

## *Virtual Mentor*

American Medical Association Journal of Ethics  
March 2003, Volume 5, Number 3: 99-102.

### **POLICY FORUM**

#### **National Residency Matching Program Proposed Rule Change**

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The National Resident Matching Program (NRMP) has proposed a rule change for the 2003-2004 Match year. The proposed change would require all students applying for residency, including the currently exempt international medical graduates (IMGs) and US graduates who have been out of medical school for 1 year or more (doing research, in a different specialty, etc), To join the Match. Furthermore, this change would require any residency program participating in the Match to fill *all* of its positions through the Match. Presently a program can fill some positions with candidates from outside the Match and other positions with the match participants, most of whom are graduating US senior medical students.

The NRMP administration suggests that the proposed rule change would make the Match more fair. Currently the out-of-match applicant is at a potential disadvantage. There are anecdotes of out-of-match candidates being pressured to accept positions with programs that they regard as "second-line" but "safe." Out-of-match applicants have no real recourse if a residency program views it as ethical (or knows it isn't ethical but goes ahead), to make an out-of-match offer with short decision deadlines coupled with a vow that rejection of the offer means the applicant has no chance to come to that program via the Match. Thus the ability of the applicant to get into the best program willing to take him or her depends in part on the ethical sense of the program director or chairman. A great many program directors have recognized this and behaved in an exemplary fashion. We, at NYU, are hardly alone in making offers, limited only by the Match deadlines themselves, unless another equally qualified out-of-match candidate appears and there is only one available position. The new rule change would help eliminate this vulnerability on the part out-of-match candidates seeking residency positions.

While the NRMP doesn't need the assent of the residency programs to proceed with the proposed rule change, the change raises concerns worth discussing for specialties like pathology. As a specialty, pathology has never attracted large numbers of applicants for residency programs. Although the past year was an exception, the number of US students applying to pathology residency programs through the Match has dwindled to a level such that there are fewer applicants than open positions. As a consequence, a large number of entry-level residency positions in pathology programs across the country have been filled by with out-of-match applicants. Pathology programs, that historically had relied upon the Match to fill all of their positions, found that the dearth of US seniors in the Match looking for

pathology positions led them to have 1 or more positions unfilled when the Match results were announced. This is never a pleasant experience for a residency program or its director. Some of the most prestigious programs in the country, including those at the Massachusetts General Hospital, the Brigham and Women's Hospital, Columbia Presbyterian Medical Center, Barnes-Jewish Hospital at Washington University in St Louis, and my own program at NYU School of Medicine, have been in this situation at least once in the last 6 years.

To avoid having an unfilled position after the Match, pathology program directors began filling some positions with applicants eligible to be outside the Match prior to the NRMP closing date for ranking applicants. Quite a number of excellent IMG candidates and US graduates not required to be in the Match were eager to receive offers for "pre-match" positions. For eligible applicants, this eliminated the uncertainty of the Match, allowing them to make plans to live and work in a specific city well in advance of the Match and to resolve the visa problems some IMGs have (especially the time required for the government to process applications for H1-B visas). For a program, reducing the number of positions open to the Match, while not cutting the overall number of positions to be filled, lowered the risk of having an unfilled position at the announcement of the Match results. Furthermore, programs could select among a variety of different types of IMG applicants, choosing to hire those willing to sign contracts and those who fit certain criteria such as extensive research experience with publications or prior pathology training in their home country.

There have been and still are "gray" areas in these out-of-match interactions. Most IMGs and others not required to be in the Match register for it anyway. The interview process often involves a semi-ritualized "dance" around the subject of out-of-match offers. Candidates interviewing at a program they find desirable want to know if they might get an offer (at which point they would resign from the Match). The residency program often wants assurance that an extended offer would be promptly accepted and the candidate would indeed withdraw from the Match. The residency program directors in pathology have discussed this situation at their recent annual meetings. Some directors held that any discussion of out-of-match positions with a candidate registered in the Match is a violation and unethical. Others, who do not think these interactions are unethical, find no problem in exploring with candidates their rights to resign under Match rules should they wish to do so, provided that those explorations lack any coercive content. As program director for the NYU pathology program, I will forthrightly state that most IMG applicants know their rights and ask me about out-of-match positions. I make the Match rules clear, and, if we are interested in making an offer (after I have the opinions of all of those who participated in the candidate's interviews), I will extend one, with the condition that, if it is accepted verbally or by e-mail, I receive confirmation of the candidate's resignation from the Match with that acceptance.

Unfortunately, some programs, through their chairs or directors, have gone beyond the ethically questionable (but probably legal) coercive behavior to behavior that

clearly constitutes "breach of contract" and Match violations. Most commonly, the breach involves an out-of-match agreement between a program and a candidate who is a current senior medical student at a US school. The NRMP allows such contracts only if the student petitions to be released from the Match obligations by reason of a particular hardship, such as a spouse who cannot move or a chronically ill relative the applicant must help care for, and then only if this request is supported by the student's current medical school dean. Yet, numerous accusations have surfaced over the years concerning an applicant, recently interviewed and expressing a strong interest in a program, with no talk of any hardship, suddenly and mysteriously being allowed out of the Match just prior to the closure of Match lists. The applicant then appears on the list of newly hired residents of another program. Personally, I have talked to some pathologists who were recruited to resign from the Match on a fabricated hardship and were told by a program: "accept this offer or you will not be on our Match list." Of course, the candidate who succumbs to such pressure is not available to be matched by any other program.

To date, the NRMP has not enforced its existing rules or applied sanctions against residency programs that commit such gross violations of the Match contract. With the difficulty of proving any single case, the reluctance of program directors who learn of these violations to file official complaints, and the absence of a sufficient enforcement mechanism that would act as a deterrent, there appears to be the sense that a program that violates the cardinal rule of the NRMP will not suffer any penalty. On top of this, such a program receives the reward of filling 1 or more positions with applicants it wants without the uncertainty of the Match process. In view of the failure of the NRMP to enforce the most basic of its rules, many pathology program directors have expressed the view that the proposed new rule will empower programs willing to violate the rules to "cherry-pick" Match applicant participants. We have communicated to the NRMP administration our desire to see them enforce the existing rules effectively, and to deter Match violators, before making it mandatory to include IMGs and match-exempt US graduates. So far, there has not been an adequate response, although we are told they are still considering the issue.

The NRMP has stated that enforcement of its rules will be on a hospital- or institution-wide basis. This could mean that if a single program in an institution with many programs registered in the Match were to violate the rules, all of the institution's programs would somehow be sanctioned. If this sanction were a sufficient threat (not just a monetary fine, but perhaps being barred from the Match for the next year) then presumably peer pressure from the directors of all of an institution's programs on a director prone to violate the rules would be a sufficient deterrent. This needs to be apparent to all programs, their directors, and the department chairs before one can place faith in the NRMP's ability to deter residency programs' unethical behavior.

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