

4-9-2013

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### Recommended Citation

Andrews, Kristin C. M.B.A. (2013) "ACGME Institutional Requirements: Do They Really Protect the Residents?," *North Carolina Central University Science & Intellectual Property Law Review*: Vol. 6 : Iss. 1 , Article 5.  
Available at: <https://archives.law.nccu.edu/siplr/vol6/iss1/5>

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# ACGME INSTITUTIONAL REQUIREMENTS: DO THEY REALLY PROTECT THE RESIDENTS?

*Kristin C. Andrews*<sup>1</sup>

## I. Introduction

In 2012, 22,934 medical school graduates began the next stage of their medical training as first year medical residents in universities and hospitals across the United States.<sup>2</sup> These residency training programs are accredited by the Accreditation Council for Graduate Medical Education (ACGME). As part of the accreditation process, each institution that houses residency programs must comply with requirements at the institutional level.<sup>3</sup> These requirements are outlined in the ACGME Institutional Requirements.<sup>4</sup> This list of requirements constitutes a contract that every institution must accept before receiving accreditation.

Who are the beneficiaries of this contract? Certainly, the institution receives the benefit of accreditation, which increases the prestige of the institution and its component residency programs, but what about the actual medical residents? If medical residents are beneficiaries of these contracts, what does that mean for lawsuits in which residents have not received the benefits promised to them as a third party beneficiary of the contract?

A medical resident contracts directly with the institution that houses the residency program, rather than contracting directly with ACGME. These contracts outline, among other things, the conditions of employment, conditions for reappointment, insurance information,

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2. National Residency Matching Program, *Results and Data: 2012 Main Residency Match*, 3 (2012), [www.nrmp.org/data/resultsanddata2012.pdf](http://www.nrmp.org/data/resultsanddata2012.pdf).

3. Accreditation Council for Graduate Medical Education, *ACGME Institutional Requirements* (2007), [www.acgme.org/acgmeweb/Portals/0/irc\\_IRCpr07012007.pdf](http://www.acgme.org/acgmeweb/Portals/0/irc_IRCpr07012007.pdf).

4. *Id.*

duty hours, and moonlighting requirements.<sup>5</sup> The institution, on the other hand, contracts with ACGME regarding institutional obligations and responsibilities, including eligibility and selection of residents, financial support of residents, and resident participation in educational and professional activities.<sup>6</sup>

Black's Law Dictionary defines a third party beneficiary as "a person who, though not a party to a contract, stands to benefit from the contract's performance."<sup>7</sup> The Restatement Second of Contracts further narrows the definition of a third party beneficiary by stating that a promisee must intend to confer benefits on the third party beneficiary in order for the third party to be able to enforce the contract.<sup>8</sup> Therefore, in order for a medical resident to be classified as a third party beneficiary of the contract between the ACGME and the institution, the resident must have been an intended beneficiary of the contract by the promisee, which in this case would be the ACGME.

Residents generally spend three to six years of their medical career in a residency program. Because of the extent of time spent in these programs and the importance of the knowledge gained, it is important that residents feel that they are adequately protected both by the program and by the ACGME. One way of ensuring this protection is through contracts between the ACGME and Institutions. This article will examine the intent of the ACGME in contracting with medical institutions and discuss how such intent may impact legal and medical professions when analyzed under existing case law surrounding the rights of third party beneficiaries.

## II. History

### A. Function of the ACGME

Pennsylvania's Medical Practice Act of 1985 defines graduate medical training as:

training approved or recognized by the [medical] board which is either: (1) accredited as graduate medical education by any accrediting body recognized by the board for the purpose of accrediting graduate medical education; or (2) provided by a hospital accredited by any accrediting body recognized by the board and is acceptable to an American specialty board towards the training it

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5. *Id.* at 5.

