

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Center City Healthcare, LLC d/b/a
Hahnemann University Hospital, *et al.*,¹
Debtors.

Chapter 11

Case No. 19-11466 (KG)

Jointly Administered

Re: D.I. 142

**RESPONSE AND RESERVATION OF RIGHTS OF THE
ACCREDITATION COUNCIL FOR GRADUATE MEDICAL
EDUCATION TO DEBTORS' BIDDING PROCEDURES MOTION**

The Accreditation Council for Graduate Medical Education (the "ACGME"), by its undersigned counsel, hereby submits its Response and Reservation of Rights to the *Debtors' Motion for Entry of Orders (I)(A) Establishing Bidding Procedures Relating to the Sale of the Debtors' Resident Program Assets, Including Approving a Break-Up Fee, (B) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts, Including Notice of Proposed Cure Amounts, (C) Approving Form and Manner of Notice Relating Thereto, and (D) Scheduling a Hearing to Consider the Proposed Sale; (II)(A) Approving the Sale of the Debtors' Resident Program Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, and (B) Authorizing the Assumption and Assignment of*

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Center City Healthcare, LLC (3341), Philadelphia Academic Health System, LLC (8681), St. Christopher's Healthcare, LLC (8395), Philadelphia Academic Medical Associates, LLC (8165), HPS of PA, L.L.C. (1617), SCHC Pediatric Associates, L.L.C. (0527), St. Christopher's Pediatric Urgent Care Center, L.L.C. (6447), SCHC Pediatric Anesthesia Associates, L.L.C. (2326), St Chris Care at Northeast Pediatrics, L.L.C. (4056), TPS of PA, L.L.C. (4862), TPS II of PA, L.L.C. (5534), TPS III of PA, L.L.C.(5536), TPS IV of PA, L.L.C. (5537), and TPS V of PA, L.L.C. (5540). The Debtors' mailing address is 230 North Broad Street, Philadelphia, Pennsylvania 19102.

Certain executory Contracts; and (III) Granting Related Relief (D.I. 142) (the “Bidding Procedures Motion”).² In support hereof, the ACGME respectfully states as follows:

BACKGROUND

1. The ACGME accredits residency/fellowship programs sponsored by Hahnemann University Hospital (“Hahnemann” or the “Debtor” and, together with others identified in footnote 1, the “Debtors”) (36 residency and fellowship programs with over 560 residents and fellows). This is one of the largest cohorts of residents/fellows in the country. It also accredits residency/fellowship programs sponsored by Tower Health³ and members of the Tower Health System⁴ (9 residency and fellowship programs with 109 residents and fellows) (collectively, “Tower Health Programs”).⁵ Hahnemann’s residency/fellowship programs have over 5 times as many residents and fellows as those of Tower Health.

2. On July 9, 2019, the Debtor executed a letter of intent (the “Letter of Intent”) with Tower Health for the sale of certain of the Debtors’ assets related to Hahnemann’s residents/fellows and residency/fellowship programs (the “Residents Program Assets”). That same day, the Debtor filed the Bidding Procedures Motion, designating Tower Health as the Stalking Horse Bidder for the Residents Program Assets and requesting an expedited sale process.

² All terms used but not otherwise defined herein, shall have the meanings ascribed to them in the Bidding Procedures Motion.

³ Tower Health became an ACGME-accredited Sponsoring Institution, effective July 1, 2018. It currently has no ACGME-accredited residency or fellowship programs.

⁴ In addition to Tower Health, members of the Tower Health System that are ACGME-accredited Sponsoring Institutions are Reading Hospital and Chestnut Hill Hospital.

⁵ Reading Hospital: emergency medicine (8 residents); family medicine (24 residents); internal medicine (36 residents); obstetrics and gynecology (15 residents); addiction medicine (1 fellow); surgery (0 residents); surgical critical care (1 fellow); and transitional year (6 residents). Chestnut Hill Hospital: family medicine (18 residents). These resident/fellow numbers were submitted to the ACGME by the Sponsoring Institution, and they are available to the public on the ACGME website, www.acgme.org.

