



February 18, 1997

MEMORANDUM FOR       The Federal Co-Chairman  
                                  ARC General Counsel

SUBJECT:                   Report on J-1 Visa Waiver Program  
                                  McKee Medical Clinic, McKee, Kentucky

The attached report summarizes information with respect to compliance with J-1 program provisions by two physicians sponsored by the Director of the McKee Medical Clinic. A review was initiated based on concerns that the physicians, who have subspecialties in cardiology, were not practicing 40 hours of primary care per week in a HPSA.

As of November 1, 1996, ARC and the state of Kentucky were provided work schedules indicating the J-1 physicians were assigned 40 hours of primary care work at local clinics in HPSAs. If this schedule is maintained, the physicians' service during the remaining year of the J-1 waiver period should be in compliance with program requirements. During our unannounced on-site visits in December 1996 and January 1997, we located the physicians at assigned locations.

However, questions remain about the extent of service and type of practice for the first year of the J-1 waiver period and ongoing conflicts between clinic schedules and the performance of cardiology procedures at local hospitals. For example, the president of the subcontracting firm noted that the J-1s did not provide primary care service between August 1995 and March 1996. This case is complicated because the J-1 sponsor, McKee Medical Center, did not provide initial work for the physicians but subcontracted their services to a medical provider specializing in cardiology services. Subsequent to termination of the subcontract, legal action was filed by the subcontractor against the J-1 sponsor, J-1 physicians, and other parties, with the subcontractor alleging attempts by the parties to hurt his business. This litigation has not been settled. Although current work schedules indicate the potential for full compliance, the situation is complicated further because one of the J-1s has opened a cardiology practice at a non-HPSA location for which he claims to provide service in addition to his J-1 responsibilities.

We are recommending that:

--The J-1s and J-1 sponsor ensure full compliance with the current work schedules.

--Kentucky officials closely monitor compliance with the work schedules and determine the extent to which service performed for the subcontractor between November 1995 and July 1996 did not satisfy J-1 program requirements. Determinations that this service did not or only partially qualified as primary care should result in extensions of J-1 waiver periods.

--The J-1s and J-1 sponsors should timely notify ARC and Kentucky of schedule changes or problems.

It is anticipated that, regardless of actions or circumstances, the contentious nature of the on-going situation, including the practice of cardiology in a non-HPSA by one J-1, will probably result in continued concerns about this situation being brought to the attention of ARC.

Hubert N. Sparks  
Inspector General

Attachment

## REPORT OF REVIEW

### J-1 VISA WAIVER PROGRAM McKEE MEDICAL CLINIC McKEE, KENTUCKY

OIG Report 97-33(H)  
February 18, 1997

#### BACKGROUND

The review was undertaken in accordance with our responsibilities to evaluate compliance with J-1 Visa Waiver program requirements. This report summarizes information with respect to compliance with J-1 Visa Waiver program provisions by two physicians sponsored by the McKee Medical Clinic, McKee, Kentucky, hereinafter referred to as the J-1 sponsor or PSC.

The J-1 Visa Waiver program provides a waiver of foreign physicians' responsibilities to return to their home country after completion of medical training in the United States. The waiver can be granted for various reasons, including the need for health care services in medically underserved areas in the United States. The Appalachian Regional Commission (ARC) participates as a Federal entity sponsor in the Appalachian Region and, based on supporting information submitted by physicians requesting a waiver, prospective employers, and the applicable state health agency, recommends, where appropriate, approval of waivers to the United States Information Agency and Immigration and Naturalization Service (INS). Current ARC policies and procedures are that the J-1 physician will serve 3 years in a Health Professional Shortage Area (HPSA) in the Appalachian Region and will practice 40 hours of primary care per week. There is no prohibition on J-1 physicians working extra hours or practicing subspecialties after fulfilling primary care requirements. Also, transfers to other HPSAs in Appalachia are permitted. Prior to August 1995, ARC policies provided for a 2 year waiver period. This report deals with J-1 physicians subject to the 2-year waiver period based on submission of waiver applications prior to August 1995.

