



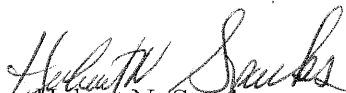
October 13, 2000

MEMORANDUM FOR The Federal Co-Chairman
 ARC General Counsel

SUBJECT: OIG Special Report 01-1(H)—J-1 Visa Waiver Program, Family
 Services Asthma Allergy Center, New Kensington, Pennsylvania

The subjects of the attached report are Dr. Mubasher Fazal, who was assigned to a Duquesne, Pennsylvania office in January 2000; Dr. Farah Khan, who was assigned to a McKeesport, Pennsylvania office in February 2000; and Dr. Prakash Kaur, employer, with a main office in New Kensington, Pennsylvania.

The report summarizes serious disagreements between the J-1 physicians and the employer, which culminated in the ending of employment in Pennsylvania on May 3, 2000. The J-1 physicians reportedly accepted a position in a midwestern state in September 2000, and the normal transfer process that includes involvement of program administering agencies to verify the eligibility of the transfer was bypassed by the J-1 physicians.


Hubert N. Sparks
Inspector General

Attachment

cc: Pennsylvania Program Manager



OCTOBER 5, 2000

OIG REPORT 01-1(H)

SPECIAL REPORT

Family Health Service Asthma Allergy Center New Kensington, Pennsylvania

SUMMARY

Our review of the J-1 Visa Waiver program at selected health care providers, the substance of which is reported in OIG Report 00-51(H), included one contentious situation pertaining to the ending of the employment of two J-1 physicians formerly working for Family Health Services of New Kensington, Pennsylvania. This report summarizes the status of this situation and the primary issues, including continuing disagreements between the parties, contributing to the current impasse.

Two physicians, husband and wife, received J-1 Visa Waivers and were employed by Family Health Services as of January 19 and February 16, 2000, respectively. One physician was assigned to a newly established office in Duquesne, Pennsylvania; and the other physician was assigned to an active office in McKeesport, Pennsylvania. In both cases, relevant documentation indicated the J-1 physicians would provide 40 hours of primary care service at the respective locations.

The physicians' employment ended on May 3, 2000; and there was, and remains, substantial disagreement on many key issues contributing or related to the ending of employment. As of our review in September 2000, the physicians were unemployed although they were considering acceptance of positions in a midwestern state. Correspondence and discussion reflected that, subsequent to our field work, the physicians accepted a position outside of the Appalachian Region after unsuccessful attempts to transfer within the Region and that a deteriorating financial situation, resulting from 5-months' unemployment, contributed to this decision. Also, the J-1 physicians were aware that neither ARC nor the US Department of Agriculture, which administers the program in non-ARC rural areas, had concurred with the transfer.

Although available information was not sufficient to reach a conclusion as to whether administering agencies should object to the transfer, consideration should be given to a 5-month extension of the J-1 Visa Waiver period based on the factual matter of a 5-month break in service. Also, program requirements, with respect to the eligibility of the new location, and the new employer's recruitment efforts should be applicable; and, therefore, notification to the administering agency for decisions on these issues is appropriate.

BACKGROUND

The reliance by all parties on oral agreements and the absence of documentation regarding primary issues restricts reaching conclusions with respect to the areas of disagreement. Also, we did not attempt to address contractual disputes or reconcile the varied contentions of the parties since the type of contractual related issues noted are matters for settlement between the parties and are not within the purview of ARC program responsibilities. However, we did obtain input on some issues in order to better identify and summarize the events leading to the separation in order to provide program officials information to use in ascertaining the extent of compliance with program requirements.

The primary areas where the employer and former employees agree are: (1) employment ended on May 3, 2000; (2) during the period of employment, service was provided by the J-1 physicians at the Duquesne, McKeesport, and New Kensington offices; (3) limited workload was developed at the Duquesne and McKeesport offices between January and May 2000; (4) the employer provided each of the physicians \$7,000 prior to start of employment, although there is disagreement about the purpose of these funds; and (5) correspondence dated May 1, 2000, commenting on the J-1 physicians' performance and provider's financial condition, was prepared by a J-1 physician and signed by the employer, although there is substantial disagreement about the intention of this correspondence and the circumstances under which it was signed.