3. Pursuant to the Letter of Intent, Tower Health will take responsibility for the continued residency/fellowship training of all of Hahnemann's residents/fellows. Also, each Hahnemann resident/fellow is free to be placed in a Tower Health program or to transfer to any other program of the resident/fellow's choice, and Hahnemann or Tower Health will release the Medicare funding even prior to closing.⁶

4. To date, the ACGME has not been informed of a single transfer with a "release."⁷

5. The Letter of Intent is conditioned on the ACGME's consent⁸ as well as the consent of any other applicable regulatory authority, including the Centers for Medicare and Medicaid Services and the Pennsylvania Department of Health and Human Services.⁹ Moreover, the Letter of Intent provides that the sale closing shall occur by August 1, 2019 or a later date "as is required to obtain necessary governmental and regulatory approvals as [Tower Health] and [Hahnemann] shall mutually agree."¹⁰

6. As set forth in the Bidding Procedures Motion, the Debtors request an expedited sale timeline, with the Sale Hearing to occur within three weeks. In particular, the Debtors'

⁶ Paragraph 3 of the Letter of Intent states:

Tower Health will assume responsibility for the continued training of all 583 Hahnemann residents and fellows and will give each Resident who desires to continue his or her training at Tower Health the right to be placed in one of Tower Health's six (6) hospitals (Collectively, "Continuing Residents") or to accept a position elsewhere. Tower Health will agree to release, or if the release must occur prior to closing, will agree that Seller may release, the temporary cap on Medicare reimbursement on a temporary basis for those current Residents who elect to complete their training elsewhere...For the avoidance of doubt, neither the existence of this letter nor any provisions set forth herein shall be interpreted to restrict Seller from agreeing to release the related cap on Medicare reimbursement on a temporary basis for those current Residents who elect to complete their training elsewhere.

⁷ The ACGME has been informed that a few transfers (less than 10) have occurred to programs that are willing to accept a resident/fellow without Medicare funding.

⁸ The ACGME does not intend to consent or not consent to this transaction. It does intend to perform its accreditation function.

⁹ Letter of Intent, ¶¶ 7(d); 18.

¹⁰ Letter of Intent, ¶ 16.

proposed milestones set the Bid Deadline for July 26, 2019, the Auction for July 30, 2019 and the Sale Hearing for July 31, 2019, with objections to the Stalking Horse Bidder due July 26, 2019 and objections to the Auction and sale to any other Successful Bidder to be raised at the Sale Hearing.¹¹

7. The ACGME supports a process that is in the best interests of the Hahnemann residents/fellows and provides them with the best opportunity to continue their training. The ACGME files this Response and Reservation of Rights to address several points:

(a) the ACGME will expeditiously fulfill its accreditation function relating to Tower Health residency/fellowship programs, and this Response and Reservation of Rights includes a timeline in this regard;

(b) the Letter of Intent provides that Hahnemann residents/fellows may choose where they wish to continue their education, and, in addition to the Tower Health Programs, over 1,200 other positions are available, with the ACGME continuing to receive available positions from other ACGME-accredited programs;

(c) the ACGME is informed that the Hahnemann residents/fellows are not being released by Hahnemann to continue their education at other programs of their choice, apparently because of issues relating to Medicare funding, and have not been able to finalize agreements with other programs of their choice;

(d) any delay in releasing the Hahnemann residents/fellows to other programs is not in the interest of the Debtor's estate; and

(e) the ACGME will continue to fulfill its accreditation function relating to Hahnemann.

¹¹ Bidding Procedures Motion, ¶ 34.

RESPONSE

I. Accelerated Process for ACGME Decisions on Complement Increases in Accredited Programs and Accreditation of New Programs of Tower Health and Others to Accommodate Hahnemann Residents

8. To date, there are 9 ACGME-accredited Tower Health residency/fellowship programs, including 7 of the 36 specialties/subspecialties of the Hahnemann residency/fellowship programs,¹² and these programs are approved for far fewer positions than would be necessary to accommodate all, or any appreciable number, of the residents/fellows from the Hahnemann counterpart programs.

9. As stated in the ACGME's Response to the Closure Motion,

Residencies and fellowships require highly specialized resources that include specialty and subspecialty faculty, specialized healthcare equipment and facilities, and a patient population sufficiently numerous and diverse in all conditions encompassed by the specialty/subspecialty to provide each resident with adequate clinical training. Each resident/fellow must undergo supervised clinical training to prepare him/her to perform independently each procedure in the specialty/subspecialty upon completion of the residency/fellowship. Both quantity and quality of all resources are particularly important. Adequate resources to train one resident/fellow may be inadequate resources to train two or more residents/fellows.¹³

10. The ACGME process for approval/disapproval of complement increases is usually one week or longer, and the normal ACGME process for an accreditation decision on a new program is 5 to 12 months.¹⁴

¹² Reading Hospital has addiction medicine and surgical critical care fellowships; while Hahnemann does not.

