

Medical Legal Forum –Residency for Sale? The Closure of Hahnemann University Hospital

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Medical residency has been around for approximately 130 years, taking the place of the traditional apprenticeship. Since then, of course, there have been and continue to be a number of changes in the trajectory from newly graduated medical students to attending physicians. The Accreditation Council of Graduate Medical Education (ACGME) is the organization that has a tremendous impact on this trajectory. According to the organization's website, there are "11,700 ACGME-accredited residency and fellowship programs in 181 specialties and subspecialties at approximately 850 Sponsoring Institutions. There were approximately 140,500 active full- and part-time residents and fellows." Many hospitals require board certification in order to obtain privileges, and in turn, the boards require training at an ACGME-accredited program to qualify for certification. Thus it is significant to understand the mission of the ACGME, which is "to improve health care and population health by assessing and advancing the quality of resident physicians' education through accreditation." (1) Nothing in there about commerce.

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Thus it was jarring to read about the efforts of Hahnemann University Hospital to auction off its residency programs to the highest bidder. Even more amazing was the result of the auction – Thomas Jefferson University agreed to pay \$55 million for 550 Medicare-funded residency slots. The notion of a residency position as an asset on a balance sheet and a source of revenue that can be auctioned off upon the closing of a hospital is troubling and has led to a legal battle that is still playing out. Let us examine more closely the details of this important legal case.

Hahnemann University Hospital, a 495-bed safety-net hospital in Philadelphia that had been in operation for 170 years, was the main teaching hospital for Drexel University College of Medicine. On June 30, 2019, the parent company of Hahnemann filed for Chapter 11 bankruptcy. Shortly thereafter, the residency and fellowship slots were put up for sale with the noted results. While the bankruptcy court judge was prepared to

split the \$55 million among the creditors, The Centers for Medicare and Medicaid Services (CMS) objected to the sale, and in response, a federal judge temporarily halted the sale. CMS cares because, while ACGME accredits training programs, it is CMS that funds the residency slots, and in their view, residency programs are a contract between them and the hospital as opposed to an asset of the hospital that can be sold. (2) CMS has a process in place for this situation in which priority for the slots is given to local hospitals but without any charges involved. Additionally, there are significant concerns about the precedent of allowing such a sale. Many hospitals with large residency programs are financially troubled and could potentially 'sell-off' some residency slots as a 'quick fix' way to improve their balance sheet. (3)

CMS was not the only party concerned with the sale. The State of Pennsylvania objected to the manner in which hospital licensing regulations were handled and the ACGME, along with the Association of American Medical Colleges (AAMC) and the Educational Commission for Foreign Medical Graduates (ECFMG) advocated for insurance coverage for residents. (4) Congress got involved as well, with Energy and Commerce Chairman Frank Pallone, Jr. (D-NJ) and Ways and Means Chairman Richard Neal (D-MA) releasing a statement objecting to the "dangerous precedent" set by the sale including the concern it "sends a signal to Wall Street that there is money to be made off the downfall of community hospitals." (5)

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Perhaps the most invested party to this tragedy are the residents themselves, many of whom had started residency days earlier. Reading from a prepared statement, third-year Hahnemann Radiology resident Raluca McCallum spoke to the judge on behalf of Hahnemann trainees and noted the group's anger at "the perception that residents are viewed as nothing more than assets, the sale of which might offset the debt." (6) As we were all trainees once, let us hope that as this bankruptcy case drags on, the residents and fellows all find appropriate positions to continue their training with proper malpractice coverage for their care at the now-shuttered hospital.

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This column does not give specific legal advice, but rather is intended to provide general information on medicolegal issues. As always, it is important to recognize that laws vary state-to-state and legal decisions are dependent on the particular facts at hand. It is important to consult a qualified attorney for legal issues affecting your practice.

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