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Correspondence

Maintenance of Certification (MOC)

In the summer issue, Dubravec¹ outlines how the American Board of Medical Specialties (ABMS) and its subsidiary specialty boards have allowed a bureaucratic monstrosity to grow at the expense of physicians. The salaries listed for both full and part time positions for these boards are obscene. Dubravec listed the total assets of two specialty boards in the range of \$50 million.

The costs to private practitioners for MOC seems to be in the \$5,000 to \$10,000 range per maintenance period of 5 to 10 years, after total cost and losses are compiled. The article also described how the ABMS and its subsidiaries, while having absolutely no authority from federal, state, or local laws, are using their influence in an attempt to persuade the various state licensing boards to make MOC a requirement for a medical practitioner's license renewal.

In describing her personal Catch-22 dealings with her specialty board, Hieb² asks a central question: "In this age of 'evidence based medicine,' where is the evidence that recertification matters?" It seems that there is no evidence to support the notion that MOC benefits physicians or patients.

About 20 years ago, I predicted that MOC would turn into a bureaucratic nightmare, as it has. How dare the self-professed altruistic board members give themselves a dispensation from their own MOC process?

Although Hieb notes that MOC is not now *legally* needed to practice medicine, it may be *financially* needed to practice medicine. The only way to stop it might be a class action suit based upon obstruction of free trade and commerce.

I propose that the specific specialty board be included as a co-defendant in related malpractice litigation, if certification has been maintained, since the board is in fact certifying that the physician has met a certain standard.

I think that continued specialty board certification should be dependent only upon a current active license to practice medicine; up-to-date medical education to satisfy the specialty board and jurisdiction; no pattern of repetitive malpractice; and appropriate fees to the specialty board, not to exceed \$100.

John R. Carbon, D.O., M.S.

Warwick, R.I.

- 1 Dubravec M. Board certification/recertification/maintenance of certification: a malignant growth. *J Am Phys Surg* 2011; 16:52-53.
- 2 Hieb LD. Down the rabbit hole of recertification. *J Am Phys Surg* 2011; 16:36-37.

Texas Medical Board Reform

The Texas Medical Board (TMB) has needed reform for the past 8 years, and one of the ways for this to be accomplished is by amending the Texas Medical Practice Act (TMPA).¹ During the 2011 Texas legislative session, Rep. Fred Brown introduced HB 1013, which was initially drafted by Andrew Schlafly, general counsel for AAPS. This bill became the framework for the major legislative initiative to secure true and meaningful TMB reform. It would have provided for full legal due process for physicians, and would have required transparency and accountability by the TMB. HB 1013 had 87 House sponsors and passed the Texas House of Representatives by a 147-0 vote on May 10, 2011.

Unfortunately, the major opponent to reform was the Texas Medical Association (TMA), which fought the enactment of this legislation at every level. Even after our overwhelming victory in the Texas House, TMA was able to persuade its allies, Sen. Jane Nelson and Sen. Joan Huffman, to block HB 1013 from being brought up in the Texas Senate.

Because of the initiative taken by AAPS members in Texas over the past 4 years, TMA found itself in a position where it had to support some sort of window-dressing changes to the TMPA.

HB 1013 was supported by both of the physicians who were members of the House Public Health Committee, Rep. John Zerwas and Rep. Charles Schwertner; the latter helped craft the language of HB 1013.

Unfortunately, we were unable to get the major provisions of HB 1013 into a Senate bill. Our motion to amend SB 8 with HB 1013 was ruled non-germane.

SB 190 had been set on the calendar for a vote by the House where it could have been amended with provisions from HB 1013. But SB 190 did not reach the House floor prior to the deadline for passing Senate bills.

It is said that it takes five legislative sessions to pass a bill. We have been through our second session and made great progress considering that legislators had much bigger priorities, such as balancing the budget and education reform and funding.

This session's result only strengthens my resolve to push this issue to its successful conclusion in the 2013 Texas Legislature.

We will turn the obstacles thrown against us to our advantage. Working together with other AAPS members, I am confident that we shall eventually succeed in our efforts to obtain transparency and accountability at the TMB, and to ensure that physicians are provided with full legal due process when they come before the board.