¹³ ACGME Response to Closure Motion, ¶ 10, D.I. 122.

¹⁴ The new program accreditation decision normally takes 5 to 12 months because the Review Committees that make the decisions are composed of volunteers, most committees only meet regularly twice per year, and time is allotted for a full-day site visit (for specialty programs) and preparation of a site visit report, which usually exceeds 20 pages.

11. Insofar as any of the Tower Health Programs or other programs have requested, or will request, that the ACGME increase their approved resident complement to accommodate Hahnemann residents, the ACGME has processed them expeditiously, and will continue to do so.¹⁵

12. Insofar as any Sponsoring Institution, including Tower Health or any Tower Health System members, should choose to create new residency/fellowship programs to accommodate Hahnemann residents/fellows,¹⁶ the ACGME has set a date of July 26, 2019 for its receipt of applications for accreditation. For applications received on or before that date, site visits will occur no later than August 7, 2019,¹⁷ and accreditation decisions (including resident/fellow complement) will be made no later than August 23, 2019. This is as fast as the ACGME, and any other accrediting agency, can responsibly make somewhere between 30 and 35 accreditation decisions.

II. Over 1,200 Other Positions Are Available for Hahnemann Residents/Fellows

13. As of the morning of July 13, 2019, the ACGME has identified 1,204 available positions¹⁸ for Hahnemann residents/fellows, mainly from the mid-Atlantic states, including the

¹⁵ The ACGME has already made increase in complement decisions for 1,204 “available positions.” See *infra* note 18.

¹⁶ The normal process for a Sponsoring Institution to create a new residency/fellowship program and submit an application for ACGME accreditation takes 1 to 2 years. Thereafter, as stated above, the normal ACGME process for an accreditation decision on a new program is 5 to 12 months.

¹⁷ Specialty residency programs require a site visit; however, subspecialty residency programs normally do not.

¹⁸ “Available position” means that an ACGME-accredited program has offered a position, and as necessary, the applicable ACGME Review Committee has approved an increase in resident/fellow complement for the program to accommodate that offer. These available positions do not include positions in ACGME-accredited programs sponsored by Tower Health or members of the Tower Health System, or in any new programs sponsored by Tower Health or members of the Tower Health System.

Philadelphia area.¹⁹ **The vast majority of these available positions are contingent on release of Medicare funding to the receiving programs.**

14. Most of the specialties/subspecialties have more available positions than needed to accommodate all the Hahnemann residents, and the number of available positions continues to grow each day. ACGME informs the Hahnemann Designated Institutional Official (“DIO”) daily of the list of positions. The DIO, in turn, circulates the list to the program director for each of the Hahnemann programs. The ACGME is informed that each program director is making the list available to residents/fellows.

15. The ACGME is informed that many Hahnemann residents/fellows have made arrangements to transfer to other programs, **but that these transfers are contingent on release of Medicare funding to the receiving program.**

III. An Accelerated Transfer Process for Hahnemann Residents/Fellows

16. The Letter of Intent provides for the transfer of Hahnemann residents/fellows to other programs before or after the closing with the release of funding by either Hahnemann or Tower Health. Yet, the ACGME understands that transfers are not occurring with Medicare funding. Consistent with the Letter of Intent, there are several categories of Hahnemann residents/fellows who could be easily self-identified, and released immediately for transfer with Medicare funding:

¹⁹ These include over 350 available positions in the Philadelphia area at the following Sponsoring Institutions: Temple University Hospital; University of Pennsylvania Health System; Cooper Hospital – University Medical Center (Camden, NJ); Sidney Kimmel Medical College at Thomas Jefferson University (some positions are Newark, DE); Albert Einstein Healthcare Network; Main Line Health System; Rowan SOM/Jefferson Health/Our Lady of Lourdes Health System (Stratford, NJ); Mercy Catholic Medical Center (Darby, PA); Nazareth Hospital; and Crozer-Chester Medical Center.

a. Residents/fellows in specialties/subspecialties not within the Letter of Intent;²⁰ and

b. Residents/fellows who know now that they want to “elect to complete their training elsewhere.”²¹

17. In addition, consistent with the Letter of Intent, all residents/fellows should be informed that Tower Health and Hahnemann have agreed to release “the temporary cap on Medicare reimbursement on a temporary basis for those current Residents who elect to complete their training elsewhere.”²²

18. The ACGME respectfully suggests that, at the hearing on approval of the Bidding Procedures, the Debtors should explain to the Court why the releases of Medicare funding are not occurring.

