrote that she could either s or that

included the type of probation

[she] had been on at the University of Contrary to that explanation, Dr.

Gurbani now claims that she was LaPort made false statements to the Board of Physicians.

Dr. Gurbani continued to receive salary and benefits until her contract term

expired at the end of June 2013. None of the other departments at Johns Hopkins offered



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her the opportunity to transfer.

In August 2013, Dr. Gurbani initiated a formal grievance u procedures. She wrote to the chair of the grievance panel accusing Dr. Osgood, Dr.

Hasenboehler, Dr. LaPorte, and Dr. McMillan of violating University and ACGME

policies. 12 She sought to be reinstated in the residency program, without being required

to work with Dr. Osgood or Dr. Hasenboehler in the future.

Dr. LaPorte and Dr. McMillan submitted to the grievance panel the various

evaluations, memos, and emails that documented the process that culminated in the

dismissal. Dr. Gurbani responded with a point-by-point rebuttal in which she denied

12 a grievance against Dr. McMillan. There is no evidence that she had named Dr. McMillan as a subject of her grievance until her August 2013 letter, which was addressed to the panel chair who had already been selected. responsibility for nearly every reported instance of inadequate performance (such as the

dural tear or the missed diagnosis of compartment syndrome).

In a procedures, the panel chair attempted to

resolve the grievance through informal discussions until those efforts failed. 13 Over a

multi-month period, the grievance panel conducted interviews with Dr. Gurbani, the four

doctors who were the subject of her grievance, and other faculty members.

On March 11, 2014, the grievance panel issued a comprehensive report

recommending that Dr. Gurbani not be reinstated in the program. The panel noted that,

despite some of her strengths as a physician, faculty members observed that her

other ncies in clinical

The panel opined that she should have received more regular written feedback, in



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addition to the notes in the [computerized evaluation] system, during her first year and more frequent

Overall, however, the panel found that she verbal communication about the program's expectations and the deficiencies in her performance, and notice of the changes in her status, and that she was given ample opportunities for training and The panel rejected her allegations that she had been

13 The director of the orthopaedic surgery department rejected a compromise that would have allowed Dr. Gurbani to return as a second-year postgraduate resident, citing to the Maryland Board of Physicians the opportunity to file a grievance, or du T but instead found that the department had in deciding to dismiss her. 14

On March 31, 2014, the dean of the medical faculty informed Dr. Gurbani that he had accepted the unanimous recommendation not to reinstate her in the program. In the aftermath of her dismissal, Dr. Gurbani applied to other residency programs with the goal of continuing her training as an orthopaedic surgeon. By the middle of 2015, she secured an appointment at the third-year postgraduate level in an orthopaedic surgery residency program at the University of Texas.

J. Dr. against the University and Its Employees

On June 5, 2015, Dr. Gurbani filed a four-count complaint in the Circuit Court for Baltimore City. She claimed that her dismissal from the residency program caused through



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. She sought to recover past and future income,
other consequential damages, punitive damages.

In Count I of her complaint, Dr. Gurbani alleged that Johns Hopkins University 15

14

Dr. Gurbani exhibits a pattern of unwillingness to assume personal responsibility for
- om the continuing constructive

15 The complaint named four entities as defendants: Johns Hopkins Health System Corp.; Johns
Hopkins Hospital, Inc.; Johns Hopkins Medicine; and Johns Hopkins breached the 2011 and 2012
residency contracts through various acts. The list of alleged

breaches included: refusing to promote her, placing

her on probation, violating the

probation terms, ending the probation prematurely, terminating her appointment,

before hearing the grievance,

to the grievance panel.

In Count II, she alleged that, through those same acts, the University had violated
the implied covenants of good faith and fair dealing from both contracts.

The third count, s , named Dr. LaPorte, Dr.

Osgood, and Dr. Hasenboehler as defendants. Dr. Gurbani alleged that those three
defendants interfered with her contracts by withholding feedback and falsifying
information about her performance with the intent to cause her to be terminated.

Although her complaint identified those defendants as s Johns

Hopkins, she alleged that their [their]



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In the final count, Dr. Gurbani alleged that the University was negligent in retaining and supervising Dr. Osgood and Dr. Hasenboehler when it knew or should have known that those two employees were deliberately trying to cause her to be terminated.

All defendants jointly moved for summary judgment at the end of the lengthy

University. This opinion treats those defendants collectively as Johns Hopkins University, the party identified in the residency contracts. The legal arguments raised here are identical as to all four of those defendants. discovery period. The circuit court received exhaustive briefing 16 and conducted a two-

hour hearing. In an order entered on September 29, 2016, the court granted the as to all counts. The court issued no separate opinion, but it stated the grounds for summary judgment in its order.

The circuit court determined that the claims against the University could not proceed in light of *Hunter v. Board of Education of Montgomery County*, 292 Md. 481 (1982). The court observed that, in *Hunter*, the Court of Appeals established a policy of ing id. at

490) based on an allegation that an educator improperly evaluated a student. On that basis, the circuit court concluded that the University was entitled to judgment as to the counts for breach of contract, breach of implied covenant of good faith and fair dealing, and negligent retention and supervision.

The circuit court concluded that the three University employees (Dr. Osgood, Dr. Hasenboehler, and Dr. LaPorte) were entitled to judgment on the remaining count for tortious interference with contract. The court explained that a party cannot interfere with



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r within the scope of

Dr. Gurbani noted a timely appeal from the judgment.

16 The defendants submitted a 50-page memorandum, supported by 64 exhibits. Dr. Gurbani responded with a 122-page memorandum in opposition to the motion for summary judgment, supported by 138 exhibits. The defendants replied with a 45-page memorandum, supporting motion to submit another 18 exhibits for consideration. DISCUSSION

Dr. Gurbani poses eight interrelated questions, which we have

reproduced in the appendix to this opinion. In substance, she challenges the correctness of the grant of summary judgment as to all counts.

