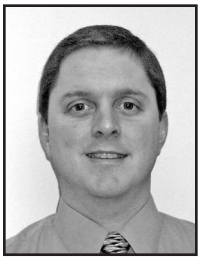
EDITOR'S Letter



Editor's Letter

David D. Vega, MD FAAEM

Legal Victory for Emergency Medicine Residency Training

In December of 2006, the American Association of Physician Specialists (AAPS) filed suit in the U.S. District Court, Southern District of New York, against various state officials in an attempt to force the New York State Department of Health (NYDOH) to recognize diplomates of the Board of Certification in Emergency Medicine (BCEM) as "board certified" in emergency medicine.[1] Unlike other boards such as the American Board of Emergency Medicine (ABEM) and the American Osteopathic Board of Emergency Medicine (AOBEM), BCEM certification does not require residency training in emergency medicine.[2]

On September 17, 2009, in a victory for emergency medicine residency training, a U.S. District Judge granted a motion for summary judgment in the case, finding in favor of the NYDOH. As expected, however, the saga continues, as the AAPS filed an appeal on October 19, 2009.

AAPS offers multiple pathways to becoming a diplomate of BCEM. It is not necessary to complete residency training in emergency medicine in order to be eligible for BCEM certification. According to the AAPS, an option equivalent to residency training in emergency medicine for eligibility includes a practice track with five years of experience practicing emergency medicine.[2] Applicants who would like a shorter route to BCEM certification may complete a 12 or 24 month graduate training program offered by family medicine programs through the University of Tennessee. According to one of these programs' websites, "A graduate of the fellowship program would be able to say that they are 'residency trained in family or internal medicine, board certified in family medicine and emergency medicine and that they completed a fellowship in emergency medicine.'"[3]

The New York Patient Health Information and Quality Improvement Act of 2000 requires the NYDOH to collect

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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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Care, where a certified social worker filed a certification indicating that she did not regard Caristo to be mentally ill. Based on that certification, the district judge ordered Caristo to be released, and Caristo returned to his mother's home.

On the following day, Caristo presented himself to Saint Joseph East Hospital, where he was hospitalized for five days while being treated for the broken bone in his lower left leg and for alcohol withdrawal. Caristo sued CRMC alleging that when he presented himself to the ED for treatment on July 30, CRMC's employees and agents failed to "provide needed medical care and either refused to treat him or transferred him without providing sufficient emergency care to stabilize and/or treat his emergency medical conditions," all in violation of EMTALA. Defendant CRMC filed a motion seeking summary judgment.

The Ruling

The court found that defendant CRMC did not violate EMTALA when discharging plaintiff Caristo on July 30, because Caristo was released and transferred to Comprehensive Care in compliance with a court order, "after he had been screened at the Emergency Department at CRMC where the medical staff there thought that he was experiencing some form of mental illness and concluded that CRMC did not have the resources to adequately diagnose or treat his condition." The court concluded that plaintiff was not "dumped" by CRMC.

The court further stated that the "plaintiff's hospitalization at St. Joseph East and surgery on the fractured bone in his lower left leg are of no consequence to plaintiff's EMTALA claim [based on Caristo's return to CRMC on July 30] because the subsequent care and treatment of the broken bone in plaintiff's lower left leg are related to plaintiff's visit to the emergency room at CRMC on July 25." Similarly, the court concluded that "such behavior that plaintiff exhibited on July 31 is of no consequence to his visit to the Emergency Department at CRMC on July 30, as it is unknown whether plaintiff had ingested any alcohol and/or prescription medication subsequent to his release from Comprehensive Care on July 30."

Additionally, the court stated that Caristo could not satisfy the evidentiary burden necessary to prove an EMTALA claim in the absence of expert testimony. The court defined expert medical testimony for this case as "from a trained, licensed physician and preferably from a physician who has knowledge acquired from having practiced in the emergency room setting."

The plaintiff also contended that defendant was not entitled to summary judgment because there was a genuine issue of material fact as to whether CRMC's physicians were ostensible agents of CRMC. "The record reflects," according to the court, "that when plaintiff visited CRMC's Emergency Department, he was presented with a consent form which advised him that the physicians at CRMC were not employees or agents of CRMC . . . Consequently, the court [was not] persuaded by plaintiff's argument that there is a genuine issue of material fact concerning the status of the medical personnel at CRMC." The court granted defendant summary judgment on plaintiff's EMTALA claims.

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and make publicly available certain information about licensed physicians, including "specialty board certification." The stated goals of the act include improving the quality of health care and increasing public information about health care providers, practitioners and plans.[4] NYDOH does not currently recognize BCEM diplomates as "board certified." According to the state of New York, "Board certification means a specialty or subspecialty in which a physician is certified by the American Board of Medical Specialties (ABMS), American Osteopathic Association (AOA) or Royal College of Physicians and Surgeons of Canada (RCPSC) [or The College of Family Physicians of Canada (CFPC)]."[5]

AAPS argued that NYDOH's non-recognition of BCEM diplomates as board certified violates the equal protection rights of its diplomates under the fourteenth amendment and other federal law. It presented several examples of physicians certified through their pathway who "are equally qualified to practice emergency medicine and yet have encountered various professional handicaps due to the fact that they only have specialty board certification from [AAPS]."[1] AAPS also claimed that "anti-competitive lobbying groups have misled the Department [of Health] about the importance of emergency medicine residency in specialty board certifications."[1] The defense presented documents and testimony from representatives of emergency medicine organizations, including AAEM Immediate Past President Tom Scaletta, supporting the importance of residency training in emergency medicine to board certification.

In making its decision, the court noted that "It is fair for the Department to conclude … that physicians with residency training in emergency medicine are more qualified than those who took a practice-track to specialization."[1]

AAEM's official news release on this issue adds:

> *"AAEM monitors the activities of AAPS, and we attempt to be present at any hearing in any state where AAPS argues that residency training in EM is unnecessary. It's embarrassing that we must still argue that EM is a legitimate specialty requiring residency training before one may call oneself 'board certified.' We expect a similar result in every state where AAPS makes a similar argument, and we will always be there to advocate for the academic integrity of EM.*
>
> *Over the balance of your career, you can rely on your Academy to always stand up for your practice rights and to always stand up for the academic integrity of emergency medicine."*[6]

References

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