Ohio HB 273 Evidence Packet

Preventing the Proprietary American Board of Medical Specialties’ “Maintenance of Certification” re-certification mandate used as basis for physician hospital credentials, insurance payments, or licensure.

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**BACKGROUND:**

- A license to practice medicine is provided by individual states after 4 years of medical school and passing 4 exams (USLME steps 1-3 with 2 exams for step 3).
- The license is maintained by doing 50 hours (in most states) of continuing medical education (CME) which is accredited by the ACCME (a private, not for profit organization).
- For CME to be accredited by the ACCME it must comply with a long list of rigorous rules addressing content, evaluations, needs assessment, conflicts of interest etc.
- Accredited CME cannot be provided by industry. CME is not a drug company boondoggle.
BACKGROUND:

- The American Board of Medical Specialties (ABMS) 24 member boards are private, not for profit organizations. The ABMS member boards provide a “certification” which is intended to denote a level of excellence above and beyond the state’s medical license.

- This certification is earned by spending several years in an ACGME accredited training program. The ACGME is another, separate, private, not for profit organization. ACGME accreditation is rigorous, *i.e.* numerous specific requirements, evaluations, audits and site visits of the hospital offering the program.

- After training for the required number of years in an ACGME accredited training program, a physician is “signed off” by the program’s director to sit for the ABMS member board’s exam. The exam is typically 1-2 days, and given at a formal test center with security checks.

- A physician often goes through several training programs and sits for several exams becoming board certified in several areas over the course of his/her education, *i.e.* internal medicine (3 years of training), cardiology (3 years of training), then interventional cardiology (1 year of training).

- The ABMS member board’s role is fairly limited, *i.e.* to create the test exam questions. The initial board exam generally costs the physician about $2000.
TIMELINE: Board Certification and Maintenance of Certification® (MOC®)

1936
American Board of Internal Medicine (ABIM) established, first certification in Internal Medicine, followed by CV, GI, Pulm Specialties

1973
Nine subspecialties added

1987
Voluntary Recertification tried but unsuccessful – unilateral decision was made to make mandatory

1990
Time-limited certification implemented, but ONLY for those certified after 1990 (Discriminatory)

2000
Required certification / MOC® introduced

2006
Conversion to computer exams complete

2014
Continuous MOC® program, Cert and MOC® exams begins separating blueprints and standards

2018
Alternative maintenance pathway (Corporate partners: Wolters Kluwer, NEJMGroup, PearsonVue, ABMS Solutions, LLC, Caveon and Kryterion Internet Test Security Firms, CECity (a.k.a., Premier, Inc.), etc.)
No Proof of Improved Patient Care Quality or Reduced Admissions with MOC®

(Non-ABIM Authors)

Association Between Physician Time-Unlimited vs Time-Limited Internal Medicine Board Certification and Ambulatory Patient Care Quality

Conclusions and Relevance Among interns providing primary care at 4 VA medical centers, there were no significant differences between those with time-limited ABIM certification and those with time-unlimited ABIM certification on 10 primary care performance measures. Additional research to examine the difference in patient outcomes among holders of time-limited and time-unlimited certificates in non-VA and nonacademic settings and the association with other ABIM goals may help clarify the potential benefit of Maintenance of Certification participation.

(ABIM Authors)

Association Between Imposition of a Maintenance of Certification Requirement and Ambulatory Care-Sensitive Hospitalizations and Health Care Costs

Conclusion and Relevance Imposition of the MOC requirement was not associated with a difference in the increase in ACSHs but was associated with a small reduction in the growth differences of costs for a cohort of Medicare beneficiaries.

(ACSHs - Ambulatory Care-Sensitive Hospitalizations measured using quality indicators)
ABIM MOC: Growth in MOC Fees

257% increase (17.2% / year)

244% increase (16.3% / year)

Gen Medicine
- 2000: $795
- 2014: $1,940

Subspecialty
- 2000: $995
- 2014: $2,560

Source: www.archive.org
Cost/Time Analysis of MOC® Re-certification

- $23,607 per internist every 10 years (95% CI, $5380 to $66,383)
- 2015: Cumulatively MOC costs $5.7 Billion/10 years
- TIME: 32.7 million physician-hours spent on MOC

Evidence of ABMS Collusion with Insurance Company denying MD Affiliation and Patient Care Access Strictly on Basis of MOC®

Insurer subscribes to ABMS CertiFact® database for a fee.

