History of Residency Selection Issues in Podiatric Medicine

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Issues related to residency interview and selection processes have concerned the podiatric medical profession for nearly 20 years. This article presents a chronology and summary of efforts undertaken to address these problems, including a discussion of legal ramifications of residency approval requirements related to establishment of a uniform notification date and participation in a resident-matching service.

For nearly 20 years, the educational community within the podiatric medical profession has devoted considerable effort to identifying and attempting to resolve issues associated with the residency interview and selection processes. Of primary concern has been establishment of a uniform date on which residency applicants are notified of appointment and adherence of all residency programs to this date.

A related question has been whether all residency programs should participate in a resident matching service. The profession has sought to link compliance with the uniform notification date to the approval status of residency programs. The profession, therefore, has looked to its accrediting arm, the Council on Podiatric Medical Education (CPME), to incorporate this requirement within its standards for residency program approval. CPME has, in turn, been mindful of the antitrust liability associated with the residency approval requirements requested by the profession.

The educational community has developed proposals and plans to address issues related to non-compliance of residency programs with the uniform notification date and disruption of the fourth year of the professional degree program as students compete for residency positions. In addition, task forces and a blue ribbon panel have been appointed to develop solutions to these problems. The authors present a chronology of issues and events related to residency selection issues, synopses of reports and legal opinions developed during the past 8 years, and the perspective of CPME on these issues.

Chronology of Issues and Events Related to Residency Selection

August 1980. At the urging of the profession, students, and the American Association of Colleges of Podiatric Medicine (AACPM), CPME established a requirement that all institutions (regardless of participation in the Central Application Service for Podiatric Residencies [CASPR]) announce residency selections on the same date. The uniform notification date was to be established each year in accord with the CASPR match date set by the AACPM Council of Teaching Hospitals (COTH). This requirement appeared in CPME 320, Requirements for Approval of Residencies in Podiatric Medicine, from August 1980 until August 1992.

January 1981. CPME cited the first violations of the uniform notification date. Non-CASPR residency directors requested in the spring of 1981 that uniform notification be removed as a requirement for residency approval, arguing that the requirement infringed on institutional autonomy.

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June 1981. COTH modified its code of ethics to allow residency directors participating in CASPR to inform residency applicants of their general standing prior to the uniform notification date.

August 1981. CPME requested that the APMA House of Delegates (HOD) rescind the uniform notification date requirement. The HOD adopted the action to rescind.

August 1982. The American Podiatric Medical Students’ Association (APMSA) requested that the APMA HOD reinstate the uniform notification date to January 15 to curtail anxiety and confusion in the fourth year of podiatric medical college. The association argued that the fourth year would be more productive if selection decisions were completed on January 15. The HOD adopted the APMSA resolution for implementation in the 1984-85 training year.

Fall 1982. The residency selection process for the 1983-84 training year was conducted without a CASPR match or uniform notification date. The process was widely considered to be chaotic and difficult for the 1983 graduates.

March 1983. A task force organized by CPME considered problems related to the fourth year curriculum and the impact of the uniform notification date on non-CASPR programs. The task force included representatives from AACPM, APMSA, the APMA Board of Trustees, CASPR and non-CASPR residency programs, and CPME. The task force suggested that uniform notification be continued and that greater efforts be made to inform non-CASPR residency directors about CASPR and its benefits.

March 1984. The CASPR system was tested when the director of an approved residency requested that AACPM file a breach of contract suit against a resident who withdrew from a position matched through CASPR. AACPM elected not to pursue litigation, and the director withdrew the program from CASPR.

August 1984. The APMA HOD adopted a change in the uniform notification date to the last Monday in February. This change responded to Veterans Administration programs that could not commit to notifying residents by January 15, prior to allocation of federal funds. Before being called out of order, a resolution proposed that college enrollments be reduced to correlate with available residency positions. The Council on Postsecondary Accreditation informed CPME that such a policy might violate the colleges’ autonomy because residency selection was not within the control of the colleges. Other proposed resolutions included a separate notification date (December 1) for non-CASPR residency programs and modification of the training year to begin on October 1, with resident notification to be completed on June 1.

August 1986. The APMA HOD directed establishment of another task force to develop an integrated process for residency application and selection. It appears that this resolution was never implemented.

Fall 1986. COTH organized the Centralized Residency Interview Program (CRIP) for all residency programs.

