

AAEM: The Trusted Advocate of Fairness in Emergency Medicine™

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The Academy is considering the launch of a major new initiative in support of principles 4 and 5 in its mission statement:

The personal and professional welfare of the individual specialist in emergency medicine is a primary concern to the American Academy of Emergency Medicine.

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.

Many emergency physicians (EPs) have been exploited as revenue-generating commodities, almost since emergency medicine's (EM's) inception. At the root of this exploitation is over 30 years of distortion in the process of assigning a fair market value (FMV) to EM management services. EPs have been deprived of *critical details* on the business of EM, and this has resulted in the disenfranchisement of the physicians at the very heart of our specialty — those whose expertise and medical licenses allow them to render patient care in the emergency department (ED). Perhaps most disturbing of all, EPs who have dared to question the fairness of certain business schemes have been terminated from their positions without being afforded due process or peer review. A culture of intimidation has thus pervaded the workplace for many EPs. AAEM believes that a fair and equitable practice environment is essential for EPs to provide the highest quality patient care. Any intimidation, whether subtle or overt, undermines patient care. Because a significant number of EM business entities have corrupted the fair market valuation process, and because countless EPs have suffered from lack of due process, a *trusted advocate of fairness in EM* is needed.

On December 3, 2012, AAEM's board of directors unanimously approved my proposal for AAEM to explore the feasibility of becoming *The Trusted Advocate of Fairness in Emergency Medicine™*. This would include the establishment of a *Practice Fairness Council (PFC)™* and the continued development of an *AAEM Practice Fairness Toolkit* (the *Toolkit*)™. As the first three members of a planned nine-member *Practice Fairness Council*; Mike Pulia, Bob McNamara, and I hope to be joined by six more AAEM members with a passion for taking the concept of defining "fair and equitable practice arrangements" to its highest level.

Before addressing the "how" and the "why" behind this potential new benefit for AAEM members, we must start with several key definitions. *Trust* is defined as a "firm belief or confidence in the honesty, integrity, reliability, or justice of another person or thing."¹ A *trustee*, in a broad sense, is anyone standing in a position of trust or responsibility for the benefit of another.^{2,3} The duties of a trustee, which may be fiduciary, include commitments to be impartial and loyal, not to seek profit from the relationship of trust, to avoid conflicts of interest, and to administer and advise in the best interests of those depending on the trustee.^{4,5} An

advocate is one who assists, defends or pleads for another.⁶ Though *not* functioning as a trustee in a legal sense, a *trusted advocate* may choose to embrace the *qualities* of a trustee in advancing fairness in the practice of emergency medicine. The definition of *fairness* is discussed below and will appear in expanded detail in the full version of this article, posted on the AAEM website.

With the sweeping changes in the U.S. health care system driven by the Patient Protection and Affordable Care Act, I believe that fairness is the single most important concept in the entire reform process. I recently asked the head of a large EM group to define fairness in EM. His reply was both candid and alarming: "I don't like that word. I don't know what that word means — it means different things to different people." Fortunately, explicit definitions of fairness and fair market value do exist. The *Toolkit* rigorously addresses the determination of fair market value and is designed as a comprehensive, dynamic, evolving document open to input from interested AAEM members. Academy members will have access to a powerful analytical instrument, to help guide the employment decisions that determine the trajectory of their careers.

And now, the all-important "why" at the heart of this initiative. While inroads have been made to support fair practice environments — largely as a result of AAEM — the Academy believes that contract management groups (CMGs) have refined their strategies to obscure the fair market value of both management services and EM practices. CMGs now use phrases like "the feel of a local group," "quality of life," "democratic," "truly democratic," "transparent," "physician-owned," and "partnership" as smokescreens to hide steep organizational hierarchies, inflated compensation arrangements for physician executives, corporate profiteering, and pyramid growth schemes that victimize emergency physicians. A number of smaller EM groups with lopsided ownership models are equally culpable. Newly minted EPs continue to be the target of recruitment activities that prey upon their lack of access to the truth about the employment arrangements available to them. As a *Trusted Advocate of Fairness in Emergency Medicine*, the *Practice Fairness Council*, informed by the application of the comprehensive *AAEM Practice Fairness Toolkit* and rendering opinions on the fairness of business arrangements, would go a long way towards eliminating this problem.

