The Academy and the College

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Editor, *Common Sense*

Dr. Steven Kailes' letter to the editor is so well done and on such an important topic, I decided to dedicate my regular column to responding to it. If you haven't read it, please go to the 'Letters to the Editor" section and read it now.

Thank you for writing. I am grateful that you read *Common Sense* and appreciate the time and effort you took to write. I welcome criticism as much as praise, especially when it is as thoughtful and articulate as yours. Besides, I have been hoping for a few angry letters to the editor since I took over *Common Sense* five years ago. Until your letter, I was preparing to go from provocative to incendiary — so I thank you and AAEM's lawyer thanks you!

As for the substance of your letter, first I want to assure you that the Academy (AAEM) and the College (ACEP) do agree on many issues and cooperate on many initiatives. Just a few recent examples of this include joint efforts to persuade Congress to pass a bill allowing paramedics with standing orders to give controlled substances and carry those drugs on their rigs; an appeal to the Centers for Medicare/Medicaid Services (CMS) to enforce existing rules and make sure emergency physicians are paid for real-time EKG interpretations; and an attempt to get the Veterans Administration to drop its unnecessary and offensive policy of requiring board-certified emergency physicians to pass a test on procedural sedation and rapid sequence intubation each year, and even go to the OR and prove to an anesthesiologist they can intubate competently. The Academy and the College also agree on fundamental issues like tort reform and the insurance industry's attempt to cap out-of-network fees and restrict or ban balance billing. And at least recently, it seems both organizations have the same regard for board-certification (ABEM or AOBEM) in emergency medicine

However, I hope my criticism of the College is just as thoughtful and articulate as your criticism of me — and not just "ACEP bashing" — and I think that criticism is both well-deserved and important. First, it is important for emergency physicians to understand the differences between the Academy and the College, because some battles that are important to our specialty would be lost — or more likely, never even fought — if emergency physicians had to depend on the College. The defense of board certification, which most of us take for granted, is one example. While the College now seems to be fully on board in regard to legitimate board certification in emergency medicine, this wasn't always the case. If you don't know that history, you should read my article "Legitimate" in the summer 2010 issue of *Common Sense*, available at AAEM's website (http://www.aaem.org/UserFiles/file/commonsense0510.pdf).

> "Perhaps the most currently glaring difference between the Academy and the College is AAEM's lonely crusade to protect emergency physicians from unfair treatment in the workplace, both from predatory financial practices and assaults on their professional autonomy."

In that article I quote the newsletter of ACEP's Section on Certification and EM Workforce, which credits the College with obtaining recognition from the state of Florida for an alternative board, the Board of Certification in Emergency Medicine (BCEM). (Even now, BCEM will grant board certification in emergency medicine to physicians who have never completed a residency in emergency medicine.):

> *2000 — ACEP Board approves "Recognition of Certifying Bodies in Emergency Medicine" policy, which includes the asterisk statement: "ACEP acknowledges that there exists a non-ABMS and non- AOA certifying body, the Board of Certification in Emergency Medicine (BCEM), that may allow emergency physicians who do not meet existing training standards of ABEM or AOBEM to present themselves for evaluation and testing in the clinical content of emergency medicine and achieve certification based on specified criteria. This ACEP policy is not intended to pass judgment on the work of BCEM."*
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> *2001 — ACEP representative quietly presents ACEP's official "Recognition of Certifying Bodies" policy to the Florida Board of Medicine; the Florida BOM subsequently votes to officially recognize the BCEM.*

I also describe the hearing at which the Florida Board of Medicine voted to recognize BCEM and its parent, the American Association of Physician Specialists:

> *ACEP's Florida chapter did have a representative at the meeting, and when asked for his opinion on the AAPS and BCEM, Dr. Michael Lusko simply reiterated the ACEP policy quoted in the time line above. This neutral-sounding policy has been described by Dr. Timothy Geno, ACEP member and BCEM diplomate, as "…benign neglect, not supporting BCEM, but not condemning them either."[5] Furthermore, two members of the Florida Board of Medicine were members of AAPS. One, Dr. Peter Lamelas, was a diplomate of BCEM as well as a member of ACEP.*