August 1987. The APMA HOD adopted a resolution permitting a new uniform notification date each year depending on the needs of the educational community.

June 1988. AACPM sponsored the Task Force on CASPR and CRIP mandates. The task force included representatives from COTH, CPME, CASPR and non-CASPR residency programs, Veterans Administration residency programs, APMSA, and the American Podiatric Medical Postgraduate Association (APMPA).

October 1988. AACPM obtained a legal opinion from the law firm of Kominers, Fort & Schefler regarding the legality of residency approval requirements related to the uniform notification date and membership in CASPR.

January 1989. AACPM prepared the Preliminary Plan for the Restoration of a Stable Environment in the Fourth Year of Predoctoral Podiatric Medical Education.

June 1990. The AACPM Board of Directors approved the recommendation of COTH to discontinue the computer matching component of the CASPR program effective with the fall 1990 selection process for the 1991-92 training year. Reactions received by AACPM in August and September 1990 ranged from support to outrage that this decision was made without a survey of the podiatric medical educational community.

August 1990. An APMSA House of Delegates resolution called for CPME to mandate residency program participation in CASPR and to continue to adhere strictly to the uniform notification date requirement.

Fall 1990. Directors of numerous approved residency programs informed CPME of the decisions of their institutions to withdraw from the CASPR match and to state publicly that they were notifying residents of appointment prior to the 1991 uniform notification date. Other residency programs elected to notify prospective residents prior to the uniform notification date, although the directors of
these programs did not state publicly that they were doing so.

**February 1991.** CPME observed that the disorder of the fall 1990 residency selection process had adverse effects on the integrity of the process and the fourth year curriculum at the colleges of podiatric medicine. CPME responded by appointing the Blue Ribbon Panel on Residency Selection Issues and requesting of the educational community that a 6-month moratorium related to changes in the residency selection process be established from February to August 1991. The panel included representatives of CPME, the Joint Residency Review Committee, COTH, AACPM Council of Deans, AACPM Council of Student Affairs Officers, APMSA, APMPA, a residency program that did not participate in the 1991-92 CASPR match, APMA Board of Trustees, and an educational specialist.

**March 1991.** COTH requested that CPME consider modifying the uniform notification date to January 2 beginning in 1992. CPME adopted this change in August 1991.

**August 1991.** CPME adopted the *Report of the Blue Ribbon Panel on Residency Selection Issues*. CPME forwarded the report to all other organizations responsible for implementation of the panel’s recommendations (AACPM, APMSA, and APMPA). All organizations indicated their approval of the report and willingness to implement the panel’s recommendations.

CPME also adopted revisions to CPME 720, *Standards, Requirements and Guidelines for Continuing Education Programs in Podiatric Medicine*, recommended by the panel to enable continuing education credit to be granted to residency program directors and faculty for participation in faculty development activities.

**August 1992.** CPME adopted revisions to CPME 320, *Standards, Requirements and Guidelines for Approval of Residencies in Podiatric Medicine*, for implementation in January 1993. CPME 320 included changes recommended by the panel related to ethical conduct of the interview, selection, and appointment processes and participation of program directors in faculty development activities. CPME 320 included guidelines encouraging programs to participate in CRIP and CASPR. The uniform notification date requirement was eliminated, although a guideline encouraged sponsoring institutions to adhere to the CASPR notification date.

**August 1995.** A resolution passed by the APMA HOD requested that CPME reinvestigate the appropriateness of the uniform notification date requirement by seeking an opinion from legal counsel of the Commission on Recognition of Postsecondary Accreditation (CORPA). The legal opinion was obtained in February 1996 by CPME and AACPM. A summary of the legal opinion was published in the *APMA News* of July 1996, as directed by the resolution.

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**Synopses of Reports and Legal Opinions**

**1988 AACPM Legal Opinion**

In October 1988, AACPM obtained a legal opinion from the law firm of Kominers, Fort & Scheffler in Washington, DC, concerning the legality of current and potential requirements for approval of podiatric residency programs. Kominers, Fort & Scheffler cited cases applicable at that time to support its contention that courts traditionally have accorded almost complete deference to accrediting agencies in determining the proper criteria in establishing accreditation standards. The legal opinion found that the uniform notification date requirement (and sanctions for failure to comply with the date) did not violate any federal or common law standard that was current in 1988 governing a nonprofit association’s accreditation of educational institutions in general, or CPME’s approval of residencies in particular. The opinion also stated that inclusion of an approval requirement that programs participate in CASPR did not violate any law that was in effect in 1988.