Under Maryland Rule 2-501(f), the circuit court shall grant a motion for summary judgment here is no genuine dispute as to any

material fact and that the party in whose favor judgment is entered is entitled to judgment

The question of whether a circuit court correctly granted summary

subject to a non- *Schneider Elec. Bldgs. Critical Sys., Inc. v. Western Sur. Co.*, 454 Md. 698, 705 (2017)

(quoting *Tyler v. City of College Park*, 415 Md. 475, 498 (2010)).

On an appeal from a grant of summary judgment, the *ap La Belle Epoque, LLC v. Old Europe Antique Manor, LLC*, 406 Md. 194, 209

(2008) (quoting *c.*, 393 Md. 620, 632 (2006)).

The court must view

construe any reasonable inferences that may be drawn from the facts against the moving

Windesheim v. Larocca, 443 Md. 312, 326 (2015) (quoting *Myers v. Kayhoe*,

391 Md. 188, 203 (2006)). The appellate court independently determines whether a

genuine dispute of material fact exists and, if not, whether the moving party was entitled



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to judgment as a matter of law. *Kiriakos v. Phillips*, 448 Md. 440, 455 (2016).

In her brief, Dr. Gurbani emphasizes that there are countless factual disputes within the thousands of pages of materials that the parties submitted to the circuit court.

Most notably, her firsthand accounts of her experiences in the residency program conflict with the testimony and reports from the faculty and administrators. Because a court may not weigh the credibility of witnesses at the summary judgment stage, our analysis begins by assuming that a trier of fact could credit testimony about her

interactions with University employees. See, e.g., *Rowhouses, Inc. v. Smith*, 446 Md.

611, 662-63 (2016) (explaining that, at the summary judgment stage, a court cannot

determine that a witness is not credible even where the

perceived as -serving *Okwa v. Harper*, 360 Md. 161, 182 (2000) (explaining that

the summary judgment rule does not allow the court to give credence to certain facts and where witnesses give different versions of events).

But merely generating factual disputes will not necessarily defeat a properly supported summary judgment motion. *Appiah v. Hall*, 416 Md. 533, 546 (2010).

Tr. Co. v. Brock, 430 Md. 714, 727 (2013) (quoting *Lippert v. Jung*, 366 Md. 221, 227

dispute as to facts relating to grounds upon which the decision is not rested

... does not prevent the entry of summary judgment. *Boland v. Boland*, 423 Md. 296,

366 (2011) (quoting *Salisbury Beauty Sch. v. State Bd. of Cosmetologists*, 268 Md. 32, 40 (1973)).

The party opposing a summary judgment motion must each factual dispute and must the supporting evidentiary materials. Md. Rule 2-501(b). ere general allegations or conclusory assertions



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which do not show facts in detail and with precision will not suffice to overcome a motion for summary judgment *Educ. Testing Serv. v. Hildebrant*, 399 Md. 128, 139 (2007). plaintiff

, 438 Md. 100, 108

(2014) (quoting *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 738-39 (1993)).

Where the moving party attests to a material fact, the non-moving party must do at fact. See

Windesheim v. Larocca, 443 Md. at 329-30 (citations and quotation marks omitted).

The facts offered by a must be material and of a

substantial nature, not fanciful, frivolous, gauzy, spurious, irrelevant, gossamer

inferences, conjectural, speculative, nor merely suspicions. *Id.* at 330 (emphasis in

Windesheim v. Larocca) (quoting , 153

Md. App. 210, 225 (2003)).

I. Claims against the University for Breach of Contract and Negligence

A. Challenge to the Substance of the Dismissal Decision

The circuit court identified *Hunter v. Board of Education of Montgomery County*,

292 Md. 481 (1982), as the ground for summary judgment as to the claims against the

University for breach of contract and negligence. In *Hunter*, the Court of Appeals

refused to recognize a tort action seeking damages based on negligent education *Tabor v. Balt. City Pub. Sch.*, 138 Md. App. 747, 751 (2001). Under *Hunter*, a plaintiff placement,

regardless of how the plaintiff claim might be characterized. *Doe v. Bd. of Educ. of*



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Montgomery Cnty., 295 Md. 67, 78-79 (1982).

Specifically, the Hunter opinion addresses whether an action can be successfully asserted against a school board and various individual employees for improperly

Hunter v. Bd. of Educ. of Montgomery Cnty.,

292 Md. at 483. A trial court concluded that the Hunters, two parents suing on behalf of their minor child, could not maintain such an action. Id.

The Hunters alleged that their child developed learning deficiencies because the local school system negligently evaluated his abilities and required him to repeat first-grade materials while he was physically placed in the second grade. Id. at 483-84.

Although they raised multiple theories for the source of an alleged duty, the of their [a right to] damages for the alleged

Id. at 484.

Citing an extensive body of out-of-state authority, the Court of Appeals observed that - claims

other jurisdictions considerations of public policy Id. (collecting

authorities). The Court identified three main considerations underlying those decisions:

of care may be

of any

resources of the public school system to s Id. Upon review of those cases, damages . . . represents a singularly inappropriate remedy for asserted errors in the

Id. at 487. The Court emphasized



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courts had expressed

re indeed well

founded. Id. at 487-88. The Court reasoned that the recognition of such an action

-to-day

operation of our educational process as well as the formulation of its governing policies.

Id. at 488. The Court was reluctant to impose such a responsibility on the courts. Id.

In addition to their negligence claims, the Hunters had

contract in one count of their complaint. Id. at 489 n.5. The Court concluded

that the defendants were entitled to dismissal [w]it

well, explaining: [W]hat we have said in this opinion concerning the uncertainty of

damages, the difficulty in determining legal cause, and the public policy factors

precluding negligence claims remains true whether the allegations state breach of

contract or tort and we discuss it no further. Id.