6. Accreditation Council for Graduate Medical Education, *supra* note 3.

7. BLACK'S LAW DICTIONARY 177 (9th ed. 2009).

8. RESTATEMENT (SECOND) OF CONTRACTS § 302 (1981).

requires for the certification it issues in a medical specialty or subspecialty.<sup>9</sup>

One of the accrediting bodies recognized nationally is the ACGME. The ACGME is “responsible for the Accreditation of post-MD medical training programs within the United States.”<sup>10</sup> The ACGME uses a “peer review process” to conduct accreditation reviews of the accredited programs and bases its reviews on “established standards and guidelines.”<sup>11</sup> There are separate guidelines for individual programs and the institutions (hospitals or medical centers) in which the programs are housed.<sup>12</sup> The institutional guidelines are found in the ACGME Institutional Requirements and include the required organization of the institution, the institution’s responsibilities for residents, the set-up and function of the Graduate Medical Education Committee (GMEC), and the process for internal review of the programs.<sup>13</sup>

The purpose of the GMEC is to “establish and implement policies and procedures regarding the quality of education and the work environment for the residents in all programs.”<sup>14</sup> Further responsibilities of the GMEC are to monitor resident duty hours, supervision, and curriculum development and evaluation.<sup>15</sup>

## B. Conflict Between Residents and Attending Physicians

As with all situations involving a difference in authority, various conflicts between residents and attending physicians arise on a daily basis. A study by the Council on Ethical and Judicial Affairs of the American Medical Association notes a number of these conflicts by identifying such abuse and mistreatment as follows: (1) “verbal abuse, humiliation, and belittlement,” (2) “being assigned tasks for punishment,” (3) “being threatened with unfair grades,” (4) “someone else taking credit for one’s work,” (5) sexual harassment, (6) gender discrimination, (7) racial discrimination, and (8) unethical conduct.<sup>16</sup>

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9. *McKeesport Hosp. v. Accreditation Council for Graduate Medical Educ.*, 24 F.3d 519, 521 (1994).

10. Accreditation Council for Graduate Medical Education, *The Accreditation Council for Graduate Medical Education homepage*, ACGME.ORG, <http://www.acgme.org/acgmeweb/> (last visited Feb. 18, 2013).

11. *Id.*

12. *Id.*

13. Accreditation Council for Graduate Medical Education, *supra* note 3.

14. *Id.* at 9.

15. *Id.* at 10.

16. Council on Ethical and Judicial Affairs Report 1—I-93 “Disputes

Most institutions have official grievance processes in order to address such issues.<sup>17</sup> These grievance procedures in residency programs are governed by the ACGME's Institutional Requirements.<sup>18</sup> The American Medical Association has also released guidelines "for the resolution of disputes between individuals" through multiple publications.<sup>19</sup>

Despite the avenues residents have to air their grievances, many residents are reluctant to take advantage of such opportunities. This reluctance may stem from a belief that a grievance is not serious enough to merit using an official means of dispute resolution. There is also a fear of retaliation by the attending physician if a formal complaint is filed against him or her. Because of the difference in authority and power between the resident and the attending physician, residents are "particularly vulnerable to professional retaliation."<sup>20</sup>

Another area of common dispute between residents and attending physicians involves duty hours. Residents in ACGME accredited programs, among other restrictions, are only allowed to work a total of 80 hours per week.<sup>21</sup> While to a non-physician, this may seem like more than enough hours, to a medical resident, 80 hours is not enough time to accomplish the maximum amount of training and experience that is capable of obtainment within one week. Attending physicians can also complicate issues surrounding a resident's duty hours by forgetting that residents have strict requirements with which they must comply.

### III. Analysis

#### A. Is the Institutional Agreement a Contract?

A contract is defined as "[a]n agreement between two or more parties creating obligations that are enforceable or otherwise recog-

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Between Medical Supervisors and Trainees," American Medical Association (1994).

17. *Id.* at 3.

18. *Id.* at 4.

19. *Id.*

20. *Id.*

21. Institute of Medicine of the National Academies, *ACGME Board of Directors Approved New Requirements for Residency Programs*, IOM.EDU (Dec. 12, 2012), <http://iom.edu/Reports/2008/Resident-Duty-Hours-Enhancing-Sleep-Supervision-and-Safety/ACGME-Board-of-Directors-Approved-New-Requirements-for-Residency-Programs.aspx>.

nizable at law.”<sup>22</sup> As all lawyers and law students beyond their first week of classes know, the basic elements of a contract are an offer, an acceptance, and consideration.<sup>23</sup> The accreditation agreement between the ACGME and the institution is a contract because it meets these requirements.

