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California Chapter of the American Academy of Emergency Medicine

NEWSLETTER

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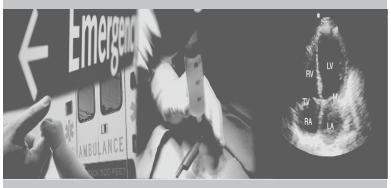
PRESIDENT'S MESSAGE

November 2015



As my term comes to an end, it has been a honor to serve you as Cal/AAEM President this past year. As the Chair of the *AAEM Practice Fairness Council* and editor of the *AAEM Practice Fairness Toolkit,*™ my past three President's Messages have offered a view of the some of the pressing issues in the business of emergency medicine as seen through a high powered lens that focuses sharply on the critical definitions of fairness and fair market value.[1, 2, 3] I hope this approach has both piqued your interest and broadened your understanding of AAEM Principle 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 environments include provisions for due process and the absence of restrictive covenants."*

Principle 5, written over 22 years ago by AAEM's founders and backed by AAEM's staunch upholding of this fundamental concept—*especially through tangible action including support of complex litigation*, differentiates AAEM from all the other professional organizations that represent emergency physicians, anesthesiologists, radiologists, hospitalists, and critical care intensivists. It is these hospital based specialties that appear to be the vulnerable target of a number of large contract management groups in the U.S., most notably those that are publicly traded. I hope members of these hospital based specialties press their professional organizations to take some pages from AAEM's playbook to explicitly support fair and equitable

practice environments in the interest of patient safety and their specialty's medical professionalism.

In an exhaustive search of the openly accessible parts of the websites of the American Society of Anesthesiology (ASA), the American College of Radiology (ACR), the Society for Hospital Medicine (SHM) and the Society of Critical Care Medicine (SCCM), I could find only one statement clearly related to AAEM Principle 5. In Article X – Ethics and Discipline of the ACR's 2014-2015 Bylaws, an entry in Section 2 notes: "*Radiologists shall not divide fees either directly or by any subterfuge*." AAEM strongly agrees with the ACR's ethical prohibition against fee splitting. I believe that dividing fees with lay entities can be viewed as the "original sin" in the complex process that has led to the emergence of large contract management groups whose very existence depends on the creation of an operational culture of fee splitting over which working physicians have no control. Add to that culture of fee splitting a *culture of fear* of termination of employment *without due process* for any physician who questions the fairness and legality of fee splitting, and you have defined the operational essence of large contract management groups—especially those in the publicly traded domain—where physicians routinely sign away their due process rights at the front door.

At some point in its history, however, it appears that the American College of Emergency Physicians' Board of Directors chose to adopt, verbatim, the core phrase of AAEM Principle 5. Because ACEP's website does not contain an archive that chronicles the evolution of the organization's vision, mission, values and policies, I cannot tell exactly when ACEP finally chose to support the concept of *fair and equitable practice environments*. Fair and equitable practice environments were certainly not mentioned in ACEP's founding statements in 1968. However, concern about the *lack* of fair and equitable practice environments did appear 11 years later in JACEP (the Journal of the American College of Emergency Physicians, now renamed the Annals of Emergency Medicine), when Ron Hellstern, MD, FACEP wrote:

> "Among these national contract groups, business techniques born of avarice have been substituted for professionalism: exploitation of College [ACEP] members is routine…Because these groups routinely take expenses plus 17-22% of physicians fees, the full-time compensation is not compatible with a career commitment."[4]

ACEP's policy on Emergency Physician Rights and Responsibilities, "Revised and approved by the ACEP Board of Directors April 2008," notes: "ACEP believes that high-quality emergency care is best provided when emergency physicians practice in a *fair and equitable environment*." The policy goes on to note the importance of due process, billing transparency and the lack of restrictive covenants—all of which AAEM has championed for over two decades. Concerning management fees taken from the income an emergency physician generates, the Rights and Responsibilities policy states: "Emergency physicians shall not be required to purchase unnecessary, unneeded, or *excessively priced* administrative services from a hospital, contract group of any size, or other parties in return for privileges or patient referrals." One policy section even notes: "Emergency physicians have a right to expect *adequate staffing* and equipment to meet the needs of the patients seen at the facility *and to have the institution provide support to improve patient safety*. Emergency physicians shall be provided such support and resources as necessary to render high-quality emergency care in the ED setting and *shall not be subject to adverse action for bringing to the attention of responsible parties deficiencies in such support or resources when done in a reasonable and appropriate manner*." In the end, the April 2008 ACEP Rights and Responsibilities policy admonishes, "These guidelines are not intended to dictate individual contracting practices; rather, *ACEP members must make independent determinations regarding their employment and contractual relationships with*

hospitals, practice groups, and other entities based on their individual circumstances."

