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Litigation Update

Residency Match Programs for Healthcare Professionals Come Under Antitrust Scrutiny

By Stephen McIntyre, Michael Murray and Ryan Phair

In recent months, private class action lawsuits have challenged residency match programs for pharmacists and veterinarians under antitrust laws. In addition, a congressional subcommittee has begun an inquiry into the residency match program for medical doctors — despite the existence of a statutory antitrust exemption for that match program. With this wave of antitrust scrutiny, healthcare providers and institutions that participate in match programs for interns and residents should be aware of the potential for more enforcement activity.

The Residency Match Program Landscape

A number of healthcare professions — including medical doctors, pharmacists and veterinarians — have postgraduate residencies. A residency is a supervised clinical training program for new graduates that provides hands-on experience and an opportunity to learn and develop specialized skills. Depending on the profession, a residency may be necessary for licensure, board certification or practice in particular specialties.

The pathway is residency is typically through a "match program." The most prominent example is the National Resident Matching Program (NRMP) — also known simply as the Match. During their final year of medical school, soon-to-be graduates apply for residencies with particular programs, and also register with the Match. Applicants and residency programs then submit rank-order lists to the Match; the applicant ranks residency programs in order of preference, and programs do the same for applicants. In simplified terms, the Match then uses an algorithm to attempt to "match" applicants and residency programs. For a match to occur, the applicant and the program must have ranked one another. If a match is achieved, it is binding on both parties. Not every applicant matches with a program. By the same token, some residency spots may go unfilled.

The NRMP also governs the match process for international medical graduates (IMGs) and for fully trained and licensed physicians who are seeking fellowships.

House Subcommittee Reconsiders the NRMP's Statutory Antitrust Exemption

In 2004 — following a lawsuit challenging the Match under the antitrust laws — Congress enacted legislation that created an antitrust exemption for the Match. Codified in 15 U.S.C. § 37b, the statute provides that it "shall not be unlawful under the antitrust laws to sponsor, conduct, or participate in a graduate medical education residency matching program."

Despite this exemption being the law of the land for over two decades, the House Judiciary Committee's Subcommittee on Administrative State, Regulatory Reform and Antitrust is questioning whether the statute should remain on the books. In March 2025, the subcommittee issued letters to the American Medical Association, the NRMP, and leading hospitals and health systems seeking documents and information, including information on the matching algorithm, the exchange of salary information and compensation limits. The letters reportedly stated that "[b]y controlling every aspect of the hiring process, the Match limits the free choice of both applicants and programs within the residency market." Rep. Scott Fitzgerald (R-WI), chair of the subcommittee, indicated in a statement that he believes the Match may have led to "stagnant" wages for residents and precipitated "doctor shortages."

Whether Congress takes action to amend or remove the Match's antitrust exemption remains to be seen. Outside of the NRMP, residency match programs are not subject to a statutory antitrust exemption.

Private Antitrust Actions Challenge Match Programs for Pharmacists and Veterinarians

In the first of these cases, *Albert v. American Society of Health-System Pharmacists, Inc.*, No. 8:25-cv-00673 (D. Md.), two former pharmacy residents filed suit against the American Society of Health-System Pharmacists (a professional organization that represents pharmacists), National Matching Services Inc. (the company that helps administer the pharmacist match program), and several prominent hospitals and health systems that participate in the pharmacist residency match program. They allege that "[i]nstead of competing to hire resident pharmacists, and allowing these individuals to negotiate better terms of employment and move between employers as they wish, Defendants have designed and agreed to participate in a system that intentionally suppresses competition by forcing all such individuals to apply for employment through a system called the ASHP Resident Match Program."

According to the *Albert* complaint, the ASHP Match makes it impossible for pharmacy graduates "to negotiate over the terms of employment they are offered, prohibits them from moving between employers after they are hired, bars them from applying for pharmacy residency positions outside of the ASHP Match." This, in turn, allegedly results in "artificially suppressed wages and employment benefits" for pharmacy residents. On behalf of a putative nationwide class of persons who obtained pharmacy residencies through the ASHP Match, the *Albert* plaintiffs assert claims under Section 1 of the Sherman Act.

At least two follow-on actions to *Albert* have already been filed. *See Kim v. Am. Soc'y of Health-Sys. Pharmacists, Inc.*, No. 8:25-cv-00708 (D. Md.); *Walker v. Am. Soc'y of Health-Sys. Pharmacists, Inc.* (D. Md.). The actions are in preliminary stages.

In early April, private class action plaintiffs filed a similar challenge to the match program that governs veterinary residencies. In *Amore v. American Association of Veterinary Clinicians*, No. 7:25-cv-00229 (W.D. Va.), three recent veterinary interns filed suit against the American Association of Veterinary Clinicians, Solution Innovations, Inc. (the company that runs the veterinary match program), retail veterinary companies and leading veterinary schools under the Sherman Act. These plaintiffs allege that the veterinary match program has "illegally subverted the system of free competition in the U.S. labor market for veterinary interns and residents," resulting in suppressed wages and benefits.

In each of these cases, the plaintiffs allege that the match programs in question are tantamount to horizontal agreements among competitors to fix wages, which are treated as *per se* illegal under the antitrust laws. If any of the cases proceed past the pleading stage — which remains to be seen — the courts will likely be asked to determine whether *per se* condemnation is appropriate. Under Section 1 of the Sherman Act, most agreements are instead subject to the "rule of reason," an inquiry that evaluates the defendants' market power and their agreement's actual effects on competition. If a challenged agreement produces procompetitive benefits or efficiencies that outweigh any anticompetitive effects, the agreement is lawful.

More Challenges on the Horizon?

We may not yet have seen the last of antitrust challenges to match programs. Given that other healthcare professions — including dentistry, optometry, podiatry and psychology — have match programs for interns or residents, institutions and organizations that participate in those programs may be targeted in future lawsuits. We will continue to monitor any challenges to match programs and provide guidance tailored to these developments.

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