The major areas of disagreement include:

- The reason for the ending of employment—being terminated as contended by the employees or resignations as contended by the employer.
- The purpose of the \$7,000 (\$1,000 per month) provided to each J-1 physician by the employer prior to start of employment—as a loan to help the physicians during their period of unemployment while awaiting approval of the J-1 Visa Waiver as contended by the employer or as partial repayment of legal fees incurred by the employees to obtain the waiver as contended by the employees.
- The reasons for the intermittent and variable deductions from the employees salaries.
- The reasons/motives for the ending of employment as of May 3, 2000.
- The intent and content of a potential employment contract revision.
- The extent of on-site service provided at the Duquesne office by the physician assigned to that office.
- The extent of additional services such as house calls provided by the physician assigned to the Duquesne office.
- The extent of billings generated by the J-1 physicians in connection with their work at Duquesne, McKeesport, and New Kensington and the related issue of employer financial losses in connection with the Duquesne and McKeesport operations.
- The extent to which medical insurance was paid for by the employees and/or employer.

- The availability of receipts for expenses claimed by the employees.
- The reasons for the May 1, 2000 letters.

The positions of the parties on the most pertinent issues relating to financial matters and program policies and procedures are primarily based on oral communications between the parties, and the absence of documentation or third-party involvement does not permit conclusive determinations about many events. Within this context, some of the background, explanations, and additional information, resulting from contacts with the employer, employees, and third-party sources, is noted below for some of the unresolved issues.

Ending of Employment and Related Issues

The J-1 physicians' employment ended as of May 3, 2000. The physicians contend they were terminated by the employer, and the employer contends the physicians quit. There is no credible documentation denoting any termination or resignation actions or intended actions. The J-1 physicians contend the employer's financial difficulties, which were noted in the May 1, 2000 letters, were the primary basis for being informed by the employer that they were terminated and noted they had only worked a few months after a lengthy period of unemployment and, thus, were not in a financial position to resign. The physicians said they had not been seeking other employment prior to being alerted to their possible termination.

The employer said that the physicians had not been notified about any intention to terminate them and contended that the physicians quit their positions in order to obtain higher paying positions. The employer denied financial difficulties that would have necessitated terminating the physicians and noted the absence of the physicians left her unable to serve some of her practice's patients; and, thus, she would not have terminated the physicians in the manner claimed.

The parties agree that a meeting was held on May 3, 2000, wherein keys and beepers were returned to the employer but disagree about whether this exchange was based on termination or resignation and whether any discussions about possible termination were held prior to this date. The J-1 physicians said they had been separately told by the employer in late April 2000 that low workload could result in employment termination. The employer denied such conversations.

Contact with two potential employers disclosed their recollections were that contacts had been initiated by the two J-1 physicians after May 3, 2000. In one case, the prospective employer said that no job offers were made; and in the other case, the prospective employer said his interest waned after learning of the complicated process involved in hiring a J-1 physician.

Correspondence and discussions indicated negotiations between the J-1 physicians and/or their attorney and the University of Pittsburgh Medical Center (UPMC), McKeesport subsequent to the ending of employment with Family Health Services. This negotiation appeared to involve hiring of the J-1 physicians, sponsoring of the J-1 physicians, or some sort of purchase and/or financing of the J-1 physicians' former practice sites. The end result was no action by UPMC McKeesport.

Two letters dated May 4, 2000 from the J-1 physicians to the employer noted that, by mutual consent, the employment contract entered into on June 28, 1999, had been effectively terminated May 2, 2000. These letters were signed by the J-1 physicians; but, in the absence of any signature or agreement by the employer, the letters do not provide any useful information about who initiated the termination of employment.

Payments to J-1 Physicians Prior to Start of Employment

The parties agreed that the employer provided each of the J-1 physicians \$7,000, or \$1,000 per month, during the period they were unemployed and awaiting the waiver approval and other necessary certifications. No direct documentation was available to indicate the purpose of these payments.

The employer contended that this was a loan in order to help the physicians during the period prior to employment and provided a schedule indicating the extent of salary deductions that had been made prior to May 3, 2000. This schedule reflected salary deductions of \$4,050 and \$2,550, respectively, and balances of \$2,950 and \$4,450, respectively. The schedule also noted intermittent and variable deduction amounts, and the employer noted that the amounts deducted were based on input from the two J-1 physicians with respect to how much and for whom deductions should be made. As noted, there was no documentation of such a loan agreement, repayment schedule, or other information indicating the purpose of the payments. However, the employer provided a copy of a letter from her former attorney that indicated an understanding that the payments made by the employer were a loan and would continue until the physicians obtained their waiver.