An offer, as defined by American Jurisprudence, is a communication from one party to another that “identifies the bargained-for exchange and creates a power of acceptance in the offeree.”<sup>24</sup> On its website, the ACGME states the documentation required to become an accredited residency program.<sup>25</sup> This publicly available knowledge of the requirements of accreditation and the documentation required to obtain accreditation constitutes an offer from the ACGME to unaccredited programs in the United States for accreditation.

Acceptance is “a manifestation of assent to the terms of the offer made by the offeree in a manner invited or required by the offer.”<sup>26</sup> When a program downloads the documents and begins the accreditation process, the institution is accepting the offer of accreditation. When the institution completes the accreditation process and becomes an accredited institution, the offer has been effectively accepted through performance by the institution. Effective acceptance of the contract means that the contract can no longer be rejected or revoked by either party.<sup>27</sup> Once an acceptance has been made, the acceptance cannot be revoked or recalled.<sup>28</sup> Since neither party can cancel the offer after it has been accepted, the effective acceptance of the offer creates a contract binding on both parties.

Finally, consideration is “the price bargained and paid for a promise – that is, something given in exchange for the promise.”<sup>29</sup> There is valuable consideration exchanged between ACGME and the institution. A program that does not have ACGME accreditation is unlikely to attract the most talented applicants because applicants who attend non-accredited programs are less likely to be given privileges at hospitals after graduation. Attending an accredited program

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22. BLACK’S LAW DICTIONARY 143 (3rd pocket ed. 2006).

23. 17A AM. JUR. 2D *Contracts* § 19 (2012).

24. 17A AM. JUR. 2D *Contracts* § 45 (2012).

25. Accreditation Council for Graduate Medical Education, *supra* note 10.

26. 17A AM. JUR. 2D *Contracts* § 66 (2012).

27. 17A AM. JUR. 2D *Contracts* § 67 (2012).

28. *Id.*

29. 17A AM. JUR. 2D *Contracts* §102 (2012).

is critical to the future career of a young physician. Therefore, the ACGME's accreditation serves as valuable consideration in exchange for the institution's promise to maintain specified conditions and work environments.

### B. Third Party Beneficiaries

The third party beneficiary rule is stated as when "a third person may, in his or her own right and name, enforce a promise made for his or her benefit even though such person is a stranger both to the contract and to the consideration."<sup>30</sup> Who constitutes a third party beneficiary is thoroughly discussed in case law and secondary sources such as the Restatement of Contracts and American Jurisprudence. Black's Law Dictionary defines a third-party beneficiary as "a person who, though not a party to a contract, stands to benefit from the contract's performance."<sup>31</sup> Although this definition seems simple enough, case law proves otherwise.

The United States Court of Federal Claims, in *Arbelaez v. United States*, held that "[t]o qualify for third-party beneficiary status, a plaintiff must prove that the contract reflects an express or implied intention to benefit that party and further that the intent of the principal parties is to benefit that third-party directly."<sup>32</sup> Furthermore, the United States Supreme Court has held that granting a third party the right to sue for breach of contract is "an exception to the general principle" requiring the party to show that he or she intended to benefit from the contract before he or she may take advantage of this "exceptional privilege."<sup>33</sup> Though a party may benefit from a contract, the party must have been an intended beneficiary of the contract in order to have standing to sue for the breach of such contract.<sup>34</sup> The United States Court of Appeals for the Federal Circuit further reiterated this point in 2012 when it held that "the intent of the parties to [a] contract is . . . the cornerstone of a claim for third-party beneficiary status."<sup>35</sup> The third party must also "demonstrate that the contract not only reflects the express or implied intention to benefit the

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30. 17A AM. JUR. 2D *Contracts* § 425 (2012).

31. BLACK'S LAW DICTIONARY (9th ed. 2009).

32. *Arabelaez v. United States*, 94 Fed. Cl. 753, 767 (2010).

