

When will discrimination end in France?

Article L-4111-1 of the French Public Health Code specifies that the practice of medicine in France requires that the physicians possess a French or European Union medical diploma, have French or European Union nationality, **and** be registered with the National Council of the Order of Physicians (CNOM), a condition which is dependent upon the first two being met. Persons of either French or foreign nationality, who possess a medical diploma delivered by a State outside the European Union, are in principle not licensed to practice medicine in France. The same applies to nationals of countries outside the European Union, even when they possess a diploma delivered by France or by another European country.

However, despite this legislation and due to a persistent shortage of physicians, French public hospitals do employ a number of professionals with non-European Union diplomas and give them a variety of different posts. However, these physicians **are expected to practice their clinical duties while placed under the direct supervision and responsibility of a practitioner who himself has a full license to practice medicine in France.**

In June 2005, the Direction of Hospitalisation and Organisation of Health Care (DHOS) of the French Ministry of Health conducted a survey of public health institutions and private institutions participating in the public hospital service (PSPH). This survey analysed by the Accounting Office revealed that the number of practitioners possessing a non-European Union diploma practicing in French public hospitals was **6750 physicians.**

The distribution by status showed that 48 % of the physicians had a status of acting resident [*“faisant fonction d'interne / FFI”*] preparing a

certificate of specialized training. Another 28 % had a status of “adjunct” affiliate practitioner (*praticien attaché associé*), and 15 % had the status of “adjunct” assistant (*assistant associé*). The remaining 9 %, were classified as “other”, and practiced sporadically or under unofficial positions [*non agréés*].

The « FFI » students (acting residents) pursuing training were in principle supposed to return to their countries after this training. However, as the Accounting Office noted in its report on personnel in health institutions, *“their training certificate was renewed year after year, either by falsely doubling the training period [of a year of training] or by successively enrolling in different specialties. The number of “acting residents” [“faisant fonction d'interne”] increased very strongly during the past ten years, changing from 765 in 1994 to 4,009 in 2004, a growth of 424 %, according to data from the Ministry of National Education”.*¹

The topic is all the more pressing, since the heightened recourse to “acting residents” [*faisant fonctions d'interne*] is accompanied by irregularities notably disclosed by the Accounting Office and indicating that *“in the institutions confronted with shortages, acting residents [faisant fonction d'interne] occupy positions of Assistant or even Hospital Practitioner, all the while having the remuneration corresponding to a resident status, that is, a monthly wage [prior*

¹See paragraph below regarding «adjunct» statuses. A health care bill passed by the French Parliament in 1999 (law 99-641 of 27 July 1999, articles 60 and 61) introduced a prohibition on the hiring of health care practitioners with non-European diplomas under “adjunct” statuses. This likely resulted in the hiring of new practitioners under the acting resident status, since this was the only status available to them.

to income tax] of 1,365 Euros to which compensation for on-call duty [permanence des soins] is added.²” Only recently, thanks to a law that was voted in December 2006³, obtained through the pressure of multiple union actions organized by INPADHUE which drew national attention in the media, a large number of “FFI” have become “adjunct” affiliate or “adjunct” assistant practitioners.

Concerning the « **adjunct** » affiliate practitioners and « **adjunct** » assistant practitioners, in the 1980s the legislator created these hybrid statuses which took into account the scientific equivalence of the medical diploma, allowing the recruitment of these practitioners in the public hospitals, on the condition that...**they practice under the responsibility of a practitioner with a French diploma**⁴. These statuses allowed practitioners with non-European Union diplomas to practice, without however conferring upon them the recognition of their competencies or their diplomas, or full licensure. The resulting outcome of this partial nature of the right to practice thus conferred is firstly a difference in treatment, notably in terms of career development and future prospects, and above all a difference in remuneration compared to their colleagues with French diplomas (approximately 1,800 Euros per month, versus 3,600 Euros). This difference allegedly arises from the fact that they practice under the responsibility of the latter, and therefore their situation is not one of exact equality. In order to reassure these “adjunct” practitioners, the public authorities have not hesitated to declare, on several occasions, that these practitioners will be allowed to remain in their jobs under their current statuses for life!⁵

And yet, if there is such a difference in juridical and/or administrative status justifying their job

² This may explain in part why the majority of on-call time in France is covered by practitioners with non-European Union diplomas.

³ Law 2006-1640 of 21 December 2006, article 83.

⁴ Below we use the term “French diploma” to indicate a diploma recognised for full licensure by France, which may include non-French, European Union diplomas.

