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May Resident Physicians Use Hospital DEA Registration Numbers Off-Site?

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A Florida “resident physician” is someone who has completed their internship and graduated from medical school but is not yet licensed as a Florida medical doctor or osteopathic physician and who registers with the Department of Health as a resident physician. Resident physicians have to complete at least a one-year residency before they can take the licensing examination and become licensed physicians. As part of the process of training new physicians, Florida allows resident physicians to utilize the hospital’s Drug Enforcement Administration (DEA) registration number to prescribe controlled substances listed in Chapter 893, FS, in the normal course of their employment. (Section 458.345, FS). The hospital assigns a suffix to the hospital’s number for each resident. But where can these registrations be used?

In the early history of graduate medical education residency programs, residents were typically confined to practicing on hospital campuses. More recently, hospitals have expanded resident physician education to recognize the breadth of physician practice. Especially with the recent increase in hospital acquisition of physician practices, some graduate medical education programs include rotations through physician office practices.

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Florida's law on resident physician prescribing does not strictly limit the use of the hospital DEA registration number to use on the hospital campus. It states that such controlled substance prescribing must be "through use of a [DEA] number issued to the hospital or teaching hospital by which the person is employed or *at which the person's services are used.*" So, if a Florida resident physician were employed by the hospital at an off-site location such as a hospital-owned physician practice, arguably, Florida would not balk at such physician engaging in controlled substance prescribing using the hospital's DEA number at such physician practice.

However, meeting Florida requirements is only half of the analysis. The DEA also has a say in this matter as the primary agency that regulates controlled substance prescribing and its regulations address resident physician prescribing of controlled substances. The DEA regulations (21 CFR 1301.22), in relevant part, waive the requirement of a DEA registration under the following conditions:

(c) An individual practitioner who is an agent or employee of a hospital or other institution may, when acting in the normal course of business or employment, administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution which is registered in lieu of being registered him/herself, provided that:

1. Such dispensing, administering or prescribing is done in the usual course of his/her professional practice;
2. Such individual practitioner is authorized or permitted to do so by the jurisdiction in which he/she is practicing;
3. The hospital or other institution by whom he/she is employed has verified that the individual practitioner is so permitted to dispense, administer, or prescribe drugs within the jurisdiction;

4. Such individual practitioner is acting only within the scope of his/her employment in the hospital or institution;
5. The hospital or other institution authorizes the individual practitioner to administer, dispense or prescribe under the hospital registration and designates a specific internal code number for each individual practitioner so authorized. The code number shall consist of numbers, letters, or a combination thereof and shall be a suffix to the institution's DEA registration number, preceded by a hyphen (e.g., APO123456-10 or APO123456-A12);

With regard to off-site resident physicians, the language of subsection (4), “[s]uch individual practitioner is acting only within the scope of his/her employment in the hospital or institution” raises troubling questions. While a resident physician may be acting within the scope of their employment at an off-site location, they are not necessarily “in the hospital or institution.” There may be arguments militating in favor of satisfying that condition when the physician office is located on the hospital or institution's campus.

Furthermore, historically, DEA has frowned on the use of DEA registrations other than at the address associated with the registration, so off-site use may be problematic – though the DEA regulations prohibiting off-site use do not mention “prescribing” and are limited to locations where controlled substances are “manufactured, distributed, imported, exported, or dispensed.” In light of these somewhat conflicting laws, we recently spoke to the staff at one of the DEA district offices. That staff member verbally confirmed the interpretation that off-site prescribing by resident physicians was not allowed.

So, here's the dilemma: Florida law appears to permit resident physicians to use the hospital DEA registration if employed by the hospital regardless of where the resident is performing services as a

resident. The DEA, however, does not. It appears to limit the resident physicians' use of the hospital DEA registration to the site of the hospital, itself.

Is there a way to satisfy both regulatory schemes? The DEA rules also allow "hospitals/clinics" to obtain an "institutional registration." Could the off-site hospital-owned physician practice obtain its own institutional "clinic" DEA registration number to be used for resident physicians? That may satisfy the DEA's requirements, but it could raise a new issue under Florida law. Florida recognizes hospitals, but does not appear to recognize the DEA category of "clinics" for institutional registrations. Rather, Florida law contemplates only the issuance of hospital or teaching hospital DEA numbers for resident physicians' use and the statute doesn't authorize resident physicians' use of clinic DEA registrations. Would Florida consider an expansive reading of its statute to allow resident physicians to use a hospital-owned physician practice's institutional clinic DEA registration? And, if it did, would this meet the requirement of being authorized by the state jurisdiction? It is difficult to predict such a change in policy, but it would likely serve the public good to resolve this dilemma and would cause no harm, so it may be possible.

Change is unlikely to occur unless representatives of Florida's accredited Graduate Medical Education hospitals (and perhaps the medical schools as well) meet with Florida DEA to revisit this process on both sides such that Florida resident physicians receive the needed on-the-job education and training on controlled substance prescribing that all sides would want. It may require tweaking of Florida's statutory scheme to allow resident physicians to use the clinic registration as well as possibly revising the DEA regulations or confirming their interpretation to get there. Or, perhaps creative minds can come up with another approach.

This problem is likely not limited to Florida. Other states with varying laws on off-site resident

physician prescribing of controlled substances may encounter similar issues. Ideally, DEA, itself, should recognize this conundrum and provide national guidance on resident physician use of institutional DEA numbers at off-site resident physician training sites. We will keep you posted.

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