



# THE OMBUDSMAN FOR ACADEMIC ETHICS AND PROCEDURES OF THE REPUBLIC OF LITHUANIA

## DECISION REGARDING COMPLAINT OF P. Ū. OF 6 MAY 2015

7 August 2015 No. SP-18

Vilnius

The Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania (hereinafter – Ombudsman), <...> examined the complaint of P.Ū., the former student<sup>1</sup> of residency studies (hereinafter – applicant, resident) at Lithuanian University of Health Sciences (hereinafter – LUHS) regarding a possibly illegal expulsion from residency studies at LUHS, received in the Office of Ombudsman for Academic Ethics and Procedures of the Republic of Lithuania on 6 May 2015, the submitted material, and **determined that:**

The applicant in his complaint states that from 2011 he studied in the residency studies at LUHS and from August 2013 – the residency programme of cardiac surgery at LUHS Cardiac Surgery Clinics. On 4 March 2015 the applicant was expelled from the residency studies programme of cardiac surgery by the Rector of LUHS Order No. PS-11-72-R according to the clause 57.2 of LUHS Regulation on Residency which provides for that “a resident is expelled from the residency studies upon failure to meet the requirements set forth in the residency studies programme”.

The applicant in his complaint states that he does not agree with the expulsion from the residency studies and in support to his disagreement indicates that from November 2014 he was subjected to “severe, humiliating measures that complicated the residency studies making unfavourable conditions for study in the residency and finalising the residency studies”; that “interested” persons from the Hospital of LUHS Kaunas Clinics Cardiac Surgery Clinics “strived to expel” the applicant from the residency studies by “theoretical assessment tests that had never been applied to residents in this clinics”, complaints regarding violations of ethics and deontology; that “the rights of residency were violated, opportunity to rewrite assessment tests that were given negative evaluation was not provided (according to the Regulation on Residency)”, that the applicant “was not provided with an opportunity to continue his residency studies in a state financed programme”.

The applicant requests the Ombudsman “to make familiar with all the submitted documents regarding the residency studies”, as well requests “to conduct an investigation regarding violation of the right of residency studies, quality of studies” and “make opportunity to continue residency studies in a state financed programme”.

<...>

The residency coordinator is responsible for the performance of a specific programme of residency studies at LUHS, the performance of all residency studies is coordinated by the Pro-Rector for Clinical Medicine, direct management and ensurance of implementation is done by the Dean of

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<sup>1</sup> Student (applicant, resident) in the text of the Ombudsmen’s resolution is given as a noun of masculine gender without linking it to the sex of the student, applicant

the Post-Diploma Studies Centre (the clauses 8, 17, 50 of the Regulation on Residency / the clauses 3.15, 3.16, 6 of the Regulation on Residency Studies.).

<...>

The clause 18 of the Regulation on Residency provides for that a Residency Committee is set up in the university for settling of general residency issues (the chairman is the University Pro-Rector for Clinical Medicine, the secretary is the Dean of the Post-Diploma Studies Centre).

In accordance with the clause 19 of the Regulation on Residency, Residency Commissions are set up in profile clinics <...>

The clause 28 of the Regulation on Residency / the clause 45 of the Regulation on Residency Studies set forth that for accounting for work done during the cycle a resident fills in a daybook that comes in the form established by the University. The duty of a resident to fill in a daybook is embedded in the point 65.7 of the Regulation on Residency / the point 98.5 of the Regulation on Residency Studies as a duty of a resident.

<...>

*Based on the studies book of the applicant P. Ū. and the data of the daybook of work and residency studies of III–IV residency years (2013–2014), the following conclusions should be done:*

*1. By failure to fill in a daybook the applicant violated the duty of a resident “to fill in a daybook that comes in the form established by the University” set forth in the point 65.7 of the Regulation on Residency / the point 98.5 of the Regulation on Residency Studies;*

*2. The clause 28 of the Regulation on Residency / the clause 45 of the Regulation on Residency Studies provide for that theoretical knowledge and practical skills obtained by a resident during the cycle have to be assessed in scores using ten-score assessment system, it means that the applicant without having assessments in scores for the 3 cycles of the residency studies for 2013–2014 (Artificial Blood Circulation, Ischemic Heart Disease and Pathology of Heart Valves), had 3 academic debts.*

<...>

“Research and practical work of the applicant for the third (2013-2014) study year of the residency, assessment of study objectives and outcomes “was considered at the meeting of the Residency Commission on 16 October 2014 (Minutes No. MF-37-5-14-14). <...> It was decided “not to credit the resident <...> assimilation of practical residency skills for the third residency year according to the study objectives and outcomes set forth in the residency programme”. Following this decision on 17 October 2014 the Head of Cardiac, Chest and Blood Vessel Surgery Clinics Prof. Habil. Dr. R. Benetis addressed the Dean of the Post-Diploma Studies Centre Ass. Prof. K. Petrikonis informing him on the applicant’s “failure to assimilate practical skills during the cardiac surgery treatment, failure to apply them during independent surgery work” and suggesting to make decision on expedience of continuation of his residency studies and submitted reports of two employees of the clinics (one of them is the supervisor of the resident and the coordinator of the residency prof. J. Sakalauskas) on actions of the resident (on independently incorrectly prescribed dose of medicine to the patient dated 27 August 2014 and on prescription of inadequate medicine to the patient dated 11 September 2014).

