



Michael M. Raskin,
MD, MPH, JD

*Under the guise of
improving patient
safety, several
institutions have
adopted age-
related physician
policies in
recent years.*

Of a certain age: When are radiologists too old to practice?

Michael M. Raskin, MD, MPH, JD

A 71-year-old radiologist in another state called to tell me that his hospital just informed him that he would have to submit to mandatory annual cognitive testing and competency evaluation starting at age 72 or risk losing his medical staff privileges.

“Isn’t that age discrimination?” he asked. “I thought that was illegal.”

Yes, it is age discrimination, I told him, but no, it isn’t illegal.

And it can also happen to you.

The Age Discrimination in Employment Act (ADEA) of 1967 protects individuals who are 40 years or older from age discrimination in employment, including mandatory retirement ages. The ADEA limits the ability of employers to make age-related decisions unless it can be established that age is a “bona fide occupational qualification.” Such an exception would be when public safety may be at stake. For example, the courts have

mandated the airline industry to enforce mandatory retirement of pilots. The Americans with Disability Act (ADA) provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. To have a disability under the ADA, you must have a physical or mental impairment. However, not everything that restricts your activities qualifies as an impairment. The ADA does not contain a list of medical conditions that constitute disability, but instead it has a general definition of disability that each person must meet. Therefore, some people with age-related impairments will have a disability under the ADA and some will not. Aging, by itself, is not an impairment, but a person who has a medical condition often associated with age has an impairment based on the medical condition. However, a person does not have an impairment solely because of his or her age.¹

Dr. Raskin is a Radiologist at University Medical Center, Tamarac, FL. He is also a member of the Editorial Advisory Board of Applied Radiology.

How old is too old?

The physician population in America is aging, with more than 20 percent of practicing physicians currently over the age of 65. Many hospitals and institutions are testing older physicians on mental and physical acuity; however, physicians are raising questions of fairness, scientific validity, and ageism. In 2016, the American Medical Association's House of Delegates voted that the organization should have a systematic evaluation of aging physicians, perhaps with formal guidelines, for timing and method for competency testing of older physicians who wish to continue with staff privileges.² Self reporting does not work, as older physicians who have mild cognitive dysfunction often don't realize it, and their colleagues are reluctant to report them for fear of appearing disrespectful. Older physicians tend to rely on pattern recognition and often do not to adhere to evidence-based standards for diagnosis.²

Competency and cognitive ability

Competency is difficult to assess, as one size does not fit all. Age alone cannot be used as the basis for reviewing and evaluating a physician's fitness to practice. No court

has approved a mandatory retirement age for physicians, and no credentialing or licensing body has set a firm mandatory retirement date for physicians. However, some credentialing bodies have established age-related policies mandating an evaluation process for physicians when they reach a certain age. The Joint Commission requires hospitals to take an active role in assessing competency. The Ongoing Professional Practice Evaluation (OPPE) is a program for which the hospital bears the responsibility for allocating necessary resources to develop and maintain the process. However, it is the radiology department that must provide the metrics to be used and the data to be collected.³ Under the guise of improving patient safety, several institutions have adopted age-related physician policies in recent years.

Case law has clearly established that institutions, hospitals, and physician groups can be held directly liable for injuries caused to patients where there was evidence of deficiencies in the physician's skills or judgment that posed a danger to a patient. Many medical malpractice carriers now require an age-related physician review to include annual physical examination

and annual appearance before their underwriting board upon reaching a certain age to continue being insured by that carrier.

The handwriting is on the wall

What happens if you love the practice of radiology and you don't want to retire? Mandatory testing of cognitive ability at a certain age will become the new norm. At what age this will occur is currently left to the examining organization. Look for more standardized criteria in the future, whether from institutions, hospitals, medical licensing boards, or group practices. But does this testing result in better patient care, or is it just a legally defensible measure to insulate these entities from potential liability?

You don't need a crystal ball to see where this is headed.

REFERENCES

1. United States Equal Opportunity Employment Commission. <https://www.eeoc.gov/laws/statutes/index.cfm>. Accessed May 14, 2018.
2. Kaups KL. Competence not age determines ability to practice: Ethical considerations about sensorimotor agility, dexterity, and cognitive capacity. *Am Med Assoc J Ethics*. 2016;18(10):1017-1024.
3. Steele JR, Hovsepian DM, Schomer DF. The Joint Commission Practice Performance Evaluation: A primer for radiologists. *J Am Coll Radiol*. 2010;7(6):425-430.