



OCT - 4 2002

Sidney M. Wolfe, MD
Director, Health Research Group
Public Citizen
1600 20th Street, NW
Washington, DC 20009-1001

Dear Doctor Wolfe:

This is a response to your letter of April 30, 2001, to the then Acting Assistant Secretary, Mr. R. Davis Layne, in which you petitioned the Occupational Safety and Health Administration (OSHA) to promulgate a federal workplace standard to control the working hours of medical residents and fellows. You base your petition on your conclusion that residents and fellows' excessive work hours result in occupationally-related injuries and illnesses. You identify three types of adverse health effects that may be caused by housestaff fatigue: injuries due to motor vehicle accidents, negative mood effects and depression, and pregnancy complications. The information in your petition indicates that medical residents and fellows often work long hours, and that they become fatigued at work. Excessive fatigue can be a factor in accidents and injuries.

In the case of residents and fellows, fatigue is more than a potential occupational hazard; it can also place patients at risk. For this reason, several different entities with experience in both patient care and employee health have taken up the issue. As you note in your petition, the Accreditation Council for Graduate Medical Education (ACGME), the organization responsible for accrediting medical residency programs, currently has work-duty standards, as does the State of New York. In addition, the American Medical Association (AMA) has issued its own policy recommendation for limiting residents' working hours.

Your petition acknowledges the positive potential impact of New York's Bell Regulations and the state's Health Care Reform Act of 2000. As you note, the state apportioned \$165 million for enforcement efforts. New York State Department of Health can now issue fines of up to \$50,000 for repeat violations.

Since the time you submitted your petition to OSHA, the ACGME has endorsed a report calling for greater limits on resident-duty hours, including administrative changes strengthening the systems for ensuring hospital compliance with the new working hour requirements. The report specifically addresses one of your primary concerns with the ACGME guidelines: that they are not applied to all 26 specialty areas

accredited by the ACGME. The new guidelines would set 80 hours per week, averaged over a four-week period, as the minimal acceptable standards for all residency programs. Programs that desire a 10-percent increase over these hour limitations would be required to justify the increase. In your petition, you also request a limit of 24 consecutive hours worked in one shift, a minimum of 10 hours off-duty time between shifts, a limit of on-call shifts to every 3rd night, and at least one 24-hour period of off-duty time per week. The new ACGME report calls for the 24 consecutive hour limitation and the minimum rest time of 10 hours between shifts. Current ACGME guidelines already limit on-call shifts to every 3rd night and require a 24-hour period free from patient-care responsibilities every seven days. ACGME will strengthen its enforcement program by requesting immediate progress reports from programs that have been cited for violation of the duty-hour standards, and requiring that the programs develop plans for achieving compliance within six months after the citation was issued. For more serious violations, the ACGME is authorized to conduct a resident survey six months after the citation to assess whether the program has achieved compliance.

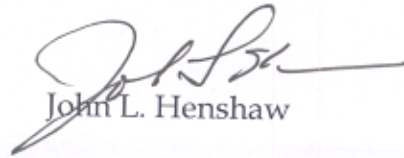
OSHA believes that the ACGME and other entities are well-suited to address work-duty restrictions of medical residents and fellows. These entities have extensive experience in patient health, employee health, and medical education and training. They are in a good position to address the issue in a manner that comports with the complexity of the various interests. Moreover, the ACGME has an effective and precisely-focused enforcement tool: it can revoke a residency program's accreditation. The ACGME also conducts regular site visits and follow-up monitoring of accredited residency programs, which provide the group with an effective vehicle for ensuring compliance with work-duty restrictions.

OSHA currently has an ambitious regulatory agenda that addresses identified hazards directly impacting workers. The Agency is engaged in a substantial number of complex proceedings involving the effects of toxic chemicals on workers, electrical hazards, crane safety, fire protection, and other compelling issues. In addition to the regulatory action, OSHA also has been devoting considerable resources toward developing the Secretary of Labor's comprehensive approach to musculoskeletal disorders through measures such as guidelines, research, compliance assistance, and enforcement. OSHA's resources are fully committed to addressing these important issues.

Because the issues involved with medical resident hours go well beyond job safety and affect hospital patient safety, because other knowledgeable groups are taking action to work on this problem, and because OSHA's rulemaking resources are fully committed to working on a range of critical workplace health and safety issues, the Agency has

decided to deny your petition. However, we are looking into various non-regulatory alternatives to inform the public about the potential safety and health effects of worker fatigue. We appreciate the opportunity to consider the issue.

Sincerely,



John L. Henshaw