At the meeting of the Residency Commission on 4 November 2014 (Minutes No. MF-37-5-14-15) “theoretical and practical knowledge of the applicant for the earlier years of the residency, interviews of the clinics staff on trust in the resident’s work, his competence and safety of patients” was discussed. As it is indicated in the minutes, “all those who spoke expressed their distrust in the resident due to his inability to apply theoretical knowledge in practice, due to his excessive self-confidence, failure to consult a doctor on duty in the department. Cases are often when

independent decisions on treatment, diagnostics that are threatening health and life of a patient are made. <...> Available knowledge and adequacy of behaviour threatens life of patients” (underlined by us). <...>

The legal acts of LUHS provide for that the objective of residency studies is to prepare a doctor for an independent work. The Schedule of the study programme provides for that “the programme is based on integration of practical work of theoretical studies from the very first year of the studies. Practical skills are obtained and theoretical course is assimilated with assistance from the University lecturers – specialists of the residency base”. The Regulation on Residency provides for that the supervisor of the residency – a lecturer of the university – a health care specialist, who works in the residency base and curates a resident during a residency cycle or during the whole residency programme, managers a resident during a relevant cycle, facilitates a resident to obtain theoretical and practical skills, informs the residency coordinator on the course of the residency, violations of medical ethics by a resident, as well in accordance with the procedures provided for by the legal acts is responsible for assignment of works or actions to be performed independently to a resident, who provides health care services (the clauses 9, 53.1–53.5 of the Regulation on Residency). The clause 25 the Regulation on Residency sets forth that “a resident works under management of the residency supervisor (the clause 3.3 of the Regulation on Residency Studies has a formulation “under supervision of the residency supervisor”) (underlined by us).

<...>

The clause 65 of the Regulation on Residency / the clauses 98–99 of the Regulation on Residency Studies set the duties of a resident one of which is “while performing practice of professional activity as well while visiting patients to provide health care services in the order prescribed by this Regulation and other legal acts only upon obtaining the required knowledge and skills, without exceeding competence and qualification obtained”, as well the duty to respect the right of patients and not to violate them, comply with the principles of medical ethics, perform the residency programme. The clause 67 the Regulation on Residency sets forth that a resident is responsible for actions that could cause or made damage to health or life of a patient in accordance with the procedure prescribed by the legal acts (underlined by us).

<...>

In the reports of 27 August 2014 and 11 September 2014, mentioned in the material of the complaint, it is requested to “pay attention to the fact that the resident <...> prescribes very often a treatment with medicine without consulting a responsible doctor on duty”, it is indicated that “I further <...> forbade to perform independently any prescriptions to patients without consulting the senior”.

*While considering the complaint no data was obtained on the fact that LUHS had investigated liabilities of the resident for the actions by which the applicant could cause or made damage to health or life of a patient in accordance with the clause 67 of the Regulation on Residency or that it had used its right to impose disciplinary actions on the resident for violations of practical activity upon detection of serious breaches in accordance with the clauses 213–214 of the Statute. In its letter No. DVT2-1049 of 1 July 2015 LUHS stated that prof. J. Sakalauskas, being the supervisor of the resident, was the residency coordinator at the same time, therefore “he was aware of the extraordinary situation and the resident`s activity and behaviour in the clinics” and no additional information was provided to him and “upon receipt of information on <...> the residency studies and violations of the practice” from the clinics “ first of all it was started to assess the studies process and necessity of required assistance” .*

*In accordance with the aforementioned and with regard to the data available in the material of the complaint, it should be concluded that the resident`s supervisor did not take any measures in order to ensure supervision of the resident`s medical practice, did not facilitate the resident to obtain theoretical and practical skills required for provision of health care services and thus violated the clauses 53.1, 53.2 53.5 of the Regulation on Residency / the clauses 3.3, 92.2, 92.4 of the Regulation on Residency Studies.*

<...>

It should be noted that the Regulation on Residency / the Regulation on Residency Studies does not provide for the procedure for liquidation of academic debts. Specific decisions on continuation or termination of residency studies may be made by the Residency Commission (the clause 19.1 the Regulation on Residency / the clause 20.2 the Regulation on Residency Studies) or it may delegate decision making to the Residency Committee (the clause 20.6 of the Regulation on Residency Studies). Until 1 August the applicant had not received credits / evaluations for three cycles because, as it is indicated by LUHS in the letter of 4 August 2015, “during the course of the third residency year the resident failed to perform or performed unduly the programme, his knowledge, competencies, practical skills could not be evaluated by a credit or a relevant score, as claimed by his cycle supervisors. Besides neither his studies nor his work daybook contain evaluations of the cycle supervisors”. By failure to fulfil the residency studies programme the resident violates the duty of a resident to fulfil the residency programme provided for in the clause 98.4 of the Regulation on Residency Studies, therefore he may be expelled from the residency studies (the clause 57.2 of the Regulation on Residency Studies).

