



Surgical residents: Are they students or employees?

by Emily R. Winslow, MD, St. Louis, MO;
Abdalmajid Katranji, MD, Peoria, IL;
and Gregory S. Cherr, MD, Buffalo, NY

Each year, the Candidate and Associate Society of the American College of Surgeons, now known as the Resident and Associate Society (RAS), sponsors a symposium at the Clinical Congress of the ACS. In 2004, designated “the year of the resident” by Claude H. Organ Jr., MD, FACS, President of the ACS,² the symposium will address the fundamental question, What *is* a surgical resident? Is a resident a student, an employee, or both? How can the differences between the designations be resolved?

What’s the difference?

Most surgeons would agree that the most important purpose of residency training is to learn the art and science of surgery. In this respect, surgical residents are first and foremost students. However, residents learn by carrying out activities within health care institutions that view them as employees and provide them with benefits. Furthermore, multiple government agencies have ruled that residents are employees. In 1999, the National Labor Relations Board recognized residents as employees when it allowed them to unionize.^{3,4} With rare exception, the Internal Revenue Service (IRS) also considers residents employees.⁵

Recent changes in resident work-hours regulations have focused attention on the fundamental role of postgraduate trainees in surgery. Although the education of surgical residents is emphasized via such mechanisms as teaching conferences, the American Board of Surgery

Student: one who studies or investigates a particular subject.

Employee: a person who is hired by another person for wages.¹

(ABS) in-training examinations, and journal clubs, a significant portion of residents' time is spent performing tasks that may be considered "services," such as procuring X rays, dictating discharge summaries, and writing prescriptions. Furthermore, the educational value of certain tasks varies during the course of residency training. For example, placement of a central line is a valuable skill that a junior resident should learn. For chief residents, however, this procedure has less educational value and may take time away from other more useful pursuits. Although great emphasis is placed on resident teaching conferences, attending to critically ill patients must take priority over more formal types of housestaff education. Who hasn't seen a surgical resident slip out of a grand rounds lecture to respond to the trauma code beeper?

Money issues

Resident salaries, pertinent to employment, are a topic that many surgeons find distasteful. Part of this reaction may stem from the fact that surgical residents in the past worked longer hours for far less money. Others may feel that a career in surgery is a calling rather than a business enterprise, and, therefore, discussions about resident reimbursement are inappropriate. Still others may note that after completing training, practicing surgeons receive adequate compensation for their work. What some of these individuals seem to forget is that most surgical residents are saddled with staggering debt and are forced to begin repaying loans while still in residency. Over the past 30 years, the cost of attending medical school in the U.S. has risen 250 percent at public schools and 400 percent at private schools.⁶ Medical school graduates from the class of 2003 entered postgraduate training with debt averaging \$109,457.⁷ Unfortunately, when accounting for inflation, resident salaries have remained stagnant. Faced with these realities, medical students and residents (predominantly from non-surgical specialties) have attempted to increase salaries by unionizing and challenging the legality of the National Resident Matching Program or by reducing work hours; others have chosen specialties with shorter residencies or higher reimbursements than surgery.⁸

Despite an increasing emphasis in the role of

residents as employees, we believe that most physicians would argue that the core concepts of residency training include study and investigation—the defining characteristics of a student.¹

A number of issues strain the balance between the resident as a student or an employee, including the 80-hour workweek, resident income-tax payment, and housestaff benefits such as maternity/paternity leave and day care. As these issues are addressed and resolved, fundamental changes in the method of training surgical residents are likely to occur. These changes may affect the number, quality, and diversity of future surgeons and therefore the future of surgery in America. This article will review one of these issues (housestaff maternity leave) to illustrate the difficulty of formulating resident training policies that address both education and employment.

Housestaff maternity leave

In the debate over whether residents should be exempt from paying of the Federal Insurance Contributions Act (FICA) tax, one of the stipulations used to argue that residents are employees rather than students was that they are provided with benefits characteristic of employees. Specifically, the 2000 memorandum from the IRS cited sick leave and disability leave as part of the facts and circumstances test by which residents could be considered employees.⁴ Interestingly, this issue of medical leave for residents, specifically maternity leave, is one that has received much recent attention within the medical community as well.

In fact, until recently, many residency programs did not have defined policies for maternity leave.⁹ In 1996, the American Medical Women's Association issued a position statement calling for all residency training programs to have a written policy concerning maternity and disability leave.¹⁰ In a review article examining pregnancy during residency, one of the major sources of stress for pregnant women was found to be inadequate time for maternity leave and fatigue after returning to work.¹¹ In 2002, the Association of Women Surgeons (AWS) issued its own position statement on maternity leave for surgical residents. In brief, it supported the concept of combining four weeks of "medical leave" with two weeks of vacation, for a total of six weeks of paid maternity leave.¹²


Despite this statement by the AWS, there remains little or no consensus on the issue of maternity leave across surgical training programs. One of the difficulties has been that the employer of the resident may be either the hospital or the university with which it is affiliated. Both of these institutions have variable policies for their employees. For example, the graduate school of biomedical sciences at Washington University in St. Louis, MO, provides 45 days of maternity leave. In contrast, the hospital policy in general allows for the standard six weeks as specified by the Family and Medical Leave Act of 1993 (FMLA), with the specifics dictated by the employee's management. This example illustrates the variable and potentially conflicting policies that women may face when pregnant.

For residency programs, the difficulty in defining maternity leave policies is that a third entity is involved, namely the specialty board. For general surgery programs, this means that no matter what hospital or university policy is chosen, ultimately the resident is held to the ABS requirements for eligibility. The rules for eligibility state that the ABS expects each year of training to include no less than 48 weeks of full-time surgical experience. In the case of maternity leave, the ABS does allow for one of the first three years and one of the last two years to be 46 weeks of full-time surgical experience.¹³ This allows for six weeks of maternity leave in the case of a well-timed, carefully planned (and uneventful) pregnancy. However, it does not allow for flexibility when pregnancies occur within a year in which vacation has already been taken or for any extension of leave if complications occur. Should the resident require additional maternity leave, she may be required to "make up" any weeks required beyond the six allowed by the ABS. For this reason, many residency programs state explicitly that such situations could result in the need to complete an additional year of residency training.^{14,15} Although this is certainly understandable from an educational perspective, it is logistically difficult for most residents to extend training or delay practice or fellowship plans.

In summary, although the resident's status as employee or student can influence some specifics of family leave policy, it is ultimately the policies of the ABS that limit the impact of these distinctions. The one critical factor in the individual's institu-

tional policy is how extensions in training as mandated by the ABS will be managed and funded. Further questions include the effect of this policy on the recruitment and retention of female surgical residents.

Conclusion

For surgical residents, many issues exist that may adversely affect the balance between "employee" and "student." By identifying and addressing these critical training issues, we will continue to attract the best and brightest into the profession of surgery. We hope that this article will encourage residents to come to the annual RAS symposium titled "Surgical Residents: Students or Employees—And Why It Matters," which will take place during the 2004 Clinical Congress in New Orleans, LA. 

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Dr. Winslow is a resident in general surgery at Washington University School of Medicine, St. Louis, MO, and a member of the RAS-ACS Issues Committee.

Dr. Katranji is chief resident in general surgery at the University of Illinois College of Medicine-Peoria, and a member of the RAS-ACS Issues Committee.

Dr. Cherr is assistant professor of surgery, State University of New York, Buffalo, and chair of the RAS-ACS Issues Committee.