So where does this leave an emergency physician who has a problem with, for example, lack of due process? In November 2014 I recounted the story of an emergency physician who has reached out to AAEM for assistance after termination without due process for reporting a very serious patient safety issue.[2] That physician has now filed a legal action against EmCare, EM-1 (a subsidiary of EmCare in Florida) and HCA.[5] AAEM stands ready to support this physician. She has already identified potential interest conflicts with Florida ACEP officers, from whom she realizes she would never receive support. In perhaps an even greater irony, one of the current ACEP Presidential Candidates is an Envision Healthcare (parent company of EmCare) senior vice president. Physicians, generally acting as independent contractors, are routinely asked to waive due process rights in their employment agreements with EmCare. Take another look at Ron Hellstern's statement above, *written 26 years ago*. I can only hope that CEP's Jay Kaplan, current ACEP President, and Paul Kivela, another Californian who is currently an ACEP President-Elect hopeful in 2015, have the courage to take a stronger stand and join AAEM in genuine support of all the facets of "fair and equitable practice environments." As I noted in August 2014,[1] ACEP refused to join AAEM and the CMA in support of the thousands of California physicians potentially adversely affected in the landmark ACHP v. CHW lawsuit. On a brighter note, ACEP President Mike Gerardi did unite with AAEM and others recently in signing a letter of concern to CMS regarding the systematic violation of physicians' due process rights by a number of hospitals and physician staffing companies. It is my ultimate hope that ACEP's members demand more responsiveness from ACEP's leadership on these critical issues, where ACEP's long history of internal interest conflicts has undermined advocacy for the working emergency physicians at the heart of our specialty. Imagine ACEP joining AAEM in real support of fair and equitable practice environments.

With regards,

John B. Christensen, MD, FAAEM

CAL/AAEM President
AAEM Board Member
Chairman, The AAEM Practice Fairness Council
Editor, The AAEM Practice Fairness Toolkit

AAEM: *The Trusted Advocate of Fairness in Emergency Medicine*

REFERENCES

1. http://www.calaaem.org/UserFiles FINALCALAAEMAugustnewsletter_79142.pdf
2. http://www.calaaem.org/UserFiles/ PresidentsMessageNovember2014.pdf
3. http://www.calaaem.org/UserFiles/March2015PresidentsMessage.pdf
4. Journal of the American College of Emergency Physicians, Volume 8: 493-495, 1979.
5. http://www.tampabay.com/news/health/doctor-says-she-was-fired-for-reporting-low-staffing-at-brandon-regional/2218497

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All applications for membership are subject to review and approval by the CAL/AAEM Board of Directors. CAL/AAEM is a non-profit professional organization. Our mailing lists are private.

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First Name MI Last Name Degree (MD/DO)

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Full voting and associate membership dues are for the calendar period Jan. 1 through Dec. 31 of the year the dues are received. Applicants who are board certified by ABEM, AOBEM or RCPSC in EM or Pediatric EM are eligible for Physician Full Voting membership. Board eligible applicants are encouraged to apply for Associate membership. Resident and student membership dues are for the academic calendar period July 1 through June 30 of the period the membership application is received. All CAL/AAEM memberships include a subscription to the *Western Journal of Emergency Medicine.*

Please complete the following:

Have you completed or are you enrolled in an emergency medicine accredited residency?

☐ Yes ☐ No

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1. I am certified in emergency medicine by:
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* For CAL/AAEM resident and student membership, please identify your program and anticipated graduation date.

In addition to your state chapter championing for individual physician rights and workplace fairness, CAL/AAEM membership benefits also include:

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5. Discounted registration fee to the annual CAL-ACEP Scientific Assembly and Yosemite conference
6. Free introductory legal advisory service for workplace fairness issues
7. Supporting medical student education and conferences in the state
8. Supporting California Legislative initiatives and the annual Emergency Medicine Legislative Leadership Conference in Sacramento

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☐ $50 ☐ $100 $250 ☐ Other $_____

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