ARC policies note that an employer's failure to comply in good faith with the waiver policy may be considered in the evaluation of other applications involving the same employer. Also, the J-1 Visa Waiver Policy Affidavit and Agreement signed by the physician includes an acknowledgment that willful failure to comply with terms of the agreement would result in ARC notifying INS and recommending that deportation proceedings be instituted against the physician. This form also provided that service shall commence not later than 6 months after receipt of notification of approval by both the INS and the US Department of Labor.

Primary responsibilities for reviewing J-1 waiver requests, including supporting documentation, justifications of need, program oversight, and reporting, have been delegated to state health agencies; but ARC retains the authority to act on waiver requests and to ensure compliance with program objectives and requirements.

ARC provides for submission of a Verification of Employment Form, formerly the J-1 Physician Reporting Form, identifying the initial work location and type of medical practice. This form

should be signed by the J-1 physician and the employer. Also, a Transfer Notification Form, completed by the J-1 physician and the employer, should be provided to ARC and the applicable state coordinating office when J-1 physician assignments are changed. Transfers within HPSAs to accommodate patient workload are permissible but should be approved by the state agency.

The originating sponsor had not opened the McKee Medical Clinic at this location at the time the J-1 applications were processed and currently operates outpatient clinics at several locations-- McKee, Monticello, and East Bernstadt, Kentucky.

McKee Medical Center sponsored two J-1 physicians in 1995; and as of our review, the two physicians were employed by the sponsor. In one case, the physician was sponsored for the McKee Medical Clinic; and in the other case, the physician was sponsored for the Owsley County Primary Care Center in Booneville, Kentucky. The J-1 Visa Waiver applications and the ARC J-1 Visa Waiver Policy Affidavit and Agreement were submitted in March and May 1995; and approvals by the INS, which generally triggers the waiver period, were received on July 21 and November 27, 1995. Although the two J-1 physicians were apparently in the area prior to November 1995, we were informed that both physicians became fully eligible to practice medicine under waiver provisions in November 1995. Both J-1 physicians have a subspecialty in cardiology and perform some cardiology-related procedures at local hospitals.

The overall issue of compliance with J-1 Visa Waiver requirements was and is impacted by the initial assignments of the J-1 physicians to work for a nonsponsoring organization, The Heart Doctors, PSC, hereinafter referred to as the subcontractor, and continuing litigation with respect to these assignments. Although our objective is to evaluate compliance with J-1 Visa Waiver program requirements, an understanding of the general conditions and activities is necessary for reaching conclusions and providing recommendations.

The J-1 physicians are generally noted as the J-1 physicians or physicians A and B.

## OBJECTIVE

To determine compliance with ARC J-1 Visa Waiver program requirements that the J-1 physicians perform primary care 40 hours weekly for 2 years in an Appalachian HPSA.

## RESULTS

Based on available information and telephonic and on-site discussions with various parties, including the J-1 physicians and J-1 sponsor/employer, we concluded that the physicians and the J-1 sponsor have provided work schedules reflecting 40 hours of primary care service per week as of November 1, 1996. These work schedules, copies attached, reflect current assignments and, if fully implemented, will satisfy program requirements until the end of the respective waiver periods. Also, our unannounced on-site contacts and visits in December 1996 and January 1997, disclosed that the J-1 physicians were providing service at scheduled locations at the time of our contacts.

However, prior use and activity of the J-1 physicians raises questions about the extent to which service prior to July 1996 met program requirements. Also, records indicate some ongoing conflicts between clinic schedules and performance of cardiology procedures at local hospitals.

Also, there is a need for close monitoring of work schedule implementation to ensure full compliance with program requirements and reduce or avoid concerns about the extent of program compliance. This is particularly applicable in one case where the J-1 physician resides in a non-HPSA and has established a cardiology practice in the non-HPSA that must be conducted separate from his HPSA primary care J-1 responsibilities.

Further, reports to ARC and the state of Kentucky with respect to J-1 use should be completed timely. There was no indication at ARC that the initial Verification of Employment forms, due around November 1995, were submitted. The Transfer Notification forms, received by ARC November 4, 1996, reflected assignment changes as of November 1, 1996, some of which were apparently initiated around April 1996.

## DETAILS

### --Application and Supporting Information

The sponsor's supporting letters, dated March 23 and May 23, 1995, reflect that the J-1 physicians will be practicing at medical clinics in McKee and Booneville, Kentucky, respectively. State agency and ARC recommendations for approval contain similar information and related justifications about the need for physicians at these locations.