Insurers “disaffiliate” any doctor not “maintaining” their previously lifetime ABMS Board certification, compromising patient access to their physician and profiting insurer (covert rationing).

Insurers must be “certified” by National Committee on Quality Assurance to use only “certified Boards” for physician credentials.

Ms. Margaret E. O’hare is President and founder of NCQA (a 501 c 3 organization) and Board member of ABMS (a 501(c)(6)).
Anti-trust/Class Action suits challenge MOC® monopoly


• Moved to US Federal District Court, Northern IL (7th Circuit) as Case 1:2014-cv-02705 filed 4/3/2014 (pending) but has not been touched in court docket since January 7, 2015

• Class Action Lawsuit for Osteopaths as well:
  • ALBERT TALONE, D.O., et al. v. THE AMERICAN OSTEOPATHIC ASSOCIATION, Civil Action No.: 1:16-cv-04644-NLH-JS (pending)
ABIM Bylaws Changed 1998
Okay for ABIM Board to Have Unlimited Conflicts

REVISED BYLAWS OF
THE AMERICAN BOARD OF INTERNAL MEDICINE
(Revised October 6, 1998)

ARTICLE I
OFFICES

Section 1-1. The registered office of The American Board of Internal Medicine, hereinafter referred to as "the Board", shall be in the City of Des Moines, Iowa. The principal office of the Board shall be located in the City of Philadelphia, Commonwealth of Pennsylvania. The Board may have such other offices as the affairs of the Board may require from time to time.

Section 9-5. The Board may accept gifts, grants, devices or bequests of funds or any other property from any public or governmental body or any private person, including private and public foundations, corporations and individuals, for its corporate purposes.
Numerous Financial Conflicts of Interest Exist with MOC®
Funding of ABIM Foundation from ABIM Diplomate Test Fees

“ABIM initially transferred $5 million to the Foundation in 1990. Over nearly 20 years (between 1990 and 2008), approximately $56 million was transferred by ABIM to the ABIM Foundation. There have been no transfers since 2008.”¹

Fact Check:

FY 1999 Fund balance $59,618,428

Additional Funds Transferred:*
FY 2000: $3,300,000
FY 2001: $1,600,000
FY 2002: $1,000,000
FY 2006: $7,000,000
FY 2007: $6,000,000

Total ACTUALLY Transferred: $78,518,428

¹ABIM Foundation.org Finances webpage, accessed 6 Oct 2017
* Source: IRS Form 990s
ABIM Foundation’s $2.3 million Luxury Condominium*

*Unit #11NW, 210 West Washington Square, Philadelphia, PA 19106
Purchased Dec 2007

Who stayed there?
Investment or perk?
Under pressure, sold at loss for $1.65M 6/21/2016

Chauffeur-driven
BMW 7-series
Town Car

Concierge Service

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<th>Category/Item</th>
<th>Cost/Other Basis</th>
<th>Accumulated Depreciation</th>
<th>Book Value</th>
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<td>33,784</td>
<td>27,871</td>
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<td>furniture</td>
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<td>Furniture - artwork</td>
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ABIM Foundation Off-Shores Diplomate Fees to Cayman Islands - 2014

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<tr>
<th>Date</th>
<th>Fund - Cayman Islands</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1/1/14</td>
<td>Aurelius Capital International Ltd Cayman</td>
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<td>9/1/14</td>
<td>Aurelius Capital International Ltd Cayman</td>
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<tr>
<td>7/1/14</td>
<td>Azentus Global Opportunities Fund Ltd Cayman</td>
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<td>8/1/14</td>
<td>Fort Warren Opportunities Offshore Fund Ltd Cayman</td>
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<tr>
<td>7/1/14</td>
<td>Hudson Bay International Fund Cayman</td>
<td>$711,900</td>
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<tr>
<td>6/1/14</td>
<td>Landsdowne UK Equity Fund Ltd Cayman</td>
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<td>2/1/14</td>
<td>Windacre Partnership International Fund Ltd Cayman</td>
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<td>10/1/14</td>
<td>Soroban Cayman Opportunities Fund Ltd</td>
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<td>9/1/14</td>
<td>Rimrock High Income Plus (Cayman) Fund Ltd</td>
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<td>7/1/14</td>
<td>Carrhae Capital Long Fund Ltd</td>
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TOTAL: $6,042,336

Dublin, Ireland Investments

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<th>Date</th>
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<th>Amount</th>
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<tr>
<td>5/1/14</td>
<td>Palestra Capital Offshore Fund Ltd Cayman</td>
<td>$474,600</td>
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GRAND TOTAL OFFSHORE INVESTMENTS FY 2015 $6,516,936

* Source: IRS Form 990
ABIM MOC® CONTRACT

MOC® is not about physician continuing education, but “health care operation services” and “practice assessment and evaluations.”

