

Work-hours regulations in the European Union and their impact on the physician workforce

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On September 9th 2003 the European Court of Justice in Luxembourg ruled against German municipal authorities in favour of plaintiff Dr. Norbert Jaeger. This landmark decision by the highest court of the European Union (EU) declared that on-call duty hours spent by Dr. Jaeger at a Kiel municipal hospital emergency department were to be considered working time, regardless of whether Dr. Jaeger actually attended to patients or rested during the on-call period. For the hospital the defendants argued that German law distinguishes between “readiness for work” (*Arbeitsbereitschaft*), “on-call service” (*Bereitschaftsdienst*) and “stand-by” (*Rufbereitschaft*), and that only “readiness for work” is considered equivalent to work (i.e. duties that are eligible for compensation). Conversely, “on-call service” and “stand-by” are considered resting time as no professional tasks are performed. The defendants maintained that sleeping in a bed provided by the hospital was not sufficient work to warrant compensation for an on-call physician. The European Court disagreed, ruling that the German method of compensating its physicians was not in line with the EU 1993 Working Time Directive: “On-call duty performed in a place determined by the employer constitutes in its totality working time even where the doctor is permitted to rest at his place of work when his services are not required” [1].

This decision forced the German parliament to take swift action in order to comply with the mandate of the European Court. At the introduction of the reform, the anticipated cost of compliance was estimated at 2 billion euros (2.5 billion dollars) in additional healthcare spending per year. Since physician compensation in Germany is remunerated in both money and free time, it was estimated that an extra 20,000 physicians would be needed to achieve compatibility with the Court’s ruling. Germany, a country abounding in fiscal problems, joined other national governments and hospital lobbyists in pressuring the European Commission (the executive branch of the EU) to soften their healthcare workforce doctrine in order to lessen the impact on government budgets. In appease-

ment, on September 22nd, 2004, the EU Commission suggested changes to the EU 1993 Working Time Directive, one of which defined an “inactive” on-call status for physicians – a category that would be exempt from compensation. German physicians’ unions have vehemently criticized this decision, alleging inhumane working conditions as a major detriment to recruiting hospital-based physicians. Victory in the battle for a civilized lifestyle, which seemed virtually inevitable to young physicians after the European Court decision last year, has now become at best a tentative possibility.

Germany, following the tracks of many European countries, is now entering an era of healthcare reform. Among members of the EU, Germany spends the highest share (10.7%) of its gross domestic product (GDP) on healthcare – the majority of which comes from an earmarked tax on labour earnings [2]. Unfortunately demographic shifts in Germany’s population, including a shrinking workforce and expanding retired population, make this an inadequate budget for the current medical system. The German government has chosen to “solve” this financial imbalance by expecting physicians to work in part for free. This exploitive and abusive system is leading an increasing number of young German medical graduates into non-medical careers or to flee the country altogether in hope of better job prospects. The European Court decision in September 2003 both acknowledged the inhumane working conditions and offered a ray of hope for lifestyle betterment that young German physicians desperately need. A reversal of these reforms, as suggested by the European Commission Directive on September 22nd, 2004, will promote the oppressive status quo and serve to accelerate the loss of qualified medical graduates from Germany and other European countries. These developments are particularly alarming in the light of a recent survey of 1044 German hospital-based physicians [3]. A majority of hospital doctors admitted to feeling overworked, underpaid, fatigued and highly stressed, with a large percentage claiming that they would not become physicians if they could choose their careers again. Excluding on-call duty, 79% of assistant medical directors (*nichtleitende Oberärzte*) work more than 45 hours per week, and 24% work more than 55 hours. Of the assistant doctors (*Assistenzärzte*, comprised of specialists and residents-in-training), 73% work more than 45 hours per week, and 22% work more than 55 hours. Interns (*Ärzte im Praktikum = AiP*) report that 89% work more than 45 hours, with 39% working more than 55 hours. 41% of assistant doctors (*Assistenzärzte*) and 39% of interns (*AiP*) revealed they were not satisfied with their job. In addition, 40% of assistant doctors (*Assistenzärzte*), and 30% of interns (*AiP*) revealed they would either “rather not” or “definitely not” go into medicine if given a

second chance. It is imperative to keep in mind that these reported physician work hours do not include any time spent as on-call duty. Furthermore, according to public regulations for physicians’ contracts an average week for assistant doctors (*Assistenzärzte*) in Germany should consist of 38.5 working hours. Nevertheless, in the survey mentioned, 63% of assistant doctors (*Assistenzärzte*) reported that their overtime work-hours were not officially registered and paid for while 25% were only able to register a half of their overtime work-hours. In addition, 75% of all assistant doctors (*Assistenzärzte*) were assigned to four to seven “stand-by” (*Rufbereitschaft*) on-call duties per month [3].

Fulfilment of unpaid duty is not an altruistic choice made by German doctors. Physicians who refuse to serve additional on-call hours are dismissed or sanctioned by their hospitals. Sanctions include, but are not limited to: being banned from the operating room or procedure suite, or being assigned to a less desirable service. Improvement in working conditions is critical for the retention of young physicians – the backbone of German healthcare reform.

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