Here, Dr. Gurbani points out many ways in which her claims against Johns

Hopkins University county board of

education. Obviously, Dr. Gurbani was not a minor child enrolled in a public school

administered by State and local agencies. She was an adult physician employed under a

contract with a private university as part of a program accredited by a national non-profit

organization. She contends that Hunter a resident claim She further

contends that her claims do not implicate the same policy concerns identified in Hunter.

Her adversaries agree that the factual context here is different from that of Hunter, but



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Hunter are even more compelling

Even as Dr. Gurbani encourages this Court to confine Hunter to its own factual context, she appears to recognize that Hunter is only a single example of a broader body of case law that overwhelmingly favors judicial deference to academic decisions at all levels of education. Other courts agree the policy concerns that preclude a cause of action for educational malpractice apply with equal force to bar a breach of contract claim attacking the general quality of an education. *Ross v. Creighton Univ.*, 957 F.2d 410, 416 (7th Cir. 1992) (citing *Hunter v. Bd. of Educ. of Montgomery Cnty.*, 292 Md. at 586 n.5, and other cases). C

in academic affairs is particularly appropriate in the health care field . . . because 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 *Burke v. Emory Univ.*, 338

S.E.2d 500, 501 (Ga. Ct. App. 1985) (alteration in original) (further quotation marks omitted) (quoting *Jansen v. Emory Univ.*, 440 F. Supp. 1060, 1063 (N.D. Ga. 1977), , 579 F.2d 45 (5th Cir. These considerations are particularly

apt where the institution involved is a private *Alden v.*

Georgetown Univ., 734 A.2d 1103, 1110 n.9 (D.C. 1999) (citing *Bilut v. Northwestern Univ.*, 645 N.E.2d 536, 541 (Ill. App. Ct. 1994)); see also *Burke v. Emory Univ.*, 338

S.E.2d at 501-02. 17

The United States Supreme Court endorsed this deferential approach in two cases



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in which it rebuffed efforts by former students to challenge their dismissals from medical degree programs at state universities. In *Board of Curators of University of Missouri v. Horowitz*, 435 U.S. 78, 90 (1978), the Court held that a state university does not deny a student due process when it dismisses the student for academic reasons without affording a hearing. The Court reasoned that dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not Id.

at 90. graduate or professional school is, after all, the best judge of its students academic performance and their ability to master the required curriculum Id. at 85 n.2.

Likewise, in *Regents of University of Michigan v. Ewing*, 474 U.S. 214 (1985), the

17 Dr. Gurbani has cited a handful of idiosyncratic cases in which a student survived a dispositive motion in a suit against an educational institution. Only a few of the cases she cites are reported cases that involve academic dismissals. Those cases fail to establish that courts have stronger reasons to oversee academic decisions simply because the institution has a contract with the student or is a private medical school. At most, those cases illustrate that in some circumstances a contract itself may limit an E.g. *Pieszak v. Glendale Adventist Med. Ctr.*, 112 F. Supp. 2d 970, 998 (C.D. Cal. 2000) (contract entitled medical resident to a hearing before termination from residency program); *Jabbour v. Albany Med. Ctr.*, 237 A.D.2d 787, 788-89 (N.Y. App. Div. 1997) (contract Univ. of Texas Health Sci. Ctr. at Houston v. Babb, 646 S.W.2d 502, 506 (Tex. App. 1982) (contract did not permit school to dismiss student nurse as long as she completed requirements in six years and maintained a 2.0 grade point average). Supreme Court declared: When judges are asked to review the substance of a genuinely

academic decision, . . . they

Id. at 225. judges an academic

decision] unless it is such a substantial departure from accepted academic norms as to



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demonstrate that the person or committee responsible did not actually exercise

Id. The Court added

widest range of discretion in making judgments as to the academic performance of

Id. at 225 n.11 (quoting Bd.

of Curators of Univ. of Missouri v. Horowitz, 435 U.S. at 96 n.6 (Powell, J., concurring)).

The decision to dismiss a medical student because of unsatisfactory clinical

evaluations is a well-recognized example of an academic decision. In the Horowitz case,

the medical student had been placed on probation after several faculty members

expressed dissatisfaction with her performance and dismissed after the faculty observed

insufficient improvement during the probation period. Bd. of Curators of Univ. of

Missouri v. Horowitz, 435 U.S. at 81-82. The Court characterized the dismissal as

because student] did

not have the necessary clinical ability to perform adequately as a medical doctor and was

Id. at 89-90. In a concurring opinion,

Justice Powell explained that an evaluation of the medical clinical performance

was

techniques in actual conditions of practice, rather than assigning a grade to her written

Id. at 95 (Powell, J., concurring). Dr. Gurbani nevertheless insists

a written contract. She

tells us t the University to argue that

held that the decision to terminate a medical resident is an academic decision. Her



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assertions lack merit. See *Fenje v. Feld*, 398 F.3d 620, 625 (7th Cir. 2005) (treating decision to dismiss medical resident as an academic decision); *Shaboon v. Duncan*, 252 F.3d 722, 731 (5th Cir. 2001) (same); *Davis v. Mann*, 882 F.2d 967, 974 (5th Cir. 1989) (same); *Gupta v. New Britain Gen. Hosp.*, 687 A.2d 111, 117-18 (Conn. 1996) (same); *Ross v. Univ. of Minnesota*, 439 N.W.2d 28, 33 (Minn. Ct. App. 1989) (same); *Hernandez v. Overlook Hosp.*, 692 A.2d 971, 975 (N.J. 1997) (same); *Abdullah v. State*, 771 N.W.2d 246, 255 (N.D. 2009) (same); *Gul v. Ctr. for Family Med.*, 762 N.W.2d 629, 635-36 (S.D. 2009) (same).