33. *German Alliance Ins. Co. v. Home Water Supply Co.*, 226 U.S. 220, 230 (1912).

34. 17A AM. JUR. 2D *Contracts* § 430 (2012).

35. *Sioux Honey Ass'n v. Hartford Fire Ins. Co.*, 672 F.3d 1041, 1056 (Fed.

party, but that it reflects an intention to benefit the party *directly*” (emphasis in original).<sup>36</sup>

It may be unclear who the contracting parties intended to benefit in making the contract. In *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, the Maryland Court of Special Appeals held that “[t]he primary method of determining the intention of the parties to a contract is to look at the language of the contract.”<sup>37</sup> The court also held that “the controlling issue is whether the contract’s terms, in light of the surrounding circumstances, reveal an intent to make the promise to the third party in fact if not in form.”<sup>38</sup>

The case law surrounding third party beneficiaries illustrates that the contracting parties must have intended the third party to be a beneficiary of the contract, not incidentally benefit from the contract. American Jurisprudence reiterates those points and includes additional elements to determine whether a person is a third-party beneficiary.<sup>39</sup> The fact that a person is not recognized as a third party beneficiary at the time of the making of the contract does not preclude that individual from becoming a third party beneficiary.<sup>40</sup> Further, the rule of third party beneficiaries “is held to be predicated, however, upon the third person having knowledge of the terms and conditions of the agreement and not merely knowledge of its existence, and such knowledge must be established by the third person claiming the benefit of such agreement.”<sup>41</sup> As previously stated, in order to find that a person is a third party beneficiary, the intent of the contracting parties must be determined.<sup>42</sup> Furthermore, the rights of the third party beneficiary are “no greater than those of the promisee under the contract.”<sup>43</sup>

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Cir. 2012) (citing *Flexfab., L.L.C. v. United States*, 424 F.3d 1254, 1263 (Fed. Cir. 2005)).

36. *Id.* (citing *Glass v. United States*, 258 F.3d 1349, 1354 (Fed. Cir. 2001)).

37. *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 202 Md. App. 307, 354 (2010) (citing *Volcjak v. Washington County Hosp. Ass’n.*, 124 Md. App. 481, 509 (1999)).

38. *Id.* at 355 (citing *College of Notre Dame of Maryland, Inc. v. Morabito Consultants, Inc.*, 132 Md. App. 158, 179 (2000)).

39. *See generally* 17A AM. JUR. 2D *Contracts* § 425-53 (2012).

40. 17A AM. JUR. 2D *Contracts* § 443 (2012).

41. 17A AM. JUR. 2D *Contracts* § 451 (2012).

42. 17A AM. JUR. 2D *Contracts* § 430 (2012).

43. 17A AM. JUR. 2D *Contracts* § 448 (2012).

These elements of a third party beneficiary show that determining whether a person qualifies as a third party beneficiary is no easy feat. Such a task is even more difficult when discussing an already-complicated situation such as medical residency. So are medical residents intended to benefit under the contract entered into by the institution and the ACGME?

### C. Are Residents Intended Beneficiaries?

There are a number of benefits included in the ACGME Institutional Requirements and most of them directly affect the medical residents who will participate in the residency programs of that institution. These benefits include requirements for financial support of residents (including their salary and benefits), requirements for employment contracts for the residents with the institution (including the responsibilities of the resident and the responsibilities of the institution), grievance procedures and policies and due process requirements that may be used by the residents if an issue arises, the requirement that the institution provide professional liability insurance, requirements for leaves of absence (including vacation and sick leave), and requirements for resident duty hours.<sup>44</sup> These are benefits that directly affect the residents and would not be necessary if there were no residents.

As discussed previously, the main requirements of a third party beneficiary are: (1) the person must be either explicitly or impliedly intended to be a beneficiary of the contract<sup>45</sup>; and (2) the party must show that he or she benefited directly from the contract.<sup>46</sup>

The benefits listed above are all intended to benefit the residents who are educated in ACGME accredited programs. The requirements of the contract do not benefit the institution except by allowing the institution to attract the best and brightest medical students. The benefits listed above, among others listed in the ACGME Institutional Requirements and other ACGME documentation, are expressly created to benefit the residents and allow the residents to have a sound educational experience that includes the support needed to be successful. Because of these benefits to medical residents, those re-

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44. Accreditation Council for Graduate Medical Education, *supra* note 3.