As mentioned above, however, by the decision of the Residency Committee as an exception the resident was provided with the opportunity to liquidate academic debts of 3 cycles during an additional period by accounting repeatedly for theoretical parts of the particular cycles. As LUHS indicated in its letter of 12 June 2015 “the applicant himself agreed on the time of the assessment, two assessors were chosen and the applicant himself agreed with their participation in the assessment”.

*With regard to the aforementioned, it should be concluded that the Residency Committee and the Residency Commission of Cardiac Surgery of Cardiac, Chest and Blood Vessel Surgery Clinics carried out the functions established in the Regulation on Residency Studies, i.e. coordinated the course of the residency studies of the applicant, provided recommendations on further performance of the studies (the clauses 3.14, 8.5, 20.2 of the Regulation on Residency Studies). In all cases the Dean of the Post-Diploma Studies Centre at LUHS, who, in accordance with the legal acts, is responsible for management of residency studies and ensurance of their implementation, was informed (the clause 17 of the Regulation on Residency / the clause 6 of the Regulation on Residency Studies).*

<...>

The applicant in his complaint to the Ombudsman indicated that LUHS “did not provide him with the opportunity to rewrite negative assessment tests (in accordance with the Regulation on Residency)”. On 23 January 2015 the applicant submitted the Head of the Clinics the application on assessment tests where he presented his arguments why he disagreed with the negative evaluations and requested to allow him to rewrite the assessment tests.

<...>

*The point 16 of the clause 208 of the Statute provides for that students who did not pass an examination or a credit are entitled “to retake assessment tests free of charge in accordance with the procedure adopted by the Regulation of Studies approved by the Senate.” Residency studies are*

*regulated by the Regulation on Residency / Regulation on Residency Studies. They do not provide for an opportunity to retake an assessment test. It should be noted that neither the clinics nor the Residency Committee established circumstances under which the applicant could reasonably retake assessments tests.*

<...>

In the meeting of 24 February 2015 (Minutes No. 1) the Residency Committee considered the information provided by the Residency Commission and issue of further course of the residency studies of the applicant. Upon examining the situation of the applicant's residency studies it was decided to recommend the Dean of the Post-Diploma Studies Centre Ass. Prof. K. Petrikonis to make proposal to the Rector of LUHS according to the clause 58 of the Regulation on Residency Studies on expulsion of the applicant from the Cardiac Surgery residency studies.

In accordance with the Decision of the Residency Committee of 24 February 2015 the Rector of LUHS on 4 March 2015 issued the Order No. PS-11-72-R "On Expulsion from Residency" based on the point 57.2 of the Regulation on Residency Studies which provides for that a resident is expelled from the residency studies "due to failure to comply with the requirements set forth in the residency studies programme", and the clause 58 that sets forth that issue of expulsion of a resident is considered and decision is made by the Rector based on the decision of the Residency Committee and the lodging of the Dean of the Post-Diploma Studies Centre.

*In its letter of 7 August 2015 LUHS indicated that expulsion of the resident from the residency studies was based on the fact that "the resident failed to fulfil the programme, did not receive credits and failed to liquidate debts during a set period". While considering the issue of his expulsion from the residency the fact was taken into consideration that "he cannot do anything independently, he may harm his patients as he does not link theory with practice", therefore it should be considered as failure to fulfil the studies programme.*

*It should be noted that the programme of Cardiac Surgery approved by the Order No. 11-09 of the Senate of Kaunas University of Medicine (current LUHS) of 19 May 2006 "On Residency Programmes of Kaunas University of Medicine" sets forth that "the rest 3 years of residency are intended for assimilation of knowledge on diagnostics of main hearth diseases and conservative and surgical treatment as well as for obtaining skills by performing main cardiac surgeries". Independently performed surgeries are indicated as one of the methods of studies. The schedule of the studies programme sets forth targets "to be able to act independently, solve problems and make decisions", "be able to apply theoretical knowledge in practice" etc.*

*With regard to the aforementioned, it should be stated that the resident was expelled from the residency studies justly (the clause 57.2 of the Regulation on Residency Studies).*

**The Ombudsman decided:**

1. To inform Lithuanian University of Health Sciences and the Ministry of Education and Science about the Ombudsman's decision.
  2. To declare the applicant's complaint regarding expulsion from the residency studies unfounded.
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