The J-1 physicians said they believed the \$7,000 in payments were offsets against the legal fees in excess of \$20,000 that they incurred to obtain their waivers and said the employer had orally agreed to reimburse them for these fees. Thus, they did not consider the payments as a loan and believed that the deductions from salary were due to the financial condition of the employer and were not loan repayments. They noted that several salary checks were replaced by the employer after being returned by the bank for insufficient funds.

The employer said there was no agreement that she would reimburse the J-1 physicians' legal fees and noted that she had not taken the \$14,000 in payments to the physicians as a business expense for 1999, which she would have been entitled to do if she was reimbursing legal fees. The employer's attorney of record in 1999 said she had no knowledge of any intention for the employer to reimburse the J-1 physicians for the legal fees they had incurred.

Contract Revisions

Discussion indicated that, in early April 2000, the employer proposed a revision to the employment agreement with the two physicians. There is disagreement as to the proposed revisions and whether the proposed revisions were discussed with and/or provided to the physicians.

The employer provided a proposed Assignment Agreement dated April 11, 2000, which was apparently intended to transfer legal liabilities from the employer as a sole proprietorship to Family Health Services and Allergy-Asthma Center, P.C. The employer contends that the only

objective of this assignment agreement was to transfer her potential liabilities, and there was no direct impact on the J-1 physicians or terms of their employment agreement. The J-1 physicians contend that they did not see a copy of the proposed revisions but said it was their understanding it essentially made them partners and reduced their salary structure. They noted they contacted their attorney and were advised not to sign any agreements or revisions containing clauses of this type.

The employer contends the physicians were provided a copy of the proposed assignment agreement and said the physicians said they would quit rather than sign the agreement. Available correspondence indicates that, as of early April, the issue of termination and physicians' obligations if they failed to fulfill their minimum 3-year requirements had surfaced, apparently in the context of discussions about the proposed assignment agreement and eligibility of "moonlighting."

The employees' attorney confirmed contacts by the employees with respect to the potential contract revisions and noted the physicians were concerned about the proposed changes. No employment agreement changes or assignment agreements were finalized.

Work Schedules, Locations, and Workload

The J-1 Visa Waivers were recommended by State and ARC officials based on full-time service at offices in Duquesne and McKeesport, Pennsylvania. Due to limited workload at these sites, schedules and locations were adjusted during the approximately 3-month employment period. Discussion indicated that, for approximately the first 2 months, the J-1 physicians performed service at the New Kensington, Pennsylvania office of the employer two afternoons per week. During the last month of employment, the schedule at New Kensington was reduced to one afternoon per week, partially due to increased workload at the McKeesport office. The physicians served at New Kensington on different afternoons, and the parties estimated that 10-17 patients were seen during the afternoon practice at New Kensington. It was noted that, when the J-1 physician from McKeesport served at New Kensington, the J-1 physician assigned to Duquesne covered the McKeesport office.

There was substantial disagreement between the employer and employees with respect to the extent of on-site practice time contributed by the J-1 physician assigned to Duquesne. The employer and employer's office staff noted difficulties with contacting the J-1 physician at Duquesne except when appointments were scheduled and cited the need to contact the physician by cell phone as an indication of limited on-site service.

The J-1 physicians said that the physician assigned to Duquesne was on-site full-time except when at New Kensington or McKeesport and cited additional activities such as establishing a website for the employer as an activity undertaken to offset the boredom created by few patients. The J-1 physician assigned to Duquesne said he made about 100 house calls per month after normal work hours or on weekends and his large volume of cell phone activity was primarily related to patient contacts. Also, he said he had worked one day in April for a local hospital after it appeared his employment might be terminated.

Our limited attempts to better identify the extent of on-site service at the Duquesne office were unproductive. Another tenant at the location was not able to provide specific information on the

extent of office occupancy; and there was internal disagreement as to whether the telephone at the Duquesne office was automatically cycled to the McKeesport office, which, if applicable, would have created an appearance that the Duquesne office was often not occupied.