MOC® contractually limits a physician’s right to free speech.

With MOC®, physicians must agree to serve as research subjects without informed consent or independent Institutional Review Board protections in violation of Federal Policy for Protection of Human Subjects (“Common Rule”) 45 CFR Part 46.
The Nuremberg Doctrine*

• "The voluntary consent of the human subject is absolutely essential.

This means that the person involved should have the legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements the subject matter involved, as to enable him to make an understanding and enlightened decision. This latter element requires that, before the acceptance of an affirmative decision by the experimental subject, there should be made known to him the nature, duration, and purpose of the experiment; the method and means it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person, which may possibly come from his participation in the experiment.

The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs, or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity."

* Source: Collaborative Institutional Training Initiative (CITI) Training Program, “Informed Consent,” University of Chicago
ABIM Published First-Time MOC® Pass Rates 2000-2014*

* Source: Published pass rates, http://www.abim.org
Social, Economic, and Psychologic Effects of ABMS MOC® on Physicians That Fail Re-certification:

• Never studied.
Potential ABIM 4th Amendment “Search and Seizure” Civil Liberty Violations

• In 2008, ABIM creates ”Director of Test Security” position. Salary undisclosed.

• Ex-DC policeman, fired from force for organizing reprisals against a journalist and with felony conviction(s), hired as ABIM “Director of Test Security” in 2008.*

• ABIM leadership authorizes Director of Test Security to coordinate investigation of Arora Board Review course using ABIM personnel to attend and secretly audiotape the ACGME-accredited course.

• ABIM obtains writ to seize materials from coarse director’s home from federal judge, including his computers. ABIM Director of Test Security and ABIM Lawyers accompany Federal Marshals in seizure. Diplomate candidate email addresses from those computers are acquired and used to issue “sanctions” on physicians accused of violating “Pledge of Honesty.” ABIM publishes press release claiming physicians cheated. Wall Street Journal article appears June 10, 2009.

• 2017 - ABIM loses copyright suit against Puerto Rican physician from Arora Board Review sting operation 8 years later because it was time-barred. FY2016 legal expenses approach $1M to ABIM diplomates. Countersuit pending.

* Fisher WG. Fact Check on ABIM Director of Investigations http://drwes.blogspot.com/2017/03/fact-check-on-abims-director-of.html
ABIM Strongman Tactics

ABIM Chief Operating Officer sends (and stores) “letter of concern” questioning ethical and professional behavior of doctors after it acquires physicians’ emails from a board review course director’s home in a raid using Federal Marshals, ABIM lawyers and staff.

“Making doctors appear ignorant became big business, worth millions of dollars, and the ABIM went from being a genial organization celebrated by the medical profession to something more akin to a protection racket.”

Physicians have paid over $581 million to ABIM and only $13.6 million remain
Just 23% of revenue used for physician testing

Source: ABIM and ABIM Foundation Form 990s and Consolidated Financial Statements
ABIM’s Mounting Legal Fees

ABMS MOC® Introduced
Average US Internist Compensation 2015**

** Medscape Internist Compensation Report 2015

$849,483

* Reference: ABIM FY2016 IRS Form 990
American Board of Medical Specialties
Salaries, Other Compensation and Benefits (Total: $40.7 Million)
For the Years Ending 12-31-10 to 12-31-15

