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NYU Told to Grant Dental Degree Denied in 2009

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[New York University](#) unfairly expelled a dental student for allegedly filing false billing records in a desperate attempt to meet the revenue-generating goal for clinic work set by the school so that she could graduate, a divided state appellate court has ruled.

All five members of the Appellate Division, First Department, panel agreed that NYU had not followed its own rules and policies for dismissing students and that the expulsion should be rescinded.

However, three of the judges went beyond directing the school to take another look at the case and ordered it to grant a degree to Katie Kickertz more than three years after she had been scheduled to graduate.

The majority observed that the expulsion of Kickertz without the possibility of her readmission "shocks one's sense of fairness" because its severity was disproportionate to penalties meted out to others accused of wrongdoing.

See Appellate Briefs for [Kickertz](#) and [NYU](#).

"Petitioner's academic performance at NYU [dental](#) college was exemplary, and this incident was at worst a single lapse in judgment in the face of extraordinary pressure," the majority wrote in an unsigned Oct. 11 opinion in [Matter of Kickertz v. New York University](#), 7754 103461/10.

Dental students at NYU are required to participate in a Practice Model Values (PMV) program. The program was created to give students practical skills, but the university requires that they generate a specified level of revenue.

According to Kickertz, she was informed for the first time by her group practice leader, Dr. Harry Meeker, on the evening before her scheduled May 26, 2009, graduation that her status was uncertain because "the paper I have before me says you still owe me something." The next day, 15 minutes before graduation, Meeker allegedly told Kickertz that she was short of PMV credits.

Meeker disputed that account, saying that he first notified Kickertz of the deficiency in mid-April and provided regular updates.

On May 27, Kickertz was advised by email that she had been credited with revenue of \$19,093, short of her \$21,000 requirement in the PMV, and she should come back to meet the requirement before getting her [diploma](#).

Kickertz contended that she had demonstrated such proficiency in the clinic that patients were taken away from her and given to other students, inhibiting her ability to meet her revenue goal.

Kickertz, who had fulfilled all other graduation requirements, said she was told by Meeker and David Hershkowitz, an instructor at the school, that she would have to come up with the [money](#), but that she would be given no other patients and no other opportunity to perform work in the clinic.

On June 1, Kickertz filled out four patient "encounter" forms falsely attesting to treatments that supposedly brought in \$2,050 to fulfill the PMV requirement. Kickertz said she paid \$200 in [cash](#) to the school and put \$1,850 on her credit card to make the payments herself.

She insisted that she did not falsify any patients' charts or records.

"She maintains that she took this action based on a good faith belief that she was following the instructions of program faculty who told her that she had to produce the PMV fees without having any patients on her roster or she would not be allowed to graduate," the decision said.

Kickertz said she eventually found her own patients and returned to the clinic, where she maintained that her PMV revenue totaled \$23,658.

After being informed that Kickertz had met the PMV requirement, Hershkowitz looked into the matter and determined that she had not done work she claimed.

The college informed her in July 2009 that the dental school's Peer Review Board on Ethics and Professionalism had determined that she had "forged fraudulent treatment records for multiple patients" and that she was to be dismissed from the school because of it.

However, Kickertz objected that she had not been afforded a mandated hearing, and the determination was withdrawn. On Oct. 7, the student-run peer review board held a "hearing" and unanimously voted to dismiss her, without the possibility of reinstatement. A faculty review board and the school's dean confirmed the decision.

'Substantial Justice' Absent

The First Department majority said that Meeker and Hershkowitz did not appear at the October hearing. That deprived Kickertz of the opportunity to cross-examine crucial witnesses, the court said.

Nor were copies of the allegedly fraudulent patient encounter forms produced or testimony heard from the dental school employee Kickertz said took her personal payment of \$2,050.

The court concluded that the disciplinary action against Kickertz failed to adhere to procedures laid out in 2005 and modified in 2009.

"In violation of both codes, petitioner was not afforded substantial justice," the majority ruled.

Since evidence of the school's violation of Kickertz's rights was so clear, "we need not remand to allow NYU to interpose an answer; we can annul the determination expelling petitioner," the majority determined.

The panel added that even if the school had followed its own rules for expelling students, it would have found Kickertz's punishment to be excessive. It cited a case from 2008-09 where an NYU dental student was found guilty of misrepresenting clinical work, but he was only required to repeat the academic year.

Justices Richard Andrias ([See Profile](#)), David Saxe ([See Profile](#)) and Nelson Roman ([See Profile](#)) joined the majority after hearing arguments on May 13.

In dissent, Presiding Justice Luis Gonzalez ([See Profile](#)), joined by Justice Leland DeGrasse ([See Profile](#)), agreed that NYU should rescind its expulsion of Kickertz, but he objected to granting her a degree without permitting NYU to file an answer to try to clear up a "number of disputed issues of fact."

Gonzalez also noted that the majority's ruling granted Kickertz's degree without definitively resolving allegations that she told student investigators she had forged treatment records.

The First Department ruling reversed a [February 2011 decision](#) by Manhattan Supreme Court Justice Alice Schlesinger ([See Profile](#)) upholding Kickertz's expulsion.

Kickertz's attorney, Jeffrey Brown of Leeds Brown Law in Carle Place, said he knew of no other instance where a court had reinstated an expelled student without even waiting for a reply from a college first.

"What they are saying is, 'We don't even need to hear from NYU,'" said Brown, who was helped in representing Kickertz at Leeds Brown by Rick Ostrove. "It annulled the expulsion. It said she completed the requirements for graduation and should graduate."

Brown said Kickertz lost out on a pediatric dental residency at Boston University in 2009 because she did not get her degree from NYU.

He said NYU's actions had a "devastating emotional and physical impact" on his client. She filed a separate action seeking monetary damages, which was dismissed. An appeal is pending.

Elyse Bloom, assistant dean for communications and public affairs at the dental school, said the college does not comment on legal matters.

NYU counsel Nancy Kilson argued for the school. In her brief before the court, Kilson argued that the dental school's rules clearly prohibited students from "cheating, misrepresenting academic or clinical work and falsifying or tampering with any clinical record."

Sanctions for students who broke those rules included expulsion without the possibility of reinstatement, Kilson wrote.

Kilson contended that Kickertz acknowledged to student investigators that she had altered patient records during the peer board's review of her actions.

Kickertz is currently enrolled at another dental school.

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