Patient workload at the McKeesport and Duquesne offices was limited, although the parties indicated that the McKeesport office workload was increasing and had reached about 10-12 patients daily near the end of April 2000. The Duquesne workload remained very low, and schedules indicated approximately 52 patients during the 3½ months it was open, or less than one per day.

The J-1 physicians noted that they had been active in the community in order to try to increase workload and that open houses sponsored by a local hospital were scheduled for May. The employer said the open houses were scheduled before employment ended, and the physicians canceled them.

Letters Dated May 1, 2000

Two letters pertaining to services of the J-1 physicians were signed by the employer. One letter was addressed to an official at UPMC McKeesport, and the other had no addressee. These letters, due to their content, became key documents pertaining to the overall situation and disputes between employer and employees.

In essence, the two-paragraph letters, which were prepared by one of the J-1 physicians, are noted as written for the J-1 physicians and state the physicians had worked very hard, added almost 100 new patients, did house calls when needed, and admitted almost 30 patients to hospitals. The second paragraph states that the employer had financial difficulties and cannot pay the J-1 physicians or run the McKeesport or Duquesne offices. The closing sentences state that the physicians are professionally competent and include a statement that with your financial help we will be able to help them.

Although the distribution, if any, of these letters was unclear, the primary dispute between the parties pertained to the intention of the letters and how the employer's signature was obtained. The J-1 physicians contend the letters are clear evidence of the employer's financial difficulties and that the letters were intended to obtain some sort of financial backing from UPMC McKeesport as well as increased patient referrals from local hospitals.

The employer contends that the letters were intended to obtain support for the Duquesne and McKeesport offices but no financial assistance was being requested. The employer strongly stated that the letters were thrust at her while she was seeing patients, and she signed them without reading the contents since she believe they contained only information that would encourage recipients to support the Duquesne and McKeesport offices. She said she would not have signed the letters if she was aware of the references to the practice's financial condition and that these references were false. She noted she confronted the J-1 physicians about the language and attempted to notify any recipients of the letters, e.g., UPMC McKeesport, that references to financial difficulties were false. The employer believed that the letters were constructed to indicate financial difficulties to better enable the J-1 physicians to pursue other position opportunities that would provide higher compensation.

Additional Background

As background, the employer noted \$106,387 in expenses in connection with the establishment of the Duquesne office and expansion of activities to include primary care at McKeesport. The expenses related to J-1 physicians' salaries; equipment costs, including a 24-month equipment lease at \$1,524 per month; furniture; supplies; miscellaneous; and the \$7,400 considered outstanding loans to the J-1 physicians.


Offsets in terms of revenue from billings were not obtained, but there was a large discrepancy between the employer and the employees about the amount of billings that were generated by the J-1 physicians. For example, the J-1 physicians estimated monthly billings from all sources, e.g., visits to offices, house calls, admissions to hospitals, and service at New Kensington, as about \$25,000 per month. The employer estimated total billings by the two physicians during their employment as about \$10-15 thousand and noted that reimbursement rates for screening activities performed at New Kensington by the J-1 physicians were very low.

With respect to other expenses, such as medical insurance, equipment, and supplies, there were disagreements about whether the employees or employer had paid the expenses and/or been reimbursed. For example, the employer said she paid the J-1 physicians for expenses they incurred based on good faith and did not always obtain receipts for the purchases. The employees said they always provided a copy of the receipts to the employer. A specific disagreement was noted with respect to payment of medical insurance. The J-1 physicians said one physician paid her own insurance and was not reimbursed by the employer, while the employer said she paid for the medical insurance of both physicians and provided some billings and checks as support of payments.

We did not attempt to reconcile expenses, payments, and contractual liabilities since these are issues for the parties themselves.

CONCLUSION AND RECOMMENDATION

The absence of documentary support for oral discussions and claimed agreements does not permit conclusive determinations about the reasons for the ending of employment nor the other primary issues of disagreement between the employer and employees. On a programmatic basis, the limited workload generated, especially at the Duquesne location, appears to have contributed significantly to the resulting situation that culminated in the ending of employment by two J-1 physicians. Since the J-1 physicians apparently accepted a position outside of the Appalachian Region, the appropriate administering agency (USDA) should be notified so that determinations with respect to the eligibility of the new location and employer and the propriety of extending the J-1 Visa Waiver period to account for the period of unemployment can be made.


Hubert N. Sparks
Inspector General