Emergency medicine needs a *trusted advocate* charged with promoting due process and truly fair negotiations, to ensure that employment arrangements between EPs and any contracting entity, large or small, are based on fair market values. And fairness extends not only to initial employment agreements, but to internal operations as well, where EPs may be the victims of management policies that exploit and subjugate them. The *Practice Fairness Council* can support AAEM members who are seeking due process after being sanctioned for questioning the fairness of a business model.

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A *trusted advocate* can thus protect medical professionalism and ultimately promote the highest quality of emergency care. Because medical staff bylaws at every hospital charge the medical staff with continuously improving the quality of care, the trusted advocate — as a protector of medical professionalism — can enhance the EP's alignment with the medical staff. This helps shift the emphasis back where it belongs: to the emergency physician providing patient care, rather than on the management entity profiting from the EP's labors.

Fair Market Value Standards: Clear evidence that fair market value matters in emergency medicine — just as it matters everywhere else.

Multiple public policies underscore the importance of fair market value (FMV) concepts and standards, and a broad consensus of business valuation standards has at its heart a formal definition of the FMV of property, including *intangible assets* — which are clearly the central issue in any financial appraisal of EM operations and management services.^{7,8} Several standards are used nationally for FMV determinations. The application of these standards to EM business entities is long overdue.⁹

IRS Revenue Rulings provide interpretive regulations that add operational substance to the tax laws passed by Congress. *Revenue Ruling 59-60*, widely cited by courts and used in the appraisal community since its publication in 1959, defines FMV:

“The price at which property [including intangibles] would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy, and the latter is not under any compulsion to sell, both parties having reasonable knowledge of the common facts.”¹⁰

Thus no transaction is fair without “common knowledge.” Any tampering with this common knowledge, shared by the two negotiating parties, is the point at which the process becomes corrupt and the “fair” disappears from fair market value. Sadly, the history of EM is rife with obfuscation of the finances at the heart of EM business arrangements. As information is withheld, often in ways both subtle and intimidating, arrangements become schemes. With limited choices in a marketplace often dominated by CMGs, emergency physicians lose the fair practice environment vital to the delivery of the highest quality emergency care, and patients suffer.

In summary, the universal themes of fair market valuation are 1) common knowledge, which is synonymous with the more popular term transparency, and 2) lack of compulsion, the option of either party to walk away until mutually favorable terms are reached. Emergency medicine has never had a trusted advocate committed to the promotion of complete transparency and the absence of compulsory win-lose terms in negotiations. The lack of transparency and coercive negotiations in EM are the stuff of legend, and one of the driving forces behind the formation of the AAEM. The Academy is therefore the natural body to give birth to a formal trusted advocate that can champion fairness in EM.

The Practice Fairness Council: From concept to working reality.

Responsibilities and functions of the *PFC* will include:

- The solicitation of *PFC* members from AAEM's membership at large, the selection of applicants, and the submission of chosen applicants for approval by the AAEM board of directors.
- The development of methods to measure the value of good will at multiple operational interfaces in EM practice, and to assure accurate attribution of the good will value to the individual who produced it.¹¹ This may be the most important aspect of the fair market valuation process in determining reasonable management charges.
- The development of web-based practice management surveys. The *PFC* will invite EM groups to describe their business models, survey AAEM members on these models, and post the results along with member comments. If survey participants with direct experience of the surveyed business models have information contradictory to that supplied by the EM groups, these discrepancies will be investigated.
- The development of a scale to rate the *fair value* offered to an EP by an EM group. The concepts behind Transparency International and WorldBlu.com can inspire and inform the development of an EM group rating methodology.^{13,14} Such a rating process could trigger positive reform in EM groups with low scores.
- The creation of a hotline or website that would provide Academy members with the best available information on practice arrangements that appear to lack transparency and fairness.
- The creation of a request-for-evaluation pathway, through which the *PFC* would use the *Toolkit* to render a detailed opinion on a specific arrangement in question. Such opinions would be published for the benefit of AAEM members. The cumulative organizational learning that would occur through this process will increase the overall degree of fairness in practice arrangements open to AAEM members.¹²
- The creation of a summary of best practices identified in the survey and of a “Perfect EM Practice Model,” as a theoretical ideal to inspire management innovation¹⁶ in existing EM groups.
- The development of feedback mechanisms to drive the *PFC* and *Toolkit* to the highest level of value to Academy members. Input from AAEM members on all aspects of the *PFC* concept and its implementation will be accepted, reviewed, published, and integrated into the process.

