

## Technical Advisory No. 4

### Patient Contact Summary for Foreign Scientists at NIH

#### **NIH Policy:**

*No level of patient contact privileges are granted without review and approval by the NIH Credentialing Services Section, Medical Records Department, and the Medical Executive Committee.*

*Non-FTE fellows currently are not clearly covered by the Federal Tort Claims Act against malpractice claims. Therefore, clinical activities of Visiting Fellows must explicitly be under the direct supervision and control of an NIH employee physician. In addition, incidental patient contact privileges are not appropriate for Guest Researchers. Guest Researchers are non-employees who conduct independent research. They are not covered by the Federal Tort Claims Act against malpractice claims.*

*Special Volunteers may have incidental patient contact but are precluded from medical specialty training (residency) under Section 405 of the PHS Act unless: (1) they are sponsored by another U.S. medical institution and are coming to the NIH for a clinical rotation as part of their residency program, and (2) the sponsoring institution forwards to the Office of Education, NIH, a memorandum of understanding stating that they will provide malpractice insurance.*

**I. Patient contact for foreign medical graduates holding a nonimmigrant visa is permitted by regulations of the U.S. Citizenship and Immigration Services (USCIS) under several visa classifications. Below is a summary of patient contact options by visa category.**

#### **A. NIH-sponsored J-1 Exchange Visitor Program (Research Scholars)**

**1) INCIDENTAL PATIENT CONTACT.** Patient contact is limited to "**incidental patient contact**" where the primary purpose is for research, teaching or observation. A statement ("Certificate 3"), prepared by the Division of International Services (DIS) and signed by the designated NIH senior medical official, must be attached to the J-1 certificate of eligibility (Form DS-2019) attesting that the following four conditions for "incidental patient contact" will be met:

1. The foreign medical graduate will participate in a program of research, teaching, observation or consultation during which incidental patient contact may be involved;
2. Any incidental contact will be under the direct supervision of a physician who meets the applicable Public Health Service requirements for patient care;
3. The alien physician will not be given final responsibility for the diagnosis and treatment of patients; and
4. Any experience gained in this program will not be creditable towards any clinical requirements for medical specialty board certification.



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**2) NO PATIENT CONTACT.** A statement ("Certificate 2"), prepared by DIS and signed by the Responsible Officer of the NIH Exchange Visitor Program, must be attached to the J-1 certificate of eligibility (Form DS-2019) attesting that the foreign medical graduate will participate solely in a program of research, teaching, observation or consultation, and that no element of patient care services will be involved.

**B. ECFMG-sponsored J-1 Exchange Visitor Program (Alien Physicians)**

**FULL PATIENT CONTACT.** The Educational Commission for Foreign Medical Graduates (ECFMG) sponsors eligible foreign medical graduates participating in a clinical residency or fellowship program under the Alien Physician category of the J-1 visa. The ECFMG-sponsored program is only for **graduate medical education or training in programs accredited by the Accreditation Council for Graduate Medical Education (ACGME)**. All applicants for J-1 sponsorship as Alien Physicians must hold a valid ECFMG certificate at the time they enter into a program of graduate medical education. Note: Graduates of U.S. and Canadian medical schools accredited by the Liaison Committee on Medical Education (LCME) are excluded from this requirement.

To be eligible for ECFMG certification **through June 30, 1998**, the alien physician must:

- a. Pass the medical science examination -- currently, Steps 1 and 2 of the United States Medical Licensing Examination (USMLE).
- b. Pass the ECFMG English test.
- c. Document the completion of all educational requirements to practice medicine in the country in which the medical education is received.

To be eligible for ECFMG certification **after July 1, 1998**, the alien physician must:

- a. Pass the medical science examination.
- b. Pass the ECFMG English test.
- c. Pass the Clinical Skills Assessment (CSA) examination -- The CSA is a one-day examination that requires demonstration of both clinical proficiency and *spoken* English language proficiency. The CSA will be administered throughout the year at the ECFMG Clinical Assessment Center in Philadelphia, Pennsylvania. Applicants must pass all components of the medical science examination and the ECFMG English test as prerequisites to taking the CSA.
- d. Document the completion of all requirements for, and receipt of, the medical diploma.

\* **Note:** This type of J-1 visa is only available to Visiting Scientists.