Continued on next page

If a member of AAEM had done such things, he or she would be subject to ethics charges and censure, possibly including expulsion from the Academy. Yet, as far as I know, none of the ACEP/FCEP members involved in getting state recognition for BCEM were ever disciplined in any way by the College or its Florida chapter. And, as late as 2009, the College allowed members who were not certified by either ABEM or AOBEM to apply for fellowship. That is why, when you see "FACEP" following an emergency physician's printed name, **you cannot assume he or she has *ever* been board certified** — at least not by ABEM or AOBEM. I know that ACEP and FCEP have evolved since that embarrassing BCEM incident, and I'm glad to hear that your experience in FCEP has been positive. However, all emergency physicians should recognize that the Academy's presence has pressured the College to move in the right direction. At the very least, ACEP's evolution would have been much slower if the Academy weren't there, criticizing ACEP when it failed our specialty.

Perhaps the most currently glaring difference between the Academy and the College is AAEM's lonely crusade to protect emergency physicians from unfair treatment in the workplace, both from predatory financial practices and assaults on their professional autonomy. As the well-publicized case of Dr. Wanda Espinoza Cruz in your own state shows (http://www.tampabay.com/news/health/doctor-says-she-was-fired-for-reporting-low-staffing-at-brandon-regional/2218497), this is about protecting patients as much as emergency physicians. Like dozens and dozens of ACEP members before her, Dr. Cruz went to the College for help, and like those other members of ACEP she found she had to turn to the Academy. (For other examples of how the Academy has come to the rescue of emergency physicians, see page 16 of the Jan/Feb 2014 issue of *Common Sense*: www.aaem.org/publications/common-sense/2014).

In addition to securing the same due process and peer review for emergency physicians that is guaranteed to other specialists on the medical staff, and thus allowing us to practice good medicine and protect our extremely vulnerable patient population, fair treatment in the workplace includes a financial element. Staffing corporations like EmCare, TeamHealth, and many others — also known as contract management groups (CMGs) — derive their profit from the professional fees of emergency physicians. First, they charge their emergency physicians for services actually rendered, such as coding & billing services and malpractice insurance — both often bought from a subsidiary of the CMG. Then, they take (on average) **another 20-25%** of their emergency physicians' collected professional fees. In contrast, a locally owned, democratic EM group typically pays no more than 10% of its expended compensation for administration. Including opportunity costs, this difference can add up to two or three million dollars over a 30-year career. To add insult to injury, some hospital chains and CMGs — like HCA and EmCare — have now formed joint ventures in which the CMG kicks back some of the emergency physicians' collected professional fees to the hospital in return for the contract to staff its ED. Now, not only does the CMG have its hand in our pockets, so does the hospital!

And all this is done behind a veil of secrecy. While federal regulations say physicians have to be told how much money is billed and collected for their services by a third party, try asking your CMG's local medical director to show you the books. You'll probably find yourself fired "without cause." And what if you bring up a quality issue, complain about dangerous under-staffing, or resist orders to do unnecessary tests or admit patients who don't need to be in the hospital? Well, ask Dr. Cruz how that turns out or watch the *60 Minutes* story called "The Cost of Admission" (http://www.aaem.org/calendar/current-news/the-cost-of-admission---60-minutes-segment-available-online).

Because their profits go to enrich shareholders and company management, CMGs add a layer of cost to an already expensive health care system — without delivering anything to doctors or patients valuable enough to offset or justify that cost. They generally strip emergency physicians of 1) the ability to control their own departments and make decisions that affect patient safety, such as staffing levels; 2) the ability to see what is billed and collected in their names, and thus of the ability to prevent or detect billing fraud; and 3) due process and peer review, allowing them to be fired and stripped of their staff privileges – not for practicing bad medicine, but for practicing good medicine and defending their patients. So yes, I do believe that the interests of CMGs — and their profit margins — directly conflict with the interests of practicing emergency physicians, and that **anyone in a management position in both a CMG and an emergency medicine professional society must betray one or the other**.