Even in her own brief, Dr. Gurbani calls attention to *Gupta v. New Britain General Hospital*, 687 A.2d 111 (Conn. 1996), a case in which a court determined that a private medical residency program was properly grounded in academic reasons. The facts of that case will sound familiar to any reader of this opinion. The plaintiff was a physician who transferred into a five-year general surgical residency program. *Id.* at 576-77. He entered into a one-year contract that could be renewed as long as he received favorable evaluations. *Id.* at 577-78. As he progressed through more advanced stages of the program, faculty members began to express doubt about whether he could improve enough to complete his residency. *Id.* at 578. The hospital continued to renew his contract, but decided to place him on probation and ultimately dismissed him during the probation period because of decisions in the operating room, his unwillingness to accept responsibility for errors, and *Id.* at 579. A committee upheld the dismissal when the



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physician challenged the decision internally. Id. at 579-80.

The physician sued the hospital, alleging breach of the residency agreement and of the implied covenant of good faith and fair dealing. Id. at 580. The trial court granted summary judgment in favor of the hospital, concluding that the decision to dismiss the resident was entitled to deference as an academic decision. Id. at 580-81. On review, the Supreme Court of Connecticut recognized that relationship containing both employment and educational features. Id. at 586. Yet the Connecticut high court explained that the dismissal, based on the unfavorable assessments of potential to become a safe and independent surgeon, the educational component of the residency agreement and was, therefore, an academic decision. Id. at 589.

We see no reason (and Dr. Gurbani supplies none) to reach a different conclusion regarding her dismissal, which was expressly assessment that a point where she would be able to practice safely and independently without s That academic decision, the result of a careful and deliberate exercise of professional judgment, is entitled to deference. It may not serve as a

Although Dr. Gurbani tells us that her breach-of-contract claim does not implicate exercise of professional judgment, her submissions show the opposite. Many factual assertions in her complaint, her memorandum in opposition to summary judgment, and her appellate brief invite the court to make its own judgment about



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, and thus whether she

deserved promotion. She calls into question the events that informed the evaluations (by, for instance, denying her responsibility for causing a dural tear). She also calls into question whether her evaluations in the aggregate justified her probation and dismissal (by, for instance, offering evidence that the program retained other residents who had similar evaluations). The main allegation from the first two counts of her complaint is refus[ed] to promote her even though (in her view, and contrary to that of her evaluators) she met all program requirements and did not, otherwise, commit any act constituting cause for placement on probation and termination from the residency. Only after her adversaries moved for summary judgment did she attempt to repackage the contract claim as a challenge to something other than her dismissal from the residency program. Her appellate briefs confirm that her alleged damages all derive from the dismissal, which allegedly stalled her pursuit of a lucrative career as an orthopaedic surgeon.

s entailed a challenge to an academic

decision to end her involvement in the residency program. Courts must defer to such a decision where, as here, the decision resulted from the actual exercise of professional

judgment. The circuit court, therefore, did not err in directing the entry of summary judgment against her. 18

B. Challenge to the Process that Culminated in the Dismissal

to terminate her residency, Dr. Gurbani contends that Johns Hopkins breached specific



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and identifiable provisions of its contracts with her. She argues that she should be allowed to maintain her action on a narrower

specific contractual promise distinct from any overall obligation to offer a reasonable

Gupta v. New Britain Gen. Hosp., 687 A.2d at 120.

The essence of such a claim is that the institution did not perform a promised

educational service at all, not that it inadequately performed the promised service. See

Ross v. Creighton Univ., 957 F.2d at 416-17. Thus, to establish a viable claim for breach

Id.; see also CenCor, Inc. v. Tolman, 868 P.2d 396,

398-99 (Colo. 1994) (en banc) (citing Hunter v. Montgomery Cnty. Bd. of Educ., 292 Md.

contract claims that in fact attack the general quality of

educational experiences questions concerning the reasonableness of conduct by

educational institutions in providing particular educational services to students

questions that must be answered by reference to principles of duty, standards of care, and

18 Although courts must defer to academic decisions when reviewing claims for breach of contract or negligence, they are not precluded from considering statutory claims of discrimination (based on race, sex, national origin, age, disability, etc.) in the context of academic decisions. E.g. Hajjar-Nejad v. George Washington Univ., 37 F. Supp. 3d 90, 124-42 (D.D.C. 2014); Pieszak v. Glendale Adventist Med. Ctr., 112 F. Supp. 2d 970, 987-91 (C.D. Cal. 2000). Dr. Gurbani has not raised such a claim here. reasonable conduct associated with the law of torts

Dr. Gurbani multiple attempts to identify a breach

Most of the provisions that she identifies are neither specific nor meaningfully distinct

obligation to educate her. See Gupta v. New Britain Gen.

Hosp., 687 A.2d at 120 (holding that general allegations by a dismissed physician that a



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residency program failed to adequately train the physician were insufficient to establish claim for breach of residency agreement).

For instance, Dr. Gurbani both

In both contracts, the University promised to

and

The 2011 contract (but not the 2012 version) also stated that the University would

University

to achieve substantial compliance requirements established by the ACGME. It

explained of the performance of

stated

rotation . . . and document this evaluation at the 19

19 ACGME program requirements are incorporated by reference into the 2011 contract. Citing these provisions, Dr. Gurbani argues that the University failed to provide

what she calls

timely written performance feedback during the two rotations that preceded her

probation. Yet it is undisputed that the faculty did supervise her clinical work and did

evaluate her performance from those rotations. At most, the evidence shows that some

attending physicians were less than prompt in submitting their formal written evaluations.

Dr. Gurbani did not adduce evidence suggesting that the physicians failed to offer any

feedback at all.

Dr. Gurba to employ that word



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in a narrow sense, to mean either a formal, written evaluation or a structured, face-to-face conference. Dr. Osgood expressed a different view of the teaching process in his

Dr. Osgood testified that he provided this type of

He opined

a written evaluation have already been

The University rejected Dr. Gur

the panel found that Dr. Osgood and Dr. Hasenboehler continued to provide this type of until she was dismissed.

