The Effect of State Medical Board Action on ABMS Specialty Board Certification

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ABSTRACT: State medical board action that is deemed a restriction by an ABMS specialty board can result in a loss of board certification, impacting a physician's ability to practice, and frustrating a medical board's efforts to rehabilitate the physician and improve the quality of care provided to patients. State medical boards have difficulty predicting what types of actions constitute a restriction by a specialty board and imposing appropriate discipline because specialty boards use varying criteria to evaluate state medical board action. ABMS specialty boards experience frustration of their own when attempting to interpret actions from 70 separate state medical boards, each governed by its own laws and using its own nomenclature. This article summarizes the inconsistency of both specialty boards and state medical boards, describes the efforts to resolve this issue, and proposes a series of steps that will bring a higher degree of predictability to this process and meet the needs of all stakeholders.

Introduction

The effect of state medical board discipline on specialty board certification has been a concern of the state medical boards and their licensees since the early 1990s. In many cases, the loss of American Board of Medical Specialties (ABMS) specialty board certification is a natural and expected result of state medical board discipline. In some cases, however, the loss of certification can significantly impact a physician's practice and frustrate a state medical board's effort to rehabilitate the physician and improve the quality care provided to patients.

The variability in the criteria and processes used by each specialty board makes it difficult for a state medical board to predict whether a particular disciplinary action will jeopardize a physician's certification status and, therefore, to craft discipline that both protects the public and rehabilitates the physician. Conversely, each specialty board must evaluate disciplinary actions from 70 separate state medical boards,* each with its own terminology and state laws governing its disciplinary process, making it challenging to interpret the action and determine whether a physician meets the criteria for certification.

A more uniform approach by both ABMS specialty boards and state medical boards would help each achieve their common goal — improving the quality of health care. This paper describes the criteria and the processes ABMS specialty boards use to evaluate state medical board discipline, the inconsistency of state medical board actions, and the efforts to address this issue. The paper concludes with proposed steps to bring a higher degree of consistency and predictability to this process for the benefit of state medical boards, ABMS specialty boards, and individual physicians.

THE VARIABILITY IN THE CRITERIA AND PROCESSES USED BY EACH SPECIALTY BOARD MAKES IT DIFFICULT FOR A STATE MEDICAL BOARD TO PREDICT WHETHER A PARTICULAR DISCIPLINARY ACTION WILL JEOPARDIZE A PHYSICIAN'S CERTIFICATION STATUS...

The Criteria and Processes Used by ABMS Specialty Boards

In 2007, the ABMS issued a policy for its member boards stating that for a physician to be eligible for certification or recertification each license a physician holds must be "current, full and unrestricted." The policy created two exceptions to this requirement: Specialty boards may certify or recertify a physician with a restricted license if (1) certification would further a state medical board goal of physician rehabilitation provided the physician can practice within the limitations imposed by the medical board; and (2) the physician has unrestricted licenses in all the states in which the physician practices, and

* The 70 medical boards consist of medical boards from all 50 states, the District of Columbia, U.S. territories, and the boards of osteopathic medicine in those states that have a separate board of osteopathic medicine.

those states are apprised of restrictions in other states and have concluded that the physician's license should not be restricted.[1]

In 2014, the ABMS Board of Directors approved "Standards for the ABMS Program for Maintenance of Certification."[2] The document listed anticipated outcomes, one of which was that each specialty board have a process in place to consider the circumstances of an action by a state medical board and to respond appropriately. The ABMS explained that a valid and unrestricted license is "an appropriate screening indicator," since specialty boards do not generally act as a first

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investigator of complaints against a diplomate. The ABMS observed that in some cases a licensing action "does not preclude continued board certification" and that specialty boards "appropriately balance their primary obligation to the public with the simultaneous obligation of fairness and due process to the diplomate."[2]

A review of each specialty board's written criteria for evaluating state medical board action shows that there is a fair amount of variation as to (1) what constitutes a "restriction" of a license; (2) whether there are any exceptions to this requirement; (3) whether a specialty board has discretion to view