Moreover, Kominers, Fort & Scheffler expressed the belief that the structure of CASPR, coupled with the nonproprietary objectives of the potential requirement, minimized the risk of incurring any antitrust liability. The legal opinion noted that strong precedent existed in analogous cases where an agency’s refusal to accredit educational institutions was held to be beyond the reach of the federal antitrust statutes, particularly the Sherman Act.

**1989 AACPM Plan to Stabilize the Fourth Year**

The AACPM *Preliminary Plan for the Restoration of a Stable Environment in the Fourth Year of Predoctoral Podiatric Medical Education* addressed problems associated with the residency interview and selection process. This proposal was premised on limiting time during which prescreening and final interviews would be completed and using fewer interview sites, thereby limiting student absences from fourth year academic pro-
grams. AACPM proposed consolidation of CRIP interview sites to three locations in 1991 and 1992 and use of a single site in 1993. Final interviews would occur in January at CRIP sites, with resident notification occurring in March.

AACPM believed that the cooperation of the colleges of podiatric medicine and CPME was essential for successful implementation of the plan. AACPM requested that the colleges release students for interviews only during the periods identified in the plan and that CPME develop a requirement identifying specific times for completion of interviews.

In February 1989, CPME received the proposal for information only. CPME referred consideration of the plan to its ad hoc advisory committee that was conducting a comprehensive review of residency standards, requirements, and procedures.

1991 CPME Blue Ribbon Panel

At its February 1991 meeting, CPME acknowledged that an impasse had occurred as a result of various organizations trying to resolve problems associated with the resident-matching program and disruption of the fourth year. CPME called for an integrated approach by the parties affected by the residency selection process in the form of a blue ribbon panel composed of individuals involved in podiatric medical education. In establishing the Blue Ribbon Panel, CPME saw its role as being one of facilitating discussion among the principal organizations able to resolve the issue.

The three goals of the panel were to propose solutions to improve the quality of residency training, reinstate the integrity of the fourth year educational curriculum, and improve the quality of life of fourth year students. The panel believed that the following responsibilities must be pursued conscientiously if the goals were to be met:

Council on Podiatric Medical Education. 1) establish a requirement for residency directors to participate in professional faculty development activities including but not limited to administrative, organizational, and teaching skills for residency programs; 2) modify current residency requirements to assure professionalism and ethical conduct of the residency interview and selection process; and 3) include professional faculty development activities within continuing education programs eligible for CPME approval.

Council of Teaching Hospitals (or a similar organization). 1) establish an educational support system for continuing development of new residency programs; 2) establish programs and procedures for the training and monitoring of residency directors; 3) consolidate times and locations of the residency interview and selection process early in the academic year; 4) decrease visitations and externships that are required for residency selection; 5) establish a standardized interview and selection process; 6) minimize financial burdens on students related to the interview and selection process; and 7) assure professionalism and ethical conduct of the residency interview process.

Colleges of Podiatric Medicine. 1) participate in the development and implementation of the faculty development programs (for COTH members only); 2) allow use of colleges for prescreening at predetermined times and dates (for COTH members only); 3) release students of all responsibilities during mutually agreed-upon time frame for participation in centralized interviewing; 4) participate in COTH (residency programs sponsored by colleges); 5) withdraw funding of all residency positions in programs that do not participate in COTH.

Students. 1) adhere to interview and selection contract of COTH; and 2) report violations or unethical behavior of residency directors to appropriate organizations.

Residents. 1) report violations or unethical behavior of program directors to appropriate organizations.

The panel believed that concerted efforts of each organization in implementing the responsibilities above would assure achievement of the following objectives, thus resolving issues related to residency selection:

Related to improving the quality of residency training. 1) establish an incentive system to develop and support the highest quality educational programs; 2) establish standards for credentialing (training, selection, and evaluation) of program directors; 3) establish a group to be responsible for training and monitoring performance of program directors; and 4) establish a support system for the continued development of new residency programs.

Related to improving the integrity of the fourth year educational process. 1) consolidate times and locations of residency interviews so that they occur early in the academic year; and 2) decrease program visitations and externships that are required for residency selection.