In any event, the provisions cited above do not amount to a specific promise to give feedback in a particular form or on a particular schedule. The contract does not define terms such as the of residents or a and periodic

basis and a manner for evaluations. Nor are these terms defined in the University policies or in . Consequently,

there is no objective standard to assess whether faculty members were so untimely in submitting some evaluations that the University can be said to have breached its obligations by failing to offer any feedback at all.

Dr. Gurbani further complains about the lack of formal feedback during her probation. She asserts that the University failed to provide all of the meetings and written feedback that Dr. LaPorte had described in the probation letter. Indeed, the faculty did not meet every expectation from the letter: Dr. Osgood met with Dr. Gurbani only once during her second rotation instead of weekly, and neither Dr. Osgood nor Dr.



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Hasenboehler gave her written feedback until after the committee decided to dismiss her.

Of course, the probation letter was not a contract, and it did not purport to modify the contracts.

guidelines and

promises.

T

specifi

she provided the letter. That policy did not require the University to strictly follow the

. Throughout the

probation period, the University was still obligated under the 2012 contract to have its

faculty

promise was no more specific or more objective than the identical promise from the 2011 contract. It could not supply the basis for a claim of breach of contract.

Dr. Gurbani further contends that the contract required the University to give her

- To the contrary,

no such requirement existed. The 2011 contract authorized the program director to

th

policy. That policy recommends, but does not require,

A four-

month delay before taking corrective action would make little sense because, as

explained in the policy documents, academic probation gives the struggling resident



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ring, counseling or repeating clinical experiences for the purpose of assisting the [resident] to bring his [or]

It is true that the 2011 contract of non-renewal no much written notice of the intent not to renew as the circumstances w[ould] reasonably within those final four months.

(Emphases added.) Without question, the University did renew appointment at the end of the 2011 contract term; it merely declined to offer to the next level of training. Even if the 2011 contract did require the same notice for a decision to renew an appointment without promotion, the notice clause would not have required the University to give that notice four months in advance. As Dr. Gurbani appears to acknowledge, the probation decision was prompted by the faculty meeting that occurred five weeks before the end of her appointment term. She fails to explain her suggestion that the notice she received was unreasonably prompt.

Dr. Gurbani comes closer to identifying a specific obligation when she asserts that written summary of the evaluations at least once during each six month period of 2012, to discuss evaluations from the first six-month training period. Indeed, Dr. Gurbani even admitted that they discussed the unfavorable evaluation from her sports medicine rotation. But although Dr. LaPorte testified that she had all of the written evaluations in front of her during the meeting, a charitable reading of the testimony shows that there may be some genuine dispute about whether Dr. LaPorte actually Perhaps the closest that Dr. Gurbani comes to identifying the failure to fulfill a



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specific obligation is when she alleges that the University denied her the right to take a grievance regarding the probation decision. Dr. Gurbani testified that she orally her on probation in early June 2012, but Dr. LaPorte referred her to Dr. McMillan who told her her] department was refusing [her] the ability to appeal, that they were not going to grant [her] that.

This testimony, viewed in the light most favorable to Dr. Gurbani, indicates that the University denied a request to initiate a grievance that she apparently was entitled to take under the contract. Eventually, Dr. Gurbani did initiate a formal grievance in August 2013, long after she had been dismissed from the program. That grievance encompassed matters both before and after she was placed on probation, and the grievance panel ultimately denied her grievance on its merits.

The University responds that it complied with or at least substantially complied with its obligations to give feedback and a fair review process. In addition, the University argues that, even if Dr. Gurbani could show that it failed to comply with those obligations, she would not be entitled to pursue a claim for damages, because she would be unable to show that the alleged breaches resulted in the damages that she claims. We agree that Dr. Gurbani has not identified any damages that resulted from the arguable breach of one or two specific contractual undertakings.

As mentioned previously, the alleged damages derive from the decision to dismiss her from the program. That adverse decision was not the direct result of alleged breaches such as written summary of her evaluations at the



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midyear meeting, or some written evaluations, or the

denial of her initial request for a grievance when she was placed on probation.

The University reminds us that tainty in determining the cause

and nature of any damages (Hunter v. Bd. of Educ. of Montgomery Cnty., 292 Md. at

484) was a major reason why the Court of Appeals refused to entertain actions based on

alleged errors in the educational process. Dr. Gurbani replies that, [u]nlike in Hunter,

the question of damages in this case is straight-forward, she claims to be able to

she was inappropriately removed, as a result, her training and

career was delayed. Indeed, she might be able to proffer an expert who can quantify the value of a promotion to the third year of the residency program. But her

argument fails to establish the other necessary links between the alleged breaches, which

and the dismissal, which rested on substantive

academic evaluations. We fail to see how any reasonable factfinder could conclude that

Dr. Gurbani would have advanced in the program if only the University had given her

more timely written feedback or if only the University had processed the grievance as

soon as she first requested it.

An appellate court confronted a similar claim in Canady v. Meharry Medical

College, 811 S.W.2d 902 (Tenn. Ct. App. 1991). There, a physician sued for damages

resulting from decision not to renew his contract for what would have

been the final year of a five-year surgical residency program, because of his substandard

clinical performance. Id. at 903-04. The trial judge found that the college did not strictly



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follow its procedures for a hearing on his possible reinstatement, but concluded that the damages were too speculative for him to recover on his breach-of-contract claim. Id. at 904. The appellate court agreed, explaining:

The damages claimed by plaintiff are based upon the theory that, if [the medical college] had meticulously followed its grievance procedure, he would have been successful in his defense against charges and in prosecution of his complaint; and that as a result of such success, he would have been reappointed for an additional year; that, at the conclusion of that year, his services would have received approval and certification; that plaintiff would thereby have attained admission to a further specialized residency which he would have successfully completed; and that he thereafter would have engaged in a successful and profitable specialized surgical practice.