The completed J-1 Visa Waiver Policy Affidavit and Agreement forms that reflect the physicians' certification to provide a minimum of 40 hours per week of primary medical care service within a USPHS designated HPSA or state-designated medically underserved area located in the ARC jurisdiction were signed March 13 and May 9, 1995, respectively.

The Transfer Notification forms, dated November 1, 1996, contain information about the J-1 physicians' work locations and type of practice. The Transfer Notification forms included copies of work schedules, as of November 1996, for the two J-1 physicians; and these are attached as Exhibits 1 and 2. Some of the information noted on these forms apparently pertained to work assignments made as of April 1996.

The work schedules note that the J-1 physicians are scheduled for 40 hours of primary care work at two or three outpatient clinics. The start date for work at the clinics was not identified on the forms, and this information has been requested of the employer.

The INS J-1 Visa Waiver approvals were dated July 21 and November 27, 1995, respectively.

At the time of the submission of forms for the J-1 Visa Waivers, both applicants cited on a Data Sheet a need to refine their acquired skills using technology not available in their home country as a reason for requesting a waiver of the 2-year home country residence requirement.

## --Chronology of Events

Discussions and record review indicating the chronology of events pertaining to the use of J-1 physicians between July 1995 and November 1996 are summarized below.

According to a court filing of August 16, 1996, the two J-1 physicians had signed employment agreements with the subcontractor on August 28, 1995, to provide cardiology services. As previously noted, the INS approved a J-1 Visa Waiver for physician A on July 21, 1995, and for physician B on November 27, 1995.

The J-1 sponsor said that, when the J-1 Visa Waivers were approved, he did not have sufficient work for the J-1 physicians at the locations for which the J-1 Visa Waiver requests were submitted. In one case, the McKee Medical Clinic had not opened. In the other case, the sponsor noted that a medical provider competitor had staffed the Owsley County Primary Care Center, Booneville, Kentucky; and he did not believe there was sufficient workload to justify another physician at that location.

The individual contracts between the two J-1 physicians and subcontractor was superseded when the sponsor entered into an agreement on December 12, 1995, with the subcontractor, wherein , the J-1 sponsor would provide two physicians to assist with a cardiology practice in London, Kentucky and at area hospitals. The two J-1 physicians were the staff provided, and the agreement noted that nothing abrogated J-1 physician responsibilities to practice according to the ARC J-1 Visa Waiver policy, including the practice of primary care. The agreement also noted that the subcontractor operated a cardiology practice in London, Kentucky, (designated HPSA) and desired the J-1 sponsor to furnish cardiologists to provide services to its patients and that the J-1 sponsor had agreed to furnish cardiologists to provide cardiology services to patients of the subcontractor. The agreement period was for 2 years, January 3, 1996 to January 3, 1998; cardiology services to patients were to be provided in the subcontractor's offices for a total of 3½ days per cardiologist per week. A handwritten covenant not to compete within a radius of 50 miles of any of the parties' offices for a period of 6 months from termination of the agreement by the sponsor's employees was included in the agreement. The not-to-compete clause was noted as applying to the practice of cardiology medicine in any form, including invasive and non-invasive; and cardiology was defined as "provision of professional services (diagnostic and therapeutic) with respect to cardiovascular disease.

The agreement between the J-1 sponsor and subcontractor also contained the following clause: "The Agreement does not supersede or change any of the agreements made for PSC employees to practice according to the Appalachian Regional Commission J-1 Visa policy and it is understood that PSC employees shall provide primary care."

Since the sponsor did not have work available for the J-1 physicians at the outset of their waiver period, the two J-1 physicians noted that they worked full time for the subcontractor until the end of March 1996. London, Kentucky, is a designated HPSA although it was not the physician location noted in requests for J-1 waivers.

About March 1996, various circumstances, including the opening of the McKee Medical Clinic on March 27, 1996, by the J-1 sponsor and differences between the J-1 physicians and the subcontractor, changed the employment circumstances. The J-1 physicians and the J-1 sponsor indicated that the provision of medical service became split between the McKee Medical Clinic and subcontractor offices until the subcontractor terminated the contract with the J-1 sponsor in late July 1996. At that time, the J-1 physicians became dependent on the J-1 sponsor for primary care work assignments. It appeared that medical provider activities varied for several months after July 1996, pending the opening by the J-1 sponsor of additional outpatient clinics at East Bernstadt on September 1, 1996, and Monticello, Kentucky in early November 1996.