Related to minimizing stress imposed on students by the residency selection process. 1) establish a standardized interview and selection process that is adhered to by all programs and stu-
dents; 2) minimize financial burdens of the selection process; and 3) establish and assure professionalism and ethical conduct of the residency interview process.

1995 Department of Justice Consent Decree

In August 1995, the Antitrust Division of the Department of Justice negotiated a proposed consent decree with the American Bar Association (ABA) related to accreditation standards. The proposed decree settled charges by the Department of Justice that the ABA violated federal antitrust laws through the law school accreditation process by inflating law faculty salaries while doing little to assure the quality of legal education. The proposed decree barred the ABA from setting salary levels as part of its accreditation standards as it had done in the past.

The consent decree shed new light on how courts might begin to view the role of accreditors as setters of standards. The deference given previously to accrediting agencies in establishing standards is likely to be tested when standards become overly prescriptive and fail to relate to the quality of the educational process.

1996 CPME and AACPM Legal Opinion

Mark Pelesh of the law firm of Cohn and Marks in Washington, DC, prepared a legal opinion in February 1996 that focused on requirements that would condition approval of a residency program upon its adherence to the uniform notification date and its participation in CASPR.

The legal opinion stated that a court would not find the uniform notification date requirement to be an unlawful restraint of trade under the Sherman Act in that the requirement addresses legitimate concerns about educational quality. Improvement of educational quality is within the legitimate purposes for which CPME was created, whether the education and training occurs in colleges of podiatric medicine or residency programs.

The purposes of the uniform notification date requirement are to diminish and eliminate practices that undermine educational quality and to protect student-consumers. The requirement imposes little restraint on the freedom of institutions to select residents and the freedom of students to accept residency appointments. The uniform notification date requirement attempts to improve the operation of the market for residencies by creating orderly conditions where disorder has previously prevailed. Since the uniform notification date has a legitimate purpose and the balance of the effects on competition weighs in favor of the requirement, Mr. Pelesh believed that a court would not find the requirement to be an unlawful restraint of trade under Section I of the Sherman Act.

Mr. Pelesh expressed doubt about the outcome of antitrust litigation against CPME if it were to require that residencies participate in CASPR as a condition of approval. Although a CASPR requirement would have a legitimate educational and consumer protection purpose, the price of these pro-competitive effects is a substantial limitation on the manner in which residencies are pursued and awarded. An additional antitrust risk associated with a CASPR requirement is that of a tying arrangement, which is a restraint of trade and violation of the Sherman Act. Mr. Pelesh indicated that a CASPR requirement would have all the elements of an unlawful tie-in and that the uniform notification date requirement is a preferable means of protecting students and improving the market for residencies.

Perspective of CPME

During the 12 years in which CPME 320 included the uniform notification date requirement, CPME found the requirement to be virtually unenforceable. Numerous residency programs were placed on probationary approval and identified as candidates for withdrawal of approval for violation of this requirement. CPME’s authority was limited, however, by its sole reliance on information obtained by on-site evaluation teams that a sponsoring institution had notified prospective residents prior to the uniform notification date and formal complaints brought against residencies for violations of this requirement. CPME remained aware, however, that many other residency programs violated this requirement, but CPME never received adequate documentation to take adverse approval actions against these programs.

As the accrediting arm of the profession, CPME is often expected to provide leadership in addressing concerns of the educational community. CPME is often prohibited, however, by the requirements of the US Department of Education and the Commission on Recognition of Postsecondary Accreditation and legal concerns and antitrust risks, from establishing requirements requested by the profession.

While realizing that it cannot be all things to all people, CPME has provided leadership by facilitating and coordinating efforts such as the 1991 Blue Ribbon Panel. CPME recognizes that it alone does not have the authority or responsibility to address
concerns related to the residency selection process but rather that this effort is a shared responsibility and obligation of all members of the podiatric medical educational community.

The list of responsibilities and objectives developed by the Blue Ribbon Panel provided a framework for a multifaceted attack on the problem. CPME acted rapidly in 1991 and 1992 to enact changes in its residency and continuing education requirements to fulfill its responsibilities. Resolution 57-95 provided clear evidence, however, that much work remains to be done by the educational community in implementing the recommendations of the 1991 Blue Ribbon Panel.