Id. at 906 (emphasis in original). The proximate relationship between the irregularities of procedure and the failure of plaintiff to realize his dream [wa]s too speculative and subject to too many future variables to show a proximate causal relationship between the irregularities and the claimed injury Id. at 907.

This reasoning is consistent with *Hunter*, which recognized that academic outside the formal teaching process *Hunter v. Bd. of Educ. of Montgomery Cnty.*, 292 Md. at 485 (quoting *Peter W. v. San Francisco Unified Sch. Dist.*, 131 Cal. Rptr. 854, 861 (Cal. Ct. App. 1976)). The inability to conclude that a causal relationship was one major reason that the Court concluded that a singularly inappropriate remedy for Id. at 487. This is true even where the allegations state breach of contract instead of negligence. Id. at 489 n.5.

In summary, although Dr. Gurbani has arguably generated evidence of a breach of



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one or two specific contractual undertakings, she has no evidence of any damages

flowing from that breach. For that reason, the circuit court was correct when it granted

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20 Dr. Gurbani also asserted a contractual claim for breach of the implied covenant no independent cause of action at law exists in Maryland for breach of that implied covenant. *Mount Vernon Props., LLC v. Branch Banking & Trust Co.* A breach of the implied duty of good faith and fair dealing is better viewed as an element of another cause of action at law, e.g., breach of contract, than as a stand-alone cause of action for money damages *C. Negligent Retention and Supervision of Educators* After devoting most of her arguments to her contract-based claims, Dr. Gurbani

also argues that Hunter should not bar her claims

against the University for the negligent retention and supervision of its educators. The

gist of that claim is her assertion that the University br

taking action to ensure that Dr. Osgood and Dr. Hasenboehler were acting in a timely

-the-fact evaluations

This count for negligent retention and supervision *Gaspar v. Ruffin Hotel Corp. of Maryland, Inc.*, 183 Md. App. 211, 231 (2008), ,

481 Md. 594 (2011). Indeed, one count of the had alleged that the

board of education was negligent in evaluating its personnel and programs *Hunter v.*

Bd. of Educ. of Montgomery Cnty., 47 Md. App. 709, 710 n.3 (1981), in part, 292 Md. 481 (1982). The Court of Appeals upheld the dismissal of that count,

observing that it d] [a] negligence claim[] regarding the educational

process. *Hunter v. Bd. of Educ. of Montgomery Cnty.*, 292 Md. at 489 & n.5; see also

James v. Frederick Cnty. Pub. Schs., 441 F. Supp. 2d 755, 759 (D. Md. 2006)

(concluding that, under *Hunter*, Maryland does not recognize a claim against a board of



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education . So too, we must reject

teaching of Dr.

Id. Dr. Gurbani nevertheless argues that her claim for breach of the implied covenant of -of-contract claim, based on ad address those allegations in Part II, below. Osgood and Dr. Hasenboehler. Recognition of her claim would improperly require a

court to import tort principles, which

academic environment[.] Gupta v. New Britain Gen. Hosp., 687 A.2d at 119.

II. Claims Based on Allegations of Bad Faith

As explained above, Dr. Gurbani resulted from an academic decision

that must be afforded great deference. The University was entitled to judgment to the failure to meet its obligations, whether those obligations are grounded in the contracts or in a common-law duty.

The remainder of claims involve allegations that University

employees acted in bad faith when they made academic decisions. Bad faith is not simply bad judgment or negligence, but implies a dishonest purpose or some moral obliquity and a conscious doing of wrong. Rite Aid Corp. v. Hagley, 374 Md. 665, 681 (2003) (quoting Catterton v. Coale, 84 Md. App. 337, 342 (1990)). Dr. Gurbani seeks to prove not merely that her evaluators misjudged her performance or abdicated their responsibilities to educate her. In her view, three University employees intentionally caused the dismissal for motives unrelated to their stated academic rationale. She suggests multiple legal theories for liability based on those allegations.

First, Dr. Gurbani contends that the University can be held liable for bad-faith



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conduct of its employees. [.] in

exercising its professional judgment, an educational institution does not have license to

act arbitrarily, capriciously, or in bad faith. *Gupta v. New Britain Gen. Hosp.*, 687 A.2d at 121
Accordingly, in cases involving academic dismissal, educational institutions will

be entitled to summary judgment unless the plaintiff can

provide some evidence from which a fact finder could conclude that there was no

rational basis for the decision or that it was motivated by bad faith or ill will unrelated to

academic performance. *Alden v. Georgetown Univ.*, 734 A.2d at 1109 (quoting

Clements v. Nassau County, 835 F.2d 1000, 1004 (2d Cir. 1987)). 21 Dr. Gurbani

contends that evidence of bad-faith conduct by the University employees would support

her claims that the University either breached the residency contracts (Count I) or

breached the implied covenants of good faith and fair dealing (Count II).

Dr. Gurbani also contends that the three employees can be held personally liable

for tortiously interfering (Count III) with her contract with their shared employer. It is

well established that an employee cannot be held liable for interfering with a contract

between the employer and another party where the employee was acting within the scope

of employment. See, e.g., *City*, 106 Md. App. 578,

591 (1995). To establish such a claim against an employee, the plaintiff must show that

the employee in question somehow acted maliciously for his [or her] own motives and

beyond the scope of his [or her] authority without the intent to further the interests of the

employer. *Id.* at 591-92. Dr. Gurbani contends that evidence that Dr. LaPorte, Dr.



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Osgood, and Dr. Hasenboehler evaluated her based on personal spite would support her

21 Dr. Gurbani does not that the decisions to place her on probation and to dismiss her from the program had a discernible rational basis. claims for tortious interference.