IV. Accelerated Transfer of Residents/Fellows to Other Sponsoring Institutions Would Save Money for the Debtors’ Estates

19. The ACGME Institutional Requirements provide for financial support and benefits that cost money to the Sponsoring Institution.²³ But this is normally a part of a

²⁰ The ACGME has not been informed that these specialties/subspecialties have been identified, and, according to the Letter of Intent, they will not be specified until the Purchase Agreement is finalized. *See* Letter of Intent, ¶ 1.

²¹ *See* Letter of Intent, ¶ 3.

²² *Id.*

²³ The ACGME Institutional Requirements state, in part,

IV.B.1. The Sponsoring Institution must ensure that residents/fellows are provided with a written agreement of appointment/contract outlining the terms and conditions of their appointment to a program. The Sponsoring Institution must monitor each of its programs with regard to implementation of terms and conditions of appointment. (Core)

IV.B.2. The contract/agreement of appointment must directly contain or provide a reference to the following items: (Core)

IV.B.2.a. resident/fellow responsibilities; (Core)

IV.B.2.b. duration of appointment; (Core)

IV.B.2.c. financial support for residents/fellows; (Core)

IV.B.2.d. conditions for reappointment and promotion to a subsequent PGY level; (Core)

symbiosis between resident/fellow and Sponsoring Institution. The resident/fellow receives clinical education, which includes caring for patients under supervision. The Sponsoring Institution receives services from the resident/fellow (caring for patients), which would otherwise be performed by a paid employee.

20. But here, Hahnemann's patient count has dwindled to the point that it has filed for bankruptcy and has submitted a closure motion to the Court. The services of the residents/fellows have dwindled with the patient count, but Hahnemann continues to bear the full burden of the financial support and benefits of all the residents/fellows, unless and until the residents/fellows become the responsibility of another Sponsoring Institution. The faster the transfer of residents/fellows to other Sponsoring Institutions, the better for the Debtors' estates.

V. The ACGME's Accreditation Responsibilities to the Public

21. At some point in the near future the ACGME will discharge its accreditation responsibilities in the face of the disintegrating specialty and subspecialty programs at Hahnemann, particularly because of a lack of patients for clinical training. Hahnemann has announced the closing of many of its services. It should not have ACGME-accredited residency

(. . . continued)

IV.B.2.d. grievance and due process; (Core)

IV.B.2.e. professional liability insurance, including a summary of pertinent information regarding coverage; (Core)

IV.B.2.f. hospital and health insurance benefits for residents/fellows and their eligible dependents; (Core)

IV.B.2.g. disability insurance for residents/fellows; (Core)

IV.B.2.h. vacation, parental, sick, and other leave(s) for residents/fellows, compliant with applicable laws; (Core)

IV.B.2.i. timely notice of the effect of leave(s) on the ability of

IV.B.2.j. residents/fellows to satisfy requirements for program completion; (Core)

IV.B.2.k. information related to eligibility for specialty board examinations; and, (Core)

IV.B.2.l. institutional policies and procedures regarding resident/fellow clinical and educational work hours and moonlighting. (Core)

programs to which these services are intrinsic for very long after that, especially if there is not a concrete and feasible plan for quick transfer of residents/fellows to other accredited programs.

22. The ACGME is respectful of the bankruptcy process, and it realizes that withdrawal of accreditation of Hahnemann's residency/fellowship programs would likely have an impact on that process. Nevertheless, the public depends on the ACGME to perform its accreditation function, and the ACGME will continue to fulfill its obligations during these cases.

RESERVATION OF RIGHTS

23. The ACGME reserves the right to supplement this Response and Reservation of Rights at any time, and to incorporate by reference any argument raised by any of the other parties in these cases. The ACGME further reserves the right to object to the Sale Motion in connection with the applicable objection deadlines.

WHEREFORE, the ACGME respectfully requests that, in any order entered with respect to the Bidding Procedures Motion, the Court order that the Debtors take all actions necessary to allow residents/fellows to achieve immediate placement in residency and fellowship programs of their choice.

Dated: July 15, 2019
Wilmington, Delaware

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