As of November 1, 1996, the J-1 sponsor provided work schedules that indicated the J-1 physicians would provide 40 hours of primary care at HPSA clinics.

--Eligibility of J-1 Service Between August 1995 and July 1996

Discussion with the J-1 physicians about services provided when assigned to the subcontractor indicated that the services included outpatient care and performance of procedures at area hospitals, e.g., catheterizations. In the J-1 physicians' opinion, the outpatient services included primary care as related to cardiology patient diagnosis and therapy and other services considered to be associated with internal medicine practice. The physicians believed they had generally met the ARC J-1 Visa Waiver requirements while working for the subcontractor, although they acknowledged the services rendered were not the full range of services normally associated with primary care practice.

With respect to the practice of cardiology, especially work at area hospitals and performance of catheterization procedures, the J-1 physicians said that this work was almost exclusively conducted in the mornings with 2 to 5 procedures per week being a general average. They said this work, which consumed about 1 hour per patient, did not interfere with their primary care duties since the primary care duties at area outpatient clinics included evening work as noted on the attached schedules. Also, they did not believe on-call cardiology responsibilities at area hospitals interfered with meeting ARC J-1 Visa Waiver program requirements since most on-call responsibilities were related to night hours.

However, the physician president of the subcontracting medical provider organization noted that he did not believe primary care medical services were provided by the J-1 physicians while employed by the subcontractor between August 1995 and July 1996.

He stated that one of the J-1 physicians worked mainly in the subcontractor's Somerset, Kentucky (a non-HPSA) office and performed only cardiology services. He also noted that the other J-1 physician worked mainly in the subcontractor's London, Kentucky office seeing cardiology patients and performing cardiac catheterizations and also did some work at the subcontractor's clinic in Manchester, Kentucky. He noted that this J-1 physician occasionally saw a patient as a primary care service and these patients were mostly employees of the subcontractor. He reiterated that the two J-1 physicians were not involved in any, or very little, primary care work between August 1995 and March 1996. After March 1996, he reported that the two J-1 physicians worked

1½ to 2 days per week at the McKee Medical Clinic, McKee, Kentucky, for the J-1 sponsor and continued to perform primarily cardiology services for the subcontractor until terminated by the subcontractor in July 1996.

The subcontractor further noted that his firm was never responsible to see that the J-1 physicians performed primary care service while employed by the subcontractor.

As noted above, a December 12, 1995 agreement between the subcontractor and the J-1 sponsor, wherein the J-1 sponsor would provide physicians to the subcontractor to provide cardiology services to subcontractor patients, contains the following clause: "This Agreement does not supersede or change any of the agreements made for PSC employees to practice according to the Appalachian Regional Commission J-1 Visa policy and it is understood that PSC employees shall provide primary care service."

PSC refers to the J-1 sponsor, and the agreement was signed by the presidents of the J-1 sponsor and the subcontractor and by the two J-1 physicians. Therefore, it appears that the involved parties were knowledgeable of the ARC J-1 Visa Waiver policies requiring the practice of primary care and that primary care was intended to be practiced.

#### --Eligibility of Service April Through August 1996

Based on available information, it appeared the two J-1 physicians provided 1½ to 2 days of primary care service during the period April through July 1996. As previously noted, the subcontractor noted that the two J-1 physicians provided 1 ½ to 2 days per week of primary care service for the J-1 sponsor at the McKee Medical Clinic after this clinic opened March 27, 1996, and continued to provide primarily cardiology services to the subcontractor for the remainder of the week. This schedule continued until late July 1996 when the subcontractor terminated the two J-1 physicians. After July 1996, the J-1 physicians worked for the J-1 sponsor at the McKee Medical, East Bernstadt, and Monticello clinics, although, as previously noted, physician A also opened an independent cardiology practice in Somerset, Kentucky, and both physicians continued to perform cardiology procedures and have on-call duties at local hospitals.