That is why I was shocked and disappointed when ACEP again elected someone from CMG upper management to its presidency. I know that has been a common occurrence in ACEP's history, but I thought the College had moved beyond that. And although I am no longer a member of the College — having resigned when I became convinced ACEP had sold out our specialty and become a front for corporate interests — since ACEP is larger than AAEM and has a much bigger budget, **all** emergency physicians are better off when the College does the right thing.

So thanks again for writing, and rest assured that the Academy and the College do work together whenever possible and will continue to do so. Realize too that competition from AAEM, and sometimes criticism, makes ACEP a better organization. And finally, with regret, I must also assure you that I believe CMGs are predators and emergency physicians their prey (or perhaps more accurately, parasites and hosts), and that no one can honestly and consistently lead both a CMG and a professional society for emergency physicians — so I will continue to point out and criticize such conflicts of interest in the time I have left as Editor. ■

Letters to the Editor

Letter in response to the "From the Editor's Desk" column "The Moral Arc" in the November/ December 2016 issue

Dr. Andy Walker, Editor of *Common Sense*

I just read your message in the recent issue of *Common Sense*. I have to say I have grown tired of the ACEP-bashing abundantly reproduced from AAEM's leadership over the years. You stated, "I want you to clearly understand the differences between the Academy and the College." Then, your examples imply ACEP must be on the side of corporations. Further, leadership of or even employment by staffing corporations, by default, means ACEP and its leaders must not be looking out for the individual physician. Not a "fair and balanced" description and one that does much to perpetuate the divide between the Academy and the College.

Interestingly, as I read through the rest of the magazine issue, it is apparent ACEP and AAEM share most of the same issues, direction, and priorities. In fact, I have noticed these similarities over many years.

I truly appreciate AAEM's desire to preserve the ideal work environment for the individual emergency physician. Indeed, that is why I have maintained my AAEM membership for over a decade. I have only ever worked for independent groups, aside from my time on active duty service with the US Navy. I would prefer to keep it that way.

With that being said, ACEP-bashing always points to some past or current leaders within ACEP who have been leaders or employed within large contract management groups. However, this "guilt by association" assumes some sinister plot to take advantage of individual physicians. I have not witnessed that to be true. Through the Florida chapter of ACEP, I had worked for years alongside a physician from another part of the state before it ever became known to me that he is a senior vice president with EmCare. Whenever he spoke, he always spoke with the individual physician's best interests in mind. I never heard him speak on behalf of EmCare or corporate medicine, for that matter.

In fact, most of the people I know today who work for CMG's, as well as many of the partners I have worked with in independent groups, want nothing to do with the business of emergency medicine. They want to clock in and clock out, get paid and leave the rest to someone else. Surely you know this type, also. However, no group would survive if it did not tend to the business of emergency medicine. The business of EM has costs and even a small group will find it needs to allocate some "administrative time" for their leaders in order to manage this business. I have not found a group where these leaders are willing to do so for free, on their own time, and only be compensated for the clinical work they do.

Yes, I don't want to be taken advantage of by any group skimming off the top of my hard-earned revenue just to line their pockets. Yes, I also recognize I will be required to contribute to the costs of billing, liability insurance, and "management" of my group.

I am happy to see AAEM maintain its principles of looking out for the "little guy." ACEP is hard at work for emergency physicians but does not become involved with contracts between a physician and their employer or group.

Yet, continually detracting from ACEP as an organization, and ACEP's leadership simply because of who they work for rather than what they say and do, has grown tiresome and seems out of touch with the ACEP I know well. The two organizations could do so much more if they worked together on common issues currently being tackled independently.

I implore you and AAEM's other leaders to simply agree to disagree with ACEP on some issues and to work together on others. No family exists without some differences of opinions on how things should be done. But, in the end, we are all the same family and can succeed together if we will work together.

