EDITOR'S Letter

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Updates on Board Certification Issues

Recently, there has been some very good news on the board certification front. In Oklahoma, the Board of Medical Licensure retracted its proposed amendment that would have allowed physicians to advertise themselves as "board certified" in emergency medicine without an ACGME- or AOA-approved residency in emergency medicine. This was an important victory for board certified emergency physicians and emergency department patients across the country. Along with similar successes in North Carolina and New York, the statement is being made that emergency medicine residency training matters. AAEM actively fought to help achieve these successes and continues to monitor the activities of other state boards for similar proposals.

In Texas, however, the struggle continues. The Texas Medical Board (TMB) is considering changes to an existing rule that would allow physicians to advertise themselves as "board certified" if they are certified by the American Board of Physician Specialties (ABPS). However, the ABPS does not require emergency medicine residency training for certification. The current TMB Rules (available online at http://www.tmb.state.tx.us/rules/rules/bdrules.php) state that certifying organizations must require "all physicians who are seeking certification to have satisfactorily completed identifiable and substantial training in the specialty or subspecialty area of medicine in which the physician is seeking certification…" (Texas Administrative Code, Title 22, Part 9 §164.4[b][5]). Organizations that do not require diplomates to have completed a residency in emergency medicine would not seem to qualify as certifying organizations under the current rule. AAEM is opposed to any rule changes that undermine the importance of emergency medicine residency training as the current pathway towards board certification.

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AAEM Mission Statement

The American Academy of Emergency Medicine (AAEM) is *the* specialty society of emergency medicine. AAEM is a democratic organization committed to the following principles:

1. Every individual should have unencumbered access to quality emergency care provided by a specialist in emergency medicine.
2. The practice of emergency medicine is best conducted by a specialist in emergency medicine.
3. A specialist in emergency medicine is a physician who has achieved, through personal dedication and sacrifice, certification by either the American Board of Emergency Medicine (ABEM) or the American Osteopathic Board of Emergency Medicine (AOBEM).
4. The personal and professional welfare of the individual specialist in emergency medicine is a primary concern to the AAEM.
5. The Academy supports fair and equitable practice environments necessary to allow the specialist in emergency medicine to deliver the highest quality of patient care. Such an environment includes provisions for due process and the absence of restrictive covenants.
6. The Academy supports residency programs and graduate medical education, which are essential to the continued enrichment of emergency medicine, and to ensure a high quallity of care for the patients.
7. The Academy is committed to providing affordable high quality continuing medical education in emergency medicine for its members.
8. The Academy supports the establishment and recognition of emergency medicine internationally as an independent specialty and is committed to its role in the advancement of emergency medicine worldwide.

Membership Information

Fellow and Full Voting Member: $365 (Must be ABEM or AOBEM certified in EM or Pediatric EM)
*Associate Member: $250
Emeritus Member: $250 (Must be 65 years old and a full voting member in good standing for 3 years)
Affiliate Member: $365 (Non-voting status; must have been, but are no longer ABEM or AOBEM certified in EM)
International Member: $150 (Non-voting status)
AAEM/RSA Member: $50 (voting in AAEM/RSA elections only)
Student Member: $50 (voting in AAEM/RSA elections only)
*Associate membership is limited to graduates of an ACGME or AOA approved Emergency Medicine Program.

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At present, only hospitals in the states in the sixth circuit (Michigan, Ohio, Tennessee and Kentucky) must comply with the court's decision in Moses. However, should the Supreme Court affirm the appellate court's opinion, the concept of stabilization prior to discharge will have to be further defined for hospitals across the nation.

Procedure Is Power

A U.S. District Court case in California involving an EMTALA liability claim alleging injury caused by inadequate screening was first reported in the August 2008, issue of *Common Sense*. (See "No EMTALA Liability for Inadequacy in Screening Leading to Injury" at http://www.aaem.org/commonsense/commonsense0708.pdf.) Plaintiff Donna Hoffman sued defendant Memorial Medical Center (MCC) after an ED physician, Dr. Kent Tonnemacher, failed to diagnose her bacterial infection (Hoffman v. Tonnemacher, E.D. Cal., No. 1:04-cv-5714, 4/10/08). Defendant filed a motion for partial summary judgment, which the district court denied. After further discovery, MCC moved again for summary judgment, which the district court granted in part and denied in part. Hoffman's surviving claim alleged that Dr. Tonnemacher's screening examination constituted disparate treatment in violation of EMTALA because it failed to comply with MCC's EMTALA policy.