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**C. H-1B Temporary Alien Worker in a Specialty Occupation**

**1) INCIDENTAL PATIENT CONTACT.** The alien physician must be coming to the U.S. primarily to teach and/or conduct research. No patient care may be performed, except that which is incidental to the physician's teaching or research. The individual must have a full and unrestricted license to practice medicine in a foreign state or have graduated from a medical school in the U.S. or in a foreign state. In addition, the incidental patient contact must be described in the H-1B petition filed with the USCIS by the DIS.

**2) FULL PATIENT CONTACT.** The alien physician must meet and provide evidence of all of the criteria listed below:

a. Be a graduate of a U.S. medical school, or have passed the Federation Licensing Examination (FLEX) [or an equivalent examination as determined by the Secretary, DHHS -- currently, Parts I, II, and III of the National Board of Medical Examiners (NBME) or Steps 1, 2, and 3 of the United States Medical Licensing Examination (USMLE)].

b. Have competency in oral and written English, as demonstrated by the passage of the English language proficiency test given by the ECFMG, or be a graduate of a school of medicine accredited by a body or bodies approved for such purpose by the Secretary of Education.

c. Have a full and unrestricted license to practice medicine in a foreign state or have graduated from a medical school in the U.S. or in a foreign state.

d. Have a license or other authorization required by the state in which the Foreign Medical Graduate (FMG) will practice or receive graduate medical education or training.

The full patient contact must be described in the H-1B petition filed with the USCIS by the DIS.

\* Note: The H-1B visa is only available to Visiting Scientists and Special Experts.

**D. TN [North American Free Trade Agreement (NAFTA)]**

1) Available only to Canadian and Mexican citizens.

2) Primary purpose is for teaching and/or research. Patient contact is limited to that which is **incidental** to research. Full patient contact is prohibited.

3) No graduate medical education/training permitted.



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**II. USCIS regulations do not address the issue of patient contact for the following nonimmigrant visa classifications also encountered at the NIH. There are other considerations as described below.**

**A. O-1 Alien of Extraordinary Ability in the Sciences**

1) Eligibility: Alien of extraordinary ability who is among the small percentage of individuals who have risen to the very top of his or her field of endeavor, and who is coming to the U.S. to continue work in the area of extraordinary ability by engaging in a specific event.

2) Even though USCIS regulations do not address patient contact for O-1 visa holders, the level of patient contact must be described in O-1 petition filed with USCIS by the DIS. Copies of the individual's medical credentials must be included in the petition.

\* Note: The O-1 visa is only available to Visiting Scientists and Special Experts.

**B. A-1/A-2 (Dependent of a foreign diplomat), G-1/G-3/G-4 (Dependent of an employee of an international organization, and J-2 (Dependent of a J-1 Exchange Visitor)**

Individuals holding either an A-1, A-2, G-1, G-3, or G-4 visa may apply to USCIS for employment authorization through the Protocol Office of the Department of State, if there is a reciprocal agreement in existence between the U.S. and the individual's country regarding employment. Individuals holding J-2 visas may apply directly to USCIS for employment authorization.

If employment authorization is approved, the USCIS places no restriction on the type of work the individual may do. Such individuals are given neither explicit patient contact permission by visa status, nor are they prohibited from having full or incidental patient contact by their visa status. The only requirement is that the individual be qualified to practice medicine in the United States. This being the case neither he/she nor the employer violates the nonimmigrant status if there is patient contact.

**III. B-1 (Visa Temporary Visitor for Business) and WB (Visa Temporary Visitor for Business under Visa Waiver Program)**

1) General information: The term "business" refers to conventions, conferences, consultations and other legitimate activities of a commercial or professional nature. It does not include local employment or labor for hire. Individuals admitted to the U.S. in B-1 or WB status may participate in scientific, educational, professional or business conventions or



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conferences, or undertake independent research as long as they are not funded by a U.S. source.

2) Patient contact is not permitted, except that which involves a "medical clerkship" (see below).

3) Medical clerkship: An individual who is studying at a foreign medical school and enters the U.S. temporarily in order to take an "elective clerkship" at a U.S. medical school's hospital without remuneration from that hospital. An "elective clerkship" affords practical experience and instructions in the various disciplines of medicine under the supervision and direction of faculty physicians at a U.S. medical school's hospital as an approved part of the individual's foreign medical school education.

#### **IV. Immigrants/Permanent Residents**

USCIS regulations do not address the issue of patient contact for immigrants/permanent residents (i.e., "green card" holders). The only requirement is that the individual be qualified to practice medicine in the United States.



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