

## **Training Programs in the U.S. for Doctors, Nurses and Administrators from China: It's not just another Exchange Program**

It seems simple. Use existing resources and talents at your university, medical school, or healthcare system to make more money, maybe a lot more money. No risk. Just a product extension.

Experience as an outside lawyer working on the first Sino-American joint venture for-profit hospital in the PRC and on this kind of training program has led me to believe that you could not be further from the truth.

It is true that your institution has something Chinese institutions with lots of cash eagerly want. They want it more than cash, more than patients, more than anything else in their world. You possess and can convey knowledge of western scientific medical practice and administration that can raise their institution's healthcare standards to world-class levels. On a more seemingly superficial level, your brand name alone goes a long way in a society ruled by status and name recognition. This has real value in China, and Chinese institutions are willing to pay a high premium to be affiliated with your established American brand.

By providing an impressive array of training experience to top Chinese practitioners, you raise the reputation of your institution in the world's most significant future healthcare market.

No doubt about it, with careful planning and diligent legwork, people can be healed and money made, both in large quantities.

### "Pick Your Partner"...Carefully

Start with your alumni and current staff to find Chinese nationals whom you know. By working through these individuals and the Chinese institutions they represent, these contacts will in turn gain "face" amongst their peers and improve their own professional standing. Pick people you have good reasons and experience to trust. Then have your legal staff run all parties through the do-not-deal-with lists and conduct a background check with private investigative groups. The best defense is good procedure.

Working through an intermediary that already has a Chinese corporate entity in place and that has served in the middle role for training programs is a wise step. Organizations with these credentials are few and far between, but consult other major U.S. institutions or experts who have done this before to obtain trusted links.

Corruption is rampant and can be extremely dangerous to you and your institution under U.S. law, not to mention Chinese law and accreditation and debarment issues. Be mindful that if you pick poorly, there is almost no way to fix a program in midstream.

### "Inscrutable" is a Misunderstanding

The Chinese government entities all follow their localized version of the 12th Five-Year Plan. The first year of that plan ends in December, 2011.

In their Five-Year Plans and related local documents, the Chinese leadership tells the world publicly what they intend to accomplish and how that is to be measured.

The bureaucrats/leaders who best achieve measurable progress on those goals get promoted. And improvement of medical care is in the top ranks of the favored programs. Capitalize on this transparency and align your incentives with these leaders. By doing this you will be well on your way to realizing your objectives.

In selecting a Chinese counterparty, be careful in your apparent motivations. Improved medical care is NOT just a government goal for the VIP or the medical tourist. It is a goal for all the people. If you set your hat toward high profit, rich patient institutions instead of general institutions, you may find yourself losing out in the long term. Instead, by aligning your incentives with the government's aims and objectives - particularly by broadly serving the public patient - you will be much more likely to succeed in your long-term goals, both medically and financially.

Because of the bureaucracy in China, there will be hold-ups. This is just the nature of the beast. The government officials run on their own time and have very little regard for yours. This is difficult when you have to balance the schedules of your professors and medical experts, but being flexible is the only way for it to work.

Chances are good that any entity with which you will be dealing that has physicians, nurses, or hospital administrators to be trained will either (1) be a government entity itself (like Bureaus of Health, which have sovereign immunity against binding contract enforcement), or (2) a state-owned enterprise ("SOE", like most hospitals, which can be bound by contract though enforcement is another story entirely). In fact, under most interpretations of the Foreign Corrupt Practices Act, the physicians themselves are government employees. Every payment obligation undertaken should be valued at a defensible, fair market value.

In most cases, local health bureau chiefs have the final say... not the participants and not even the hospital presidents themselves. Cut through this mid-level and you will much more quickly receive a "go ahead" from those in the power seat.

#### You are a U.S. institution – Just do U.S. things

For any substantial training, your training activity should be in the U.S. That is what the Chinese institutions want, and it is what you can most easily deliver legally and in every other way. But stay close to your compliance and insurance staff, since trainees should never touch a patient, much less cross any number of other regulatory lines you live with every day.

Negotiate payment up front (or at least mostly up front). Do not count on legal enforcement.

All visa and travel arrangements to get a trainee here should be the responsibility and cost of the Chinese side. This can be an unnecessary nightmare for you since obtaining a U.S. visa is difficult from your vantage point. Since you are dealing with the government, and hopefully the decision makers, they are much more able to pull strings and expedite the visa-approval process through diplomatic channels than you. Your role, in this regard, in addition to training, should be limited to a standard invitation letter, travel and lodging, and meals in the U.S. At all costs, avoid a Disney- or Las Vegas-style diversion, since this is a current hotspot for F.C.P.A. enforcement activities.

You want the delegates to go back to China and rave about their training experiences. This will build up your prestige in China and strengthen your international reputation, which is all you have unless you are heavily invested in the country already. From my experience, I saw that you can most effectively improve future programs by more thoroughly surveying the delegates' needs and interests prior to their arrival on campus. By having a more focused approach, you will be more able to add real value to their experiences in the US. Any institution can fill a week with training, but it is only through a focused approach that you can give the delegates something that is truly worth their time and money.

When selecting instructors, and actually deciding whether to engage in this kind of training at all, consider the federally-funded programs of research in which your institution is engaged. You certainly do not want to foot-fault on a release of technology in violation of sanctions rules, but that consideration is only the start of such an analysis.

The following is *one of the ten Key Recommendations* in the recently-released 2011 Report to Congress of the U.S.-China Economic and Security Review Commission November, 2011:

"Congress direct the U.S. Government Accountability Office to undertake an evaluation of investments and operations of U.S. firms in the Chinese market and identify which federally supported R&D is being utilized in such facilities and the extent to which, and on what terms, such R&D has been shared with Chinese actors in the last ten years." (emphasis added)

#### Handled Well the Opportunity is Large

Despite the hazards and pitfalls, the opportunity for an institution to be a leader in the development of western/eastern medicine links is tremendous. The field is wide-open, the knowledge gap between the two countries is vast, and the doctors, nurses, and administrators in China are hungry to learn from leading institutions. Your institution can learn a great amount from your visiting delegates as well (“case studies”) as they describe how and why they do things differently in their home country. It is this two-way learning street that adds additional value to your own institution. From the business perspective, the money is there to be earned, and the possibilities of greater collaboration are as numerous as your imagination. Just be thoughtful in implementation from the start.

If we can be of any assistance on these or any other matters, please contact [Tim Perry](#), Leader, Emerging Markets Team at 404-962-6493 or [tperry@millermartin.com](mailto:tperry@millermartin.com).

*The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.*

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