⁵ Whereas the 2006 law allowed practitioners hired as acting residents between 1999 and 2004 to convert their positions to adjunct assistant or adjunct affiliate practitioner, this status was to be time-limited. In contrast, practitioners hired in adjunct statuses prior to 1999 retain the right to continue in this status indefinitely.

insecurity, it turns out that in reality a physician with a foreign diploma and a physician with a French diploma perform exactly the same duties within the hospital. Nothing allows us to distinguish their work within the different hospital services. As far as practicing under the responsibility of a French physician is concerned, the evidence requires us to recognize that this is nothing but theoretical, since the very practice of these duties is clearly beyond that of the supposed duties implied by the status of “adjunct” affiliate or “adjunct” assistant which, if taken to the letter, would require that the entire set of medical acts performed be reviewed and validated by a physician with a French diploma. This is radically impossible in actual practice, and as such it is obvious that this “adjunct” status is discriminatory given the fact that the adjunct physicians perform the same duties autonomously.

Such is exactly the meaning and scope of the February 27, 2006 Decision of the High Authority for the Struggle against Discrimination and for Equality in France (HALDE / Haute Autorité de Lutte contre les Discriminations et pour l’Egalité / a non-judicial governmental agency established in 2005, with the binding authority to decide cases of discrimination and assign remedies), which clearly specifies:

“The absence of juridical responsibility related to the status of “adjunct” practitioner is only theoretical, as physicians with foreign diplomas in reality practice duties analogous to hospital practitioners in a completely autonomous manner...

It is in the exploitation that is made of their absence of status even while the concrete responsibilities are identical that the discrimination in regards to them finds its source. This operates on the basis of [national] origin in access to employment and in employment.

Indeed, the organization of hospital practices reserves inequality of treatment for practitioners with foreign diplomas with respect to remuneration and access to the full practice of medicine.”

The paradox which endures today relies upon the willingness of the French public authorities to maintain and prolong this discrimination under the pretext of an examination to verify the practitioners’ fund of knowledge, whereas these

practitioners have already been providing medical treatment to French citizens in the public hospitals for many years. Some among them were even trained in France by special arrangement as foreigners, in other words outside of the restrictive government-specified quota for medical trainees (*numerus clausus*⁶)! They were trained in French universities, according to the criteria and curricula set by the university, under the same conditions as French students. Nevertheless we read in an official report published during a Parliamentary debate that, although the training of these practitioners was obtained in France, this training “does not have the same qualifying scope as the French diploma”! Such statements suggest that the French university devoted itself to a medical training program, designed for foreigners destined to practice overseas, which did not guarantee the level necessary for the practice of medicine in France, an obvious discrimination, which adds to the discrimination already existing.

All indicators of the evolution of medical demography in France appear **to be in the red** for the next 10 years, and yet many competent and practicing physicians with foreign diplomas are refused licensure. Why is this? Is it truly a concern for the verification of the practitioners’ fund of knowledge⁷? The current procedures in place are lengthy and will require practitioners to wait years without the assurance that they will someday obtain full licensure.⁸ In the mean time,

⁶ *In France, entry into the medical profession is regulated by a competitive examination [concours] at the end of the first year of medical school, which is open to all who have obtained a high school diploma [baccalauréat]. The argument has been made in public debate that licensing foreign physicians would be unfair to all the French students who did not succeed in this highly selective examination. Of note, the policy of France during the 1980s and 1990s was to drastically reduce the number of physicians admitted into training, resulting in the current shortage.*

⁷ *The present examination procedure for practitioners with non-European diplomas involves an open essay examination comprised of three questions over the course of one day. To our knowledge, there is no system for verifying the validity or year-to-year reliability (reproducibility) of the grading mechanism, as questions are devised by a new grading committee [jury] each session, and there are no published criteria for the rating of essay examination answers.*

⁸ *Using a complex system of seniority (according to date of first hire), individuals will be allowed access to the licensing examination over the next four years. After passing the examination they will be required to apply to the licensing committee for review of additional*

they will continue to work in the hospitals, providing care to French citizens. By history, the delivery of licenses to practice medicine in France to practitioners of foreign origin has always been subject to strict quotas fixed in advance. In other words, a practitioner can succeed in passing all the possible and imaginable examinations, without subsequently obtaining a license to practice. In the past, these quotas have never reflected the reality of the true need for health professionals in France! So are we still to believe in promises that we hear today?

From our point of view the main question, which is difficult to answer, is: **when will discrimination end in France?**

credentials. Applicants may take the examination and apply to the licensing committee each up to a maximum of two times.

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