

Doctors Riled by Re-Certification Process Plan to Sue Board

By Alex Ebert

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- Physicians claim re-certification anti-competitive and pads pockets
- Doctors trade association says evidence backs up need for re-certification

A group of doctors is building a legal challenge to the Maintenance of Certification (MOC) process, which the doctors claim violates antitrust protections.

The Practicing Physicians of America has retained a law firm after raising more than \$150,000 in a GoFundMe campaign from doctors across the country seeking to torpedo the 10-year re-certification process for internal medicine specialties. The PPA is building a case into whether industry-wide re-certification programs violate federal antitrust laws, state fraud and deceptive trade practices laws, and will file a complaint soon.

The stakes of the suit could be massive, both from a monetary standpoint and from an industry that has increasingly become reliant on the certification.

Increasingly, hospitals require certification and insurers have used absence of the certification to deny claims, Practicing Physicians of America co-founder Dr. Westby Fisher, told Bloomberg Law Nov. 2. "Because it's now being tied to our ability to work and retain employment in our hospitals, people are now furious about it. It's basically regulatory capture at its finest and a pay-to-play scheme," he said, adding that he wants to return to lifetime certification.

Similarly, the American Osteopathic Association in July settled an antitrust lawsuit for \$35 million for its 137,000 members. In that case physicians objected to being required to join a professional association in order to obtain a crucial credential.

But the American Board of Internal Medicine (ABIM), which runs the MOC program for internal medicine doctors and subspecialists, says re-certification is beneficial for both patients and physicians. ABIM president and CEO Dr. Richard Baron told Bloomberg Law Nov. 2 that the \$200 to \$300 annual fee for the program for each doctor is in the range of what a physician living in a big city would pay to take their spouse out to a fancy dinner, and the benefits outweigh the overall costs well-compensated physicians face.

Anti-Competitive?

Fisher said his goal is to launch litigation, possibly in more than one court, that would lead to the elimination of the 10-year requirement. He's hoping for more than just a large settlement.

Fisher's group alleges the re-certification program isn't required by states but is still becoming a necessity for physicians because of collusion between the certifiers, insurers and health systems hospitals. Few hospitals recognize a competing board, and physicians are being systemically moved into hospital-employed positions, he said.

This means that most job opportunities for many medical specialties require MOC compliance and unnecessary costs, Fisher said. While the Justice Department's Antitrust Division in a September 2018 letter didn't back anti-MOC legislation in Maryland, it did say "unnecessary requirements can raise the costs of specialty practice and constrain the supply of specialized practitioners, thereby harming competition and increasing the cost of healthcare services to consumers."

Fisher claimed the MOC program costs the overall health system about \$5.7 billion every decade. That includes roughly \$23,000 of expenses per physician every decade in test preparation expenses, travel expenses to the test, fees, and missed work he said. Costs to physicians aren't just an annual fee; they include travel, time off of work, test preparation, and everything that goes into getting re-certified, he said.

Doctor Push-Back

Concerns over the MOC extend beyond Fisher's group. Seven states—Texas, Oklahoma, Missouri, Tennessee, Georgia, North Carolina and Maryland—have passed laws in some way prohibiting insurers, hospitals, or licensing boards to require MOC, and doctors across the country are suing or pushing legislation on the topic.

An October survey from MDLinx found 65 percent of internal medicine doctors surveyed believed the MOC added "no clinical value," but 62 percent of doctors who say they took the once-a-decade exam took more than three months to prepare.

The MOC and continuing medical education are popping up as one of many factors hospital systems may have to consider in doctor recruitment. Nolan Smith, recruiting principal for the Medicus Firm, told Bloomberg Law in a Nov. 2 email. This year Smith had a doctor the firm recruited decline placement in Michigan due to concerns that he'd have to take the MOC.

"It seems MOC may have more recently become a more likely deciding factor in recent years due to the increased requirements for some specialties and states," Smith said. Going forward, he thinks this factor will continue to impact health groups recruiting physicians because the competition for talent is on a national scale.

Badge of Competency

ABIM touts the MOC as proof that doctors are up on current research and proof of competency. It provides peer reviewed journals and other research to back that up.

One study showed across more than 100 quality measures certified doctors more closely adhere to guidelines, and mortality rates for patients that see board-certified internists and cardiologists are 19 percent lower. ABIM also points to research that ABIM board-certified doctors are five times less likely to have state medical censurer disciplinary actions.

Baron acknowledged that doctors are under a lot of pressure in a changing industry, dealing with difficult software changes and new rules. But while he understands concerns from physicians, he thinks the MOC process is necessary, and rapid changes in medical knowledge demand ensuring doctors meet competency standards.

"This is important because people need to know they're staying current in their field," he said.

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