154% Increase
## Maintenance of Certification® Legislative Scoreboard

<table>
<thead>
<tr>
<th>State</th>
<th>Status</th>
<th>Bill No.</th>
<th>Most Recent Act</th>
<th>Effective</th>
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<tbody>
<tr>
<td>Kentucky</td>
<td>Passed</td>
<td>KY SB17</td>
<td>Signed 3/16/2016</td>
<td>3/16/2016</td>
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<tr>
<td>Georgia</td>
<td>Passed</td>
<td>GA HB165</td>
<td>Signed 5/8/2017</td>
<td>5/8/2017</td>
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<tr>
<td>Tennessee</td>
<td>Passed</td>
<td>TN SB298</td>
<td>Signed 5/25/2017</td>
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<td>Maine</td>
<td>Passed</td>
<td>ME LD1200</td>
<td>Enacted 6/13/2017</td>
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<tr>
<td>Texas</td>
<td>Passed</td>
<td>TX SB1148</td>
<td>Signed 6/14/2017</td>
<td>1/1/2018</td>
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<tr>
<td>Alaska</td>
<td>In Process</td>
<td>AK HB191</td>
<td>Intro Hse 3/22/2017</td>
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<tr>
<td>Massachusetts</td>
<td>In Process</td>
<td>MA HB2446</td>
<td>Ref to Pub Hlth Comm 1/23/2017</td>
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<td>Rhode Island</td>
<td>In Process</td>
<td>RI SB754/ RI HB5671</td>
<td>SB Intro Senate 4/12/2017</td>
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<td>Oregon</td>
<td>In Process</td>
<td>OR HB3081</td>
<td>HB Held for further study 3/15/2017</td>
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<td>South Carolina</td>
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<td>California</td>
<td>In Process</td>
<td>CA SB487</td>
<td>Comm Hearing Postponed 4/17/2017</td>
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<td>Ohio</td>
<td>In Process</td>
<td>OH HB273</td>
<td>Ref to Comm 6/20/2017</td>
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<tr>
<td>New Jersey</td>
<td>In Process</td>
<td>NJ SB3362</td>
<td>Into Senate/Ref Comm 6/26/2017</td>
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</table>
Ohio’s HB 273 must prevent the unproven American Board of Medical Specialties MOC® mandate from being used as basis for physician hospital credentials, insurance payments, or licensure.

• It’s cost: $0

• **WARNING:** Anti-MOC bills can be complex. Many special interests get involved and work to create loopholes. The special interests usually have a financial interest in undermining the anti-MOC movement.

• Example of strong language modeled after AMA proposed ”model legislation:”
  • “A facility licensed under this chapter shall not deny hospital staff or admitting privileges or employment based solely on the absence of Maintenance of Certification.”
  • “A health insurance entity as defined [in state law], shall not deny reimbursement to, or discriminate with respect to reimbursement levels, or prevent a physician from in any of the entity’s provider networks, based solely on a physician’s decision to not participate in Maintenance of Certification.”
Weak Bill = Maine

“Nothing in this chapter may be construed to require a physician or surgeon licensed under this chapter to secure a maintenance of certification as a condition of licensure, reimbursement, employment or admitting privileges at a hospital in the State.”

Don’t be fooled. This might look strong at first glance, however it is not a prohibition on MOC, but rather a prohibition on state law [Chapter 48 of Title 32 of Maine Revised Statute] being construed as requiring MOC requirements.

A better law in Maine, might look like this:
This chapter prohibits the use of MOC as a requirement for licensure, reimbursement, employment or admitting privileges at a hospital in the State.
Anti-MOC Response to ABMS Talking Points

**ABMS Lobbying Materials:**

“The bill says that a Health Plan may not refuse a physician into their network because the physician has not kept up his or her board certification (maintenance of certification).

- Health Plans and Hospitals need to have confidence that the board-certified physicians they are credentialing to provide highly specialized medical care to their members and patients are keeping up with new medical knowledge in their specialties.”

**Anti-MOC Response:**

- The essence of the anti-MOC movement is there is neither proof nor general belief that MOC measures physicians success at “keeping up with new medical knowledge.”
The essence of the anti-MOC movement is there is neither proof nor general belief that MOC assures “the doctor is up-to-date in the knowledge and skills of the specialty”
There is neither evidence, nor general belief that not participating in MOC “puts patient’s quality of care at risk.”

Incidentally, if not participating in MOC puts patients at risk, why does ABMS exempt half of their certified doctors from MOC because they received their initial boards before 1990?
1) True, the bill does restrict hospital’s rights. However, since the ABMS/AOA has a monopoly on accepted board certification, a balance between hospital’s rights and physician’s rights must be legislated.

2) A significant amount of state funding flows to hospitals and insurers. It is not unreasonable to enact provisions on hospitals and insurers protecting patients' ability to seek treatment from physicians of their choice and protecting taxpayers from increased costs driven by counter-productive and expensive mandates.

3) There is no evidence or consensus that MOC helps “select the best-trained and most appropriate individuals.”