Dr. Gurbani points out that even an educator may be held liable for committing

intentional torts against a student. See Hunter v. Bd. of Educ. of Montgomery Cnty., 292

Md. at 490. In Hunter, one count of the complaint alleged that

acting intentionally and maliciously, furnished false information to [the Hunters]

actions, and de Id. at 484. The Court concluded that this count stated

a viable intentional tort claim, reasoning educational process is shown to have wilfully and maliciously injured a child entrusted to

his [or her] educational care, such outrageous conduct greatly outweighs any public

policy considerations which would otherwise preclude liability[.] Id. at 490.

theories of potential liability based on allegations of intentional,

bad-faith conduct appear to be mutually exclusive. Her theory of liability on the part of

the University requires proof that its employees acted within the scope of their

employment; her theory of personal liability on the part of the three University

employees requires proof that they acted outside the scope of their employment. To

make a sufficient showing under either theory, Dr. Gurbani needed to do more than

simply allege that her evaluators had improper motives. claim

depends on an issue bad faith, the defendant is entitled to summary

judgment absent a showing, supported by particular facts sufficient to allow a fact finder

to conclude that [the defendant] lacked good faith Rite Aid Corp. v. Hagley, 374 Md.



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at 688. This burden is certainly no lower when a plaintiff attempts to show that an educator acted out of ill will. allegations that certain

[,] the Court of

Appeals a claimant will usually face a formidable burden in attempting to produce adequate evidence to establish the intent requirement for an intentional tort by an educator. *Hunter v. Bd. of Educ. of Montgomery Cnty.*, 292 Md. at 490. A claim that of an educator may survive a motion for summary judgment mental state.

Clements v. Nassau County, 835 F.2d at 1005. Indeed, a

in attempting to show that an academic of

educators. *Gupta v. New Britain Gen. Hosp.* As with

claim of deficiencies in [her residency] training, we approach with caution, and with deference to academic decisionmaking, [her] challenge to the motivation of the [program] in terminating [her] residency. *Id.* at 120.

Dr. Gurbani has not identified direct evidence that any of the defendants evaluated her based on anything other than the honest use of professional judgment. All assessments in the record from Dr. Osgood and Dr. Hasenboehler expressly related to genuine criteria of academic performance. Their comments at faculty meetings and on written evaluations, while sometimes harsh, were no more extreme than comments from other evaluators. Dr. Gurbani nevertheless attempts to ascribe hidden, sinister motives onto these evaluations and to other arguable failings in the educational process.



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In her view, when Dr. Osgood and Dr. Hasenboehler voiced concerns about her performance at faculty meetings, they must have been

colleagues. Dr. Gurbani argues that, when Dr. Hasenboehler said that she would need to work much harder as a female surgeon, he must have been expressing sexism instead of merely advising her (as others had done) that she probably would encounter sexism in her career. She argues that, when Dr. Osgood and Dr. Hasenboehler neglected to submit written evaluations promptly or to schedule weekly meetings, they must have been deliberately She also

argues that, when Dr. Osgood belatedly submitted a written evaluation that identified performance issues for her to address, his evaluation is so negative that it must be suspect and likely fabricated[.]

In view, when Dr. LaPorte asked a colleague about what documents

would be needed for the possibility that she might dismiss Dr. Gurbani, Dr. LaPorte must decided to terminate her six months before the fact. When Dr.

LaPorte informed other residents that Dr. Gurbani had been placed on academic

probation, Dr. Gurbani argues that Dr. LaPorte must have her, rather than to enlist help. When Dr. LaPorte reminded Dr. Osgood and Dr.

Hasenboehler to put their evaluations in writing just before the probation committee meeting, Dr. Gurbani argues that r[ying] to gather

fabricated evaluations[.] When Dr. LaPorte and other University officials confronted

Dr. Gurbani about the false statements she made on her registration with the Board of Physicians, Dr. Gurbani argues that they



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When Dr. LaPorte turned over reports of incidents such as the dural tear and missed diagnosis of compartment syndrome (incidents for which Dr. Gurbani denies

responsibility), Dr. Gurbani argues that Dr. LaPorte must have been the grievance panel about the real reason for the dismissal.

These actions by the defendants are not evidence of dishonesty but the very actions that Dr. Gurbani hopes to prove were done dishonestly. Stripped of her self-reinforcing suspicions, the actual

bad faith. See *Clements v. Nassau County*

knowingly made false reports, her mere denials of their reports cannot be sufficient evidence of bad faith. See *Educ. Testing Serv. v. Hildebrant*, 399 Md. 128, 142 (2007) contrary to any reasonable

genuine dispute about whether the test administrator made report in bad faith). To the extent that she argues that the three defendants should have done a better job to help her advance in the program, their arguable failings are not sufficient evidence of bad faith.

See *Rite Aid Corp. v. Hagley*, 374 Md. at 687 (the availability of other alternatives, and the possibility, even probability, that the situation might have, or should have, been handled more effectively and sensitively, while perhaps suggesting negligence, does not equate to bad faith or a lack of good faith). The only factual basis that Dr. Gurbani offers for interpreting the

actions as dishonest seems to be a loose and flexible theory that they had some shared motive to lie about her performance. The defendants are not exaggerating when they call this ly accuses the



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falsify their evaluations so as

She asserts

her first orthopaedic trauma rotation, during which she started to

complain to Dr. LaPorte about the conduct of Dr. Osgood and Dr. Hasenboehler. She

insists that all of the occurred after Dr. Osgood and Dr.

remarks about her performance at a faculty meeting on

May 24, 2012. Through this imaginative chain of post hoc ergo propter hoc reasoning,

them.

Even if evidence of a mere motive to retaliate would be enough to infer that

certain actions were taken with a retaliatory purpose, Dr. Gurbani needed to present

Freilich v. Upper Chesapeake Health Sys., Inc., 423

Md. 690, 694 (2011). At a minimum, she needed to connect the alleged retaliatory

motive to the actions that it allegedly motivated. See id. at 719.