45. 17A AM. JUR. 2D *Contracts* § 430 (2012).

46. 17A AM. JUR. 2D *Contracts* § 437 (2012).

sidents in an ACGME accredited program are third party beneficiaries of Institutional contracts with ACGME.

Furthermore, residents benefit directly from the implementation of contracts between institutions and the ACGME. Such contracts require the institution to provide many benefits to the residents such as salary and a sound working environment, including reasonable working hours and accommodations such as on-call rooms. These requirements directly benefit the residents by enhancing their learning environment. The contractual requirements benefit only the residents, not the institution or the ACGME. Thus, residents are third party beneficiaries of the institutional accreditation contracts.

#### **D. What Does Case Law Say Regarding Medical Residents as Third Party Beneficiaries?**

The number of cases considering whether a medical resident can bring suit against the institution or the ACGME because of a breach of the Institutional Requirements or other agreements between the ACGME and the Institution is minimal. However, there are a few cases that speak directly to the topics at hand.

North Carolina dealt with the issue at hand in a case of first impression in *Ryan v. University of North Carolina Hospitals*.<sup>47</sup> In *Ryan*, the plaintiff was a former resident who successfully graduated from the UNC Family Medicine Residency Program, though not without some difficulty and remediation.<sup>48</sup> Plaintiff Ryan brought a claim of education malpractice against the university alleging that the program did not fully comply with the requirements of the ACGME and that he, therefore, received a substandard education.<sup>49</sup> While this was a case of first impression for the North Carolina Court of Appeals, the court held that “other jurisdictions have found that a student can bring an action for breach of contract arising from a dispute related to an educational contract.” The court further held that in order “to state a claim for breach of contract, the plaintiff must do more than simply allege that the education was not good enough[;]

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47. *Ryan v. University of North Carolina Hospitals*, 128 S.E.2d 300, 303 (NC. App. 1998).

48. *Id.* at 301.

49. *Id.*

. . . instead[,] he must point to an identifiable contractual promise that the University failed to honor.”<sup>50</sup>

In *Ryan*, the plaintiff alleged that the University of North Carolina Hospitals failed to honor its promise to the ACGME that it would meet the required standards for a residency program. The plaintiff’s complaint specifically alleged “that the university breached the ‘Essentials of Accredited Residencies’ by ‘the failure to provide a one month rotation in gynecology.’”<sup>51</sup> The court held that the “plaintiff alleged facts sufficient to support his claim for breach of contract on the basis of the University’s failure to provide him a one month rotation in gynecology.”<sup>52</sup> In this case, the ACGME and the institution, UNC Hospitals, entered into the contract for the benefit of the resident’s education and with the resident in consideration. There is no other reason this provision, to include a one month rotation in gynecology, would have been included except to benefit the education of the resident. Because the breach of contract discussed in this case was one in which the ACGME set standards for residency programs to follow, and the plaintiff, a resident at the institution, was an intended beneficiary, the plaintiff in this case was a third party beneficiary of the contract and was allowed to sue based on breach of the contract.

#### IV. Conclusion

The lack of case law surrounding the issue of whether medical residents are considered third party beneficiaries of accreditation contracts between the ACGME and medical institutions creates a unique opportunity for the courts. In the future, as the medical profession and the number of institutions and programs training medical residents continues to grow, there will be an increased number of suits brought by medical residents who believe their education was hindered by a breach in accreditation contracts to which they may be considered a third party. It will be up to the court to determine whether the resident in each instance is, in actuality, a third party beneficiary; however, based on the discussion above, it is likely that more courts will find that residents are in fact third party beneficiaries to these contracts.

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50. *Id.* at 302 (citing *Ross v. Creighton Univ.*, 957 F.2d 410, 417 (7th Cir. 1992)).

51. *Id.* at 302-03.

52. *Id.* at 303.