The *EM Practice Fairness Toolkit* will give every AAEM member the opportunity to understand the theory and practice of business valuation. It is nearly complete, and begins with essays on “Quality in Health Care,” “Value in Health Care,” and the all-important topic of “Fairness in Health Care Systems.” A chapter on “Fair Market Value Standards” is followed by overviews of the three basic approaches to business valuation. The “Corporate Practice of Medicine” is explored in detail. Sections on “EM Group Legal Structures” and “Management Services Organizations” demystify these important topics. A review of the principles of financial and investment accounting includes discussions of intellectual capital, goodwill, start-up and doomsday balance sheet concepts, and activity-based costing. The opportunity cost of capital

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(the economic value of your medical license and ABEM or AOBEM certification), the time value of money, and pyramid growth schemes are all covered.

No treatise on business valuation would be complete without a review of economic theory as it applies to valuation. The *Toolkit* covers micro-economics; behavioral and neuroeconomics; identity economics; market structures, with an emphasis on monopsonies, the bane of EM; information economics — including information asymmetry, the principal-agent dilemma, and conflicts of interest; and corruption in individuals and organizations. The *Toolkit* ultimately rests on some of the concepts explored by 11 Nobel Laureates, whose contributions I summarize. Finally, the *Toolkit* provides an overview of game theory in the business of EM.

The Toolkit is designed to be a wiki-text, open to input from AAEM members. Academy members make up an extraordinary group of thousands of individuals, each with over 23 years of undergraduate, graduate, and postgraduate education. As the *Toolkit* will demonstrate, the intellectual capital value of AAEM's membership is in the multibillion dollar range. Each of us has mastered the vast and complex world of medical biology. The *Toolkit* may look like a lot, but it doesn't come close to all we had to learn to achieve fellowship in AAEM. I believe the *Toolkit's* key topics will prove easy to grasp. The real value of the *Toolkit* is that it connects all the dots, allowing us to know what the practice of emergency medicine is really worth. Its table of contents will appear in the next issue of *Common Sense*.

What's next?

Although I have nearly completed the *Toolkit* and brought the *Trusted Advocate of Fairness in EM* project to the launching point, we must work together to make the project a reality. It will be a labor-intensive effort that requires a long-term commitment by AAEM, and the personal commitment of many of its members. With enough support from Academy members, we can address the tag-line of *Business Valuation Resources*¹⁵ and answer the big question about the practice of emergency medicine: what's it worth?

If you want to know more, send me an email. I would also be happy to answer questions submitted as a letter to the editor of *Common Sense*, or talk to you in person at the Scientific Assembly in NYC in February. The *Practice Fairness Council* now requests applications from members of the Academy whose interest has been piqued by the *Trusted Advocate of Fairness* concept, the *Practice Fairness Council's* potential, and the outline of topics covered in the *Toolkit*. I would like to see the *Toolkit*, with input from many AAEM members, published as a textbook with the proceeds going to AAEM. I hope those on the *PFC* will bring a burning passion for fairness to our work. If you want to serve on the *PFC*, send me your CV and a one-page email expressing your interest (or email info@aaem.org). Let's make this happen and change emergency medicine forever!

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AAEM Board of Directors
 Founding Chairman, AAEM Practice Fairness Council
 Founding Editor, *The EM Practice Fairness Toolkit*

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