At trial, MCC moved for judgment as a matter of law at the close of the evidence. The district court denied the motion. The jury deadlocked, and the district court declared a mistrial. Following the mistrial, MCC moved for modification of the pretrial order. The district court modified the order allowing the hospital to add a new expert witness and to file another summary judgment motion. This time the district court granted MCC's summary judgment motion on the ground that Hoffman "could not show a genuine issue of material fact with respect to causation." Hoffman then appealed to the United States Court of Appeals for the Ninth Circuit, challenging the propriety of allowing the successive summary judgment motion.

On January 21, 2010, the Ninth Circuit held that "the district court has discretion to entertain successive motions for summary judgment and that the district court did not abuse its discretion in this instance" (Hoffman v. Tonnemacher, 9th Cir., No. 08-16166, 01/21/10). This civil procedure ruling joined the Ninth Circuit with five other circuits, which in prior decisions clarified that consideration of successive summary judgment motions is within the district court's discretion.

The court noted that the "Federal Rule of Civil Procedure 56 does not limit the number of motions that may be filed. Indeed, the version of Rule 56 that was in effect when the district court modified the pretrial order stated that a motion for summary judgment could be filed 'at any time' after certain events." In addition, the Ninth Circuit previously had ruled such motions were permissible on the issue of qualified immunity and noted that summary judgment decisions are subject to reconsideration at any time.

The Ninth Circuit Court found the district court was within its discretion to hear the second motion mainly because activity between the first and second motions provided an expanded factual record. The court wrote: "We review for abuse of discretion a district court's decision to permit a successive summary judgment motion. In this case, the district court did not abuse its discretion by allowing Defendant to file another summary judgment motion after the mistrial. The deposition of an expert witness after the deadline for pretrial summary judgment motions, the testimony at trial, and the addition of a new expert witness after the mistrial expanded the factual record beyond what it had been at the time of the pretrial summary judgment motion."

The entire opinion can be viewed at http://www.ca9.uscourts.gov/datastore/opinions/2010/01/21/08-16166.pdf.

EMTALA case synopses prepared by Terri L. Nally, Principal, KAR Associates, Inc.

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Meanwhile, on May 1, the Texas Medical Association (TMA) House of Delegates passed a three-part resolution, "That the Texas Medical Association (1) recognize that, and shall ask the Texas Medical Board (TMB) to recognize that, the American Board of Medical Specialties (ABMS), American Osteopathic Association Bureau of Osteopathic Specialists (AOABS), American Board of Oral Maxillofacial Surgery (ABOMS), and non-ABMS/AOABS/ABOMS boards with equivalent standards and training, are the standard in specialty board certification for the specialties they encompass; (2) evaluate TMB rules and practices regarding physicians' ability to advertise that they are "board certified" and report back to the 2011 TMA House of Delegates; and (3) actively oppose all efforts of any alternate certifying organizations in the State of Texas, or before the TMB, to recognize its members as "board certified" without the equivalent certification and training standards." The TMA House of Delegates should be applauded for taking a solid stance on this issue. Physicians living in Texas should contact the Texas Medical Association and encourage them to aggressively pursue the actions in this resolution. Physicians in other states should work with their own state medical associations to pass similar resolutions.

Texas residents may contact the Texas Medical Board (http://www.tmb.state.tx.us/agency/contact.php) directly to express concern over changes to its board certification rules. There are likely to be significant efforts by the ABPS to lobby in favor of these changes. In addition, the ABPS has "a very aggressive and active governmental affairs program for 2010"[1] which underscores the importance of having members in every state keep a careful watch of his or her state medical board's activities for potential decisions that could damage the academic integrity of our specialty.

1. SoRelle, Ruth. "AAPS Ramping Up Campaign for Recognition." *Emergency Medicine News*. Lippincott Williams & Wilkins, March 2010. Accessed March 12, 2010. <http://journals.lww.com/em-news/Fulltext/2010/03000/AAPS_Ramping_Up_Campaign_for_Recognition.1.aspx>.

AAEM Antitrust Compliance Plan:

As part of AAEM's antitrust compliance plan, we invite all readers of *Common Sense* to report any AAEM publication or activity which may restrain trade or limit competition. You may confidentially file a report at info@aaem.org or by calling 800-884-AAEM.