With respect to practice between April and August 1996, the J-1 sponsor noted that the two J-1 physicians worked at the McKee Medical Clinic the same hours as represented on the November 1, 1996 work schedules provided to ARC. These schedules reflect that physician A is assigned to the McKee Medical Clinic 14 hours per week (9 hours on Wednesday and 5 hours on Thursday) and physician B is assigned to the clinic 16 hours per week (6 hours on Thursday and 10 hours on Friday).

Thus, the J-1 physicians also did not appear to meet J-1 service requirements between April and August 1996. With the opening of the East Bernstadt Clinic on September 1, 1996, the number of assigned primary care hours increased to approximately 40 per week.

#### --Subspecialty Related Activities



The two J-1 physicians noted that they performed some cardiology procedures, especially about 2 to 5 catheterizations per week at local area hospitals and had some on-call responsibilities at these hospitals. Available information indicated that J-1 physician A had performed about 103 catheterizations at the Lake Cumberland Regional Hospital in Somerset, Kentucky (a non-HPSA), during 1996 and J-1 physician B had performed about 110 catheterizations in 1996 at two area hospitals. About 101 of the procedures were performed at Marymount Hospital in London, Kentucky; and 9 procedures were performed at Baptist Regional Medical Center in Corbin, Kentucky (both in a HPSA). Some differences were noted between statistics provided by the hospitals and the J-1 physicians, and the higher of the two submissions are used in this report.

An analysis of dates, days, and times for the catheterizations indicated that most of the procedures were performed in the morning and, as such, would not interfere with the clinic schedules provided as of November 1, 1996. However, due to the absence of clinic schedules prior to November 1, 1996, we could not determine the extent of overlap between subspecialty and primary care practice between August 1995 and November 1996. It should be emphasized, however, that the subcontractor, as noted above, reported that the two J-1 physicians did not perform primary care while in his employ full time from August 1995 through March 1996.

A comparison of catheterizations performed in November 1996 with clinic work schedules did reflect some apparent conflicts. For example, physician A, practicing cardiology in Somerset, Kentucky, appeared to have a conflict with his clinic schedule on 2 of 11 days for which catheterizations were performed (11/12 and 11/21). Physician B appeared to have a conflict on 5 of 8 days on which catheterizations were performed (11/12, 11/13, 11/14, 11/18, and 11/22).

Also, the number of catheterizations reported as being performed by the two J-1 physicians increased substantially during the end of 1996. For example, of the 101 procedures noted for physician B in London, Kentucky, 50 or 50 percent were performed in the last 4 months of 1996, or an average of 12½ per month. This may contribute to the apparent conflicts with clinic schedules noted in November 1996.

Similarly, the number of procedures performed by physician A also increased during the last 4 months of 1996, with a high of 18 catheterizations in November 1996.

The two J-1 physicians also had on-call responsibilities at local hospitals. They said, and the hospitals confirmed, that the on-call responsibilities were primarily for night hours.

The J-1 physicians said that they were complying with the work schedules submitted as of November 1, 1996; and our confirming phone calls and unannounced visits during the week of December 9, 1996, and January , 1997, located the two J-1 physicians at the scheduled sites. The J-1 sponsor said he was very aware of the ARC J-1 Visa Waiver provisions and intended to ensure compliance with program provisions. The sponsor noted that workload at the recently opened Monticello, Kentucky, clinic at the local hospital could not yet be effectively assessed; but he intended to monitor this operation closely to determine its viability. The two J-1 physicians also said they were aware of program requirements and intended to comply fully.

The one J-1 physician (A) who also maintained an office in Somerset, Kentucky, (a non-HPSA) said that he primarily practiced cardiology at this location. He said he was at the Somerset office on Monday and Friday from around 11:00 am to 3:00 pm and sometimes on Tuesday morning, and this did not conflict with his primary care work. These hours result in a slight overlap with scheduled primary care hours. He also said his cardiology procedures were performed at the local hospital on Monday, Tuesday, and Friday mornings. He further noted he had hired a physician to assist him with this practice.