There is no genuine dispute that other faculty members independently identified

underlying issues with clinical performance months before her first

orthopaedic trauma rotation. The faculty concerns involved both her technical skills and the mental aspects of her performance. These issues were communicated to her

promptly in the evaluations of Dr. Cosgarea and Dr. Sponseller on the two preceding

rotations. The memo from May 4, 2012, the date of the first meeting of the orthopaedic

trauma rotation, documented that Dr. Osgood and Dr. Hasenboehler were already voicing

ate patients and make decisions, just as their



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predecessors had.

In contrast to the precise sequence of

testimony is vague as to when she made her various complaints. By her own admission, complaining, nor can she

She

testified that she started complaining as early as

April 2012. Yet she also submitted a written timeline of meetings, which indicates that

she was unable to discuss issues about the rotation with Dr. LaPorte until the meeting of

May 4, 2012. She testified that she continued to raise

attending physicians over several months, and the issues varied in severity. Her

testimony lacks enough detail to permit a finding that she made severe complaints about

either Dr. Osgood or Dr. Hasenboehler or both before they were already voicing concerns

about her performance. 22

Furthermore, there is no testimony showing that Dr. LaPorte even told Dr. Osgood

22

meeting of May 24, 2012. Using that estimate, the performance issues that they had identified over 20 days earlier would appear to predate her complaints. or Dr. Hasenboehler about her complaints against them before they had started to criticize

her performance. Even if one could infer that they somehow knew of her complaints by

that time, that inference would do little to explain why they would feel so incensed or

threatened that they would wage a months-long retaliatory campaign against her. It

would do even less to explain why Dr. LaPorte would agree to collaborate with their



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alleged efforts, as her conduct was not part of the complaints. It would do even less to explain why she received what were unquestionably poor evaluations from Dr. Ain and from Dr. Tis in May and June of 2012. 23 It would do nothing to explain why, in connection with the faculty meeting on May 24, 2012, six doctors other than Dr. Osgood and Dr. Hasenboehler expressed significance based on their own independent observations.

Perhaps because of the flimsiness of her conspiracy theory, Dr. Gurbani has gone to elaborate lengths to portray the assessments of Dr. Osgood and Dr. Hasenboehler as outliers. In reality, their assessments were fully consistent with those of other medical professionals who observed her performance, particularly her performance on the two previous rotations. Other doctors, without any hint of a retaliatory motive, said that she straightforward . . . bread-and-butter pediatric trauma cases; with a plan of care

23 Dr. Gurbani believes that comments made by Dr. Osgood and Dr. Hasenboehler on May 24, 2012, caused other faculty members to submit negative evaluations. Yet Dr. Tis also submitted a highly negative evaluation on May 11, 2012. that she lacked

certain routine procedure was how to apply basic tools to [the] spine, [d] clockwise vs. counterclockwise rotation of screws. To her credit, some evaluators believed that she might have succeeded in the program if given additional chances to improve. But there is no evidentiary basis to conclude that her probation and dismissal resulted from the dishonesty of her evaluators. Despite efforts to generate suspicion about the motives of certain



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decision-makers, she has not identified facts in detail and with precision to support the allegations that her evaluators acted in bad faith. See *Educ. Testing Serv. v. Hildebrant*, 399 Md. at 142-43. e is no genuine Id. at 142 (emphasis in original). She may not use the courts to nullify their academic decisions. 24

CONCLUSION

The circuit court did not err when it granted summary judgment against Dr. Barkha Gurbani as to all claims seeking damages resulting from her academic dismissal.

The court was required not to disturb the careful and deliberate decisions made by the 24 her claims of intentional interference with contract, they are inadequate for the additional reason that she had insufficient evidence that the University breached the contract or that she suffered damages as a result of any such breach. *S l Med. Ctr.*, 106 Md. App. 470, 503 (1995). *Drs. Osgood, Hasenboehler, and LaPorte* cannot be liable for tortiously inducing the University to breach a contract, if the University did not actually breach the contract or if the breach resulted in no damages. . Dr. Gurbani thorough search for some factual and

legal basis to circumvent that principle is to no avail.

On a final note, we further t Dr.

s exhaustive set of challenges to its academic decisions

Hunter, and the larger body of law

requiring deference to academic decisions, wisely counsel against putting these types of academic evaluations on trial.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT. APPENDIX

In her appellate brief, Dr. Barkha Gurbani presented the following questions:



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1. Did the Circuit Court improperly grant summary judgment on Dr.

Contracts with Dr. Gurbani because it found that *Hunter v. Bd. of Educ. of Montgomery Cty*, 292 Md. 481, 482-87 (1982) bars educational negligence and breach of contract actions related to conducting student evaluations?

Hunter, 292 Md. at 482-87 bar breach of contract actions by medical residents in residency programs?

3. Did the Circuit Court improperly grant summary judgment on Dr.

(Count II), based upon a finding that Maryland does not recognize a separate cause of action for breach of the covenant of good faith and fair dealing?

Kaye v. Wilson-Gaskins, 227 Md. App. 660, 676 (2016) bar a breach of the implied covenant of good faith and fair dealing claim?

Hunter, 292 Md. at 482-87 bar claims of negligent retention and supervision?

6. Did the Circuit Court improperly grant summary judgment on Dr.

Johns Hopkins Hospital, Inc., Johns Hopkins Medicine, and Johns Hopkins University for negligent retention and supervision?

7. Did the Circuit Court improperly grant summary judgment on Dr.

M.D., and Dawn LaPorte, M.D., for tortious interference with contract based upon a finding that Appellees Osgood, Hasenboehler, and LaPorte were acting on behalf of an employer within the scope of their authority?

8. Did the Circuit Court improperly grant summary judgment by ignoring and failing to evaluate the extensive record of evidence submitted by Plaintiff?