Respectfully,

— Steven B. Kailes, MD MPH FAAEM FACEP

Thank you for writing. Your criticism is rational and articulate, and I appreciate the time and thought that went into your letter. In fact, your letter is so well done and on such an important topic that I have decided to devote my "From the Editor's Desk" column in the Mar/Apr issue of *Common Sense* to replying to it and explaining my position.

— The Editor

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Dear Dr Walker:

I have been an emergency physician for 20+ years and have worked under a number of models with various groups. I must take exception to the oft-stated position among AAEM leaders that CMGs are somehow more vile than privately run contracts. I offer my personal experiences, admittedly unscientific with an N of 1, but very real. I will not name specific physicians, groups or cities, but they know who they are.

One private group recruited me after they had already been given notice of termination and had me scheduled the very last week they had the contract to staff the ED and never said a single word to me.

Another group strung me along on a 'partnership' track but the founder maintained a 51% controlling interest and overrode the group's recommendation to let me join, without a reason. I quickly realized he intended to retire and did not want to split the profit. As I suspected, he retired and left the group with no succession plan and they were forced to become hospital employees at 35% lower pay. Fortunately, I saw the writing on the wall and had already left.

Yet another group had a fee-for-service model where a flat rate was paid until collections caught up. After a few months, the 'open books' were not reflecting my productivity accurately and I was told there wasn't anything more to be paid. The rest of the group received the largest bonuses ever. Obviously, they were skimming my productivity. I resigned, giving my 90 days notice and even still covering a holiday before leaving. 3 months later, I received a $13,000 bill for tail coverage. If I had simply walked away and quit, they would have had to pay. But because I was honorable, it wasn't covered.

Also, another independent contractor group suddenly decided we needed to be 'on-call' several days per year because other physicians were calling off on weekends and holidays and it was difficult to get coverage. Of course, no incentive was offered to pick up those shifts and there was no compensation for the time we were expected to be available for a last-second call-in. My time away from work is just as valuable as time at work.

Clearly, private groups are often just as unscrupulous as any national CMG. Many of these same small groups sell out their practices to CMGs and pocket handsome profits by a tiny part of the groups' management and leave the rest to fend for themselves. AAEM should fight for fairness for all emergency physicians in all practice settings rather than paint CMGs as EM's bogeyman.

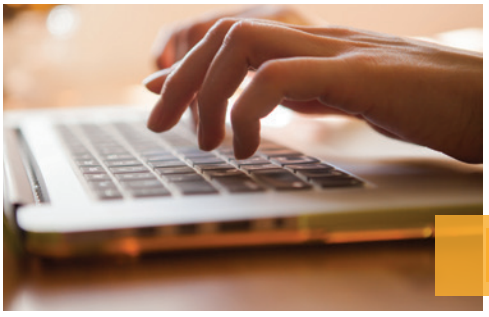
Sincerely,

— Robert J. Benkendorf, MD MMM FACEP FAAEM

I agree completely. Like you, I have seen more than one independent, "democratic" group that was anything but democratic and equitable. Many individual contract holders are as bad or worse than corporate staffing companies. Rest assured that AAEM fights for fair and equitable treatment in the workplace for all emergency physicians — whether they are hospital employees, part of an independent local group, or working for a huge staffing corporation. The basic principles of fairness are the same in each situation.

There is, however, one important difference between an independent physician-owned group and a staffing corporation (contract management group or CMG), and it is fundamental to the business model of each. A purely physician-owned group may be fair and democratic — meaning it is owned equitably by its physician members, with each having an equal share of ownership and control, each having full knowledge of the group's revenue and expenses, each having the protection of peer review and due process within the group, and each being free of post-employment restrictive covenants. A CMG not only usually does not provide these things, it cannot provide all these things because it derives its profit - and riches for its principle shareholders and upper management — by taking money away from emergency physicians far in excess of any value it returns to those physicians or their patients. Thus, while it is true that being entirely physician-owned is no guarantee of democracy and fair treatment in an emergency medicine group, it is also true that a CMG that exists to enrich its management and lay shareholders cannot be democratic or treat its emergency physicians fairly.

— The Editor



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