On October 21, 1996, this J-1 physician testified before the Kentucky Cabinet for Health Services Certificate of Need office in connection with a request by Lake Cumberland Regional Hospital, Somerset, Kentucky, for approval of an open heart surgery unit. The J-1 physician supported the request and, in his testimony, stated he had been in Somerset since October 1995; practiced family care in McKee, Jackson County, 2 to 3 days a week (Wednesdays, Thursdays, and some Saturdays) with the remainder of his time primarily used for practicing cardiology in Somerset, Kentucky. The J-1 physician stated his Somerset office hours were mainly on Monday, Tuesday, and Friday; and 70- to 80-percent of his Somerset practice was cardiology, versus internal medicine.

During our interview with this J-1 physician, he said the above testimony was incomplete because it did not specify that his office hours were half days at Somerset on Mondays, some Tuesdays, and Fridays and he performed primary care at clinics in accordance with his attached work schedule. The work schedule also notes that the J-1 physician is assigned to a clinic in East Bernstadt, Kentucky, on Mondays and Fridays from 3:00 to 8:00 pm and at Monticello, Kentucky on Tuesdays from 1:00 to 7:00 pm. These clinics are located in a HPSA.

In a subsequent conversation, the J-1 physician said that the October 21, 1996 testimony was incorrect as respects work at the Jackson County primary care clinic on Saturdays. He said the Saturday work pertained to work in Laurel County and primarily involved visiting patients at a London, Kentucky, hospital that were admitted based on visits to primary care clinics.

Although the current J-1 physician schedule reflects 40 hours per week of primary care service at HPSA clinics, the noted testimony and our review of information on cardiology procedures raised potential conflicts and reflected a need for followup to ensure full compliance with ARC J-1 Visa Waiver provisions. Also, the establishment of a private cardiology practice in a non-HPSA increases opportunities for continuing concerns to be raised about compliance with program requirements.

The second J-1 physician (B) has consistently practiced in a HPSA although not entirely at the location for which ARC approval was requested. Thus, a primary question impacting this physician is the type of practices to date. He essentially confirmed information noted above, indicating that he performed cardiology procedures during mornings he was not scheduled for clinic work and that almost all of his procedures were performed at a London, Kentucky, hospital. He did not believe this work restricted his ability to comply with J-1 Visa Waiver requirements.

#### --Reporting

ARC, in its package of information to J-1 physicians and sponsors, includes a Verification of Employment form, formerly a J-1 Physician Reporting Form. This form is intended to be completed by the J-1 physician and sponsor/employer at the start of employment. Also, changes to work schedules or practices should be submitted to the applicable state agency on a Transfer Notification form when J-1 physicians are assigned to locations or practices different from those noted in submissions for J-1 Visa Waivers.

ARC files did not reflect receipt of the initial Verification of Employment forms. Transfer Notification forms for the two J-1 physicians were received at ARC on November 4, 1996, and reflected work scheduling as of November 1, 1996. Also, these forms indicated that some of the reassignments noted were effective around April 1, 1996.

Although we understand from discussions that Kentucky officials had been notified about initial problems with respect to use of the J-1 physicians at the initially proposed sites, the absence of timely reporting of changes increases the chances for questions about program compliance. Also, while transfers within HPSAs to accommodate patient workload are generally approved by state and ARC officials, such actions should be identified and discussed in advance. For example, the shifting of the J-1 physicians from the sponsored locations of McKee and Booneville, Kentucky, to the London, Kentucky, location of the subcontractor should have included formal notification to Kentucky and ARC.

#### --Related Events

Although our objective is to ensure compliance with J-1 Visa Waiver program requirements, we also noted litigation between parties involved with the ARC J-1 program that could have some impact on the J-1 program and the J-1 issues raised in this report because the litigation issues relate to agreements and service offered as satisfying J-1 Visa Waiver program requirements. In summary, the subcontractor filed litigation against various parties, including the two J-1 physicians and the J-1 sponsor, alleging various practices intended to harm the subcontractor. One allegation involved not-to-compete covenants in the agreements for services between the J-1 sponsor, J-1 physicians, and subcontractor. As of our review, the litigation had not been resolved. The litigation does not directly involve clauses, agreements, or policies and procedures with respect to the ARC program or contracts between the J-1 physicians and the J-1 sponsor. ARC does not support not-to-compete clauses in contracts between J-1 physicians and J-1 sponsors with respect to service in the local area after completion of the J-1 Visa Waiver period.