Steven F. Hotze, M.D.
Houston, Texas

The legislative reform of the TMB¹ is a stunning accomplishment in which the TMB's unbridled powers have been limited. AAPS can now turn its attention through discovery, depositions, and investigation to unraveling the web of deceit, hypocrisy, malfeasance, and inequitable prosecution that have been the hallmark of this board. I applaud their efforts and eagerly await the systematic exposure of evidence and wrongdoing, which has ruined the careers and tarnished the reputations of so many physicians.

My career was destroyed by a board that succumbed to outside influences and treated me in a very unjust, prejudicial, and spiteful manner. As Mr. Schlafly stated, many times a solitary person or a coterie of board members will develop a grudge against a doctor and use the full power of their position to begin an unwarranted

investigation with the aim of ensnaring the doctor with superfluous, vague, and erroneous findings and accusations. The bureaucracy is all-powerful and can justify almost any conclusion and judgment even though an unbiased review of the facts makes its decision absurd, excessive, and inexplicable. The doctor, astonished and perplexed at the board's actions, must feel like a marionette being controlled by a relentless and inexorable entity without compassion or rationality.

Some board members, being unaware of the true motives of certain associates, may be subtly influenced by frequent derogatory comments. A certain board member whom I had never before met enthusiastically cast the first vote to revoke my license. There is evidence that he intimidated one of my witnesses to keep him from testifying.

The public naturally supports a board that promotes aggressively going after bad doctors. Unfortunately, this militant and assertive style is accompanied by a misdirected focus, which at times permits well-connected and influential physicians with problems to escape closer scrutiny.

John Payne, D.O.
Eules, Texas

This bill reforming the TMPA¹ was a giant leap in allowing the Texas physician to innovate and help the severely ill patient get well. It shows what a conscientious group of physicians can do if there is a will.

For some reason, some people do not want an innovative physician to be practicing. They only want group care that may be generally helpful but does not always work for the individual who has a unique set of problems. The physician who takes the Oath of Hippocrates has the obligation to give each patient good individualized care.

In my opinion and experience, the Federation of State Medical Boards, a private organization, wants to have uniform control of all medical boards, not accounting for regional, local, environmental or individual innovative changes. Its members testify against good practicing physicians in Texas. They also appear to be behind the scenes constantly trying to stir up trouble for innovative practicing physicians who just want to help their patients.

Physicians must be vigilant about infringement of their right to treat

individual patients according to their needs instead of practicing government-approved mediocre medicine.

William J. Rea, M.D., F.A.C.S., F.A.A.E.M., F.A.C.N., Fellow, Royal Society of Medicine
Dallas, Texas

1 Schlafly AL. Medical board stripped of power. *J Am Phys Surg* 2011; 16:77-80.

Surviving Prosecution

Regarding "A Doctors' Wives' Survival Guide,"¹ I suggest that plea-bargaining needs to be emphasized. The difference in penalties between going to trial and taking a plea is tremendous. Often physicians who plead are given a year and a day in the federal system, which means a little more than 10 months. The same case taken to court will lose 75.6% of the time. Since 93.6% take pleas, and 75.6% of the 6.4% that go to trial lose, the overall conviction rate is greater than 98%. The duration of incarceration after conviction at trial is five to seven times as long as after a plea. Therefore, it is imperative to attempt to plead early regardless of whether one is innocent or guilty. It is of course more important to plead if one is guilty!

In my case, my attorneys assured me that I would serve no jail time if I took a plea. I was fortunate after trial to have my 78-month sentence reduced to 60 months under the *Booker* decision. Also, going to trial and being convicted adds an automatic two points to the crime for the punishment phase. A person who pleads can probably get a sentence of fewer than ten years and thus be qualified for a prison camp without fences, where inmates are not considered dangerously violent. Life in a medium- or high-security prison is much harsher, and many physicians are not strong enough to withstand it. There were multiple deaths at the Hazelton USP during the time I was in the associated camp.

As the article noted, once the feds arrive, it is too late to reverse the tide.

Bernard L. Rottschaefer, M.D.
Oakmont, Pa.

1 Orient JM. A Doctors' wives' survival guide, or what to do when the FBI knocks at the door. *J Am Phys Surg* 2011;16:81-84.

Erratum

It is the president, not the chair of the ABAI who receives a salary, and the amount is \$94,000, not \$98,000.¹

1 Dubravec M. Board certification/recertification/maintenance of certification: a malignant growth. *J Am Phys Surg* 2011; 16:52-53.