## --Review Comments

Our review to date indicates that the J-1 physicians presently have work schedules that comply with ARC J-1 Visa Waiver program policies and procedures but that limited primary care service was provided between the dates of INS approval of J-1 Visa Waivers and the assignment to sponsor's clinics as of September 1996. Thus, there is a need to determine the propriety of extending the J-1 Visa Waiver period to offset ineligible service provided while working for the subcontractor and additional slippage in meeting primary care requirements due to delayed openings of primary care clinic facilities.

With respect to service with the subcontractor, we recognize J-1 physician comments that primary care was provided in connection with this work. However, the subcontractor, who is in litigation with the J-1 physicians and J-1 sponsor, disagrees that primary care service was provided while the J-1 physicians worked for the subcontractor. Also, the name of the facility would, in our opinion, provide a connotation to the general public that would restrict the public's understanding that full primary care services would be rendered and the language in the agreement with the subcontractor raised questions about intended services.

Also, the establishment of a private subspecialty practice by one J-1 physician at a non-HPSA location can generate inquiries or concerns with respect to the operation of the J-1 program regardless of actual work scheduling and performance. Further, timely notification of state and ARC officials about problems and changes, regarding initial change of plans for two J-1 physicians and subsequent revised work schedules, could have alleviated some of the issues raised in this review.

## RECOMMENDATIONS

1. We recommend that the McKee Medical Clinic Director and the two J-1 physicians ensure ARC J-1 Visa Waiver program requirements are fully implemented for the J-1 waiver period.
2. We recommend that the Kentucky Program Coordinator closely monitor program compliance and determine the extent to which the J-1 Visa Waiver period should be extended to compensate for ineligible cardiology services performed prior to August 1996. Time not deemed eligible should be incorporated in a negotiated extension of the J-1 waiver period.
3. The J-1 sponsor, McKee Medical Clinic, and the J-1 physicians should promptly notify state and ARC officials about changed work schedules.

Hubert N. Sparks

Inspector General

Attachments

Exhibits 1-2



February 19, 1997

MEMORANDUM FOR      ARC GENERAL COUNSEL

SUBJECT:                      Letter Pertaining to Report 97-33(H), McKee Medical Clinic,  
   McKee, Kentucky

The attached letter, which is referred to in the report, is provided in its entirety because it covers the key issue of the type of medical service provided by Drs. Anand and Thannoli during the period August 1995 through July 1996.

The J-1 physicians believe that some of the medical service provided while working for The Heart Doctors should qualify as primary care.

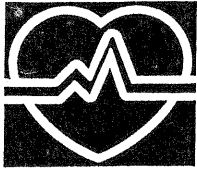
Despite litigation and a contentious atmosphere between the parties and my disagreement with the statement in the letter that The Heart Doctors, PSC was never responsible to see that the J-1 physicians performed primary care service, the statements by The Heart Doctors, PSC president, with respect to the extent of cardiology services performed, including confirmed practice at a non-HPSA, must be fully considered.

A handwritten signature in cursive script that reads "Hubert N. Sparks".

Hubert N. Sparks  
Inspector General

Attachment

cc:      Don Buecker



S. CHATTERJEE, M.D.  
B. DESAI, M.D.

P. REDDY, M.D.  
A. MANDVIWALA, M.D.

---

## THE HEART DOCTORS, P.S.C.

January 28, 1997

Mr. Hubert N. Sparks, Inspector General  
Appalachian Regional Commission  
1666 Connecticut Avenue, NW  
Washington, D.C. 20235

RE: Drs. Anand and Thannoli

Dear Mr. Sparks:

I am very sorry to have been delayed in writing a response to your letter dated December 19th, 1996. Drs. Anand and Thannoli joined The Heart Doctors, P.S.C. towards the end of August of 1995. In fact, Dr. Anand had started working with The Heart Doctors prior to the agreement dated August 28, 1995. He was, at that time, working as an independent contractor with benefits of health insurance and malpractice insurance being paid by us. The salary was paid directly by us to Dr. Anand. Since that time until March of 1996, Drs. Anand and Thannoli were only in The Heart Doctors' offices. Dr. Anand worked mainly in our office in London seeing cardiology patients and performing cardiac catheterizations and also went to our clinic in Manchester, Kentucky. Dr. Thannoli, who started after the August 28th, 1995 agreement, worked mainly in our Somerset office and rarely in our London office. He also performed only cardiology services. After the agreement between myself and Dr. P. G. Raithatha in December of 1995, payments were made to P.G. Raithatha, P.S.C. by whom Doctors Anand and Thannoli were employed. However, they were not involved in any primary care work prior to March of 1996. After March 1996, Dr. Thannoli worked Mondays and Tuesdays in Somerset doing pure cardiology. On Wednesdays, he would make rounds in the morning at Somerset and go to McKee and spend the rest of the day at McKee at Dr. Raithatha's office. On Thursdays, he would do the same thing. However, his time there would end at noontime (at Dr. Raithatha's office) after which he came back to London and spent the rest of the day at our London office doing cardiology work. On Friday, he would stay at Somerset doing cardiology. Dr. Anand, spent Monday, Tuesday and Wednesday of a typical work week doing Manchester Clinics on some mornings and spending the rest of the time at the London facility doing pure cardiology. Thursday mornings, he spent doing cardiology

---

MEDICAL ARTS BLDG. • SUITE 204  
202 W. 7TH STREET  
LONDON, KY 40741  
(606) 864-4040  
(800) 775-9177  
FAX 864-3500

FALLS ROAD PLAZA • #4  
1707 CUMBERLAND FALLS HGWY.  
CORBIN, KY 40701  
(606) 523-9010  
(800) 853-9010  
FAX 528-0028

MEDICAL ARTS BUILDING  
103 MAIN STREET  
MANCHESTER, KY 40962  
(606) 598-6647  
FAX 598-1780

402 BOGLE STREET • SUITE 2  
SOMERSET, KY 42501  
(606) 679-7785  
(800) 495-7785  
FAX 677-1920

also and left for McKee on Thursday afternoon and would spend the Friday of the work week at Dr. Raithatha's office.

As far as their work in our clinic/office appointments, Dr. Thannoli had office almost every day that he was there and also performed cardiac catheterizations at the hospital in Somerset. Dr. Anand, on the other hand, was in charge of the clinic at Manchester working with another physician. He also had the clinics with me at our London office and at our East Bernstadt, performed cardiac procedures and took cardiology call at the London and Corbin hospitals throughout this period. Dr. Thannoli took cardiology call at Somerset Hospital for most of his stay during this time.

After March of 1996 when Drs. Anand and Thannoli first started going to Dr. Raithatha's McKee Clinic, they still continued to take cardiology call and perform cardiac procedures during the time period that they were assigned to us. During Dr. Anand's stay with us, he occasionally saw a patient as a primary care service. The total number of these patients are somewhere in the range of 10 to 15 and almost all of them were either employees of The Heart Doctors, P.S.C., or their relatives. As far as I know, Dr. Thannoli had not done any primary care while he was working with us. However, The Heart Doctors, P.S.C. was never responsible to see that they performed such service.

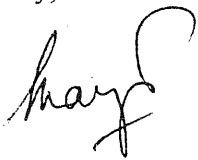
In summary, Drs. Anand and Thannoli did not perform any or very little primary care work between August of 1995 and March of 1996. During this period, they did purely cardiology work. Dr. Anand did see a few patients totaling about ten or so who were The Heart Doctors, P.S.C. employees for their primary care. Starting March of 1996, both of them started going to McKee Clinic for one and one-half days a week and as far as I am aware, that was the only primary care work that they performed until their services were dispensed with in July of 1996. They also, throughout the twelve months from August of 1995 to July of 1996, continued to take call for cardiology at Marymount Hospital in London and Baptist Regional Medical Center in Corbin (by Dr. Anand) and Lake Cumberland Hospital Somerset (by Dr. Thannoli). Should you have any further questions, please feel free to call me at (606) 864-4040 or write to me at my above address. I would also be glad to meet with you if you are in the area any time soon! I appreciate your consideration of this matter.



I understand that in addition to the information you have concerning Dr. Anand's cardiology practice in London, that Dr. Anand is frequently performing catheterizations in Corbin, Kentucky.

Thanking you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Satyabrata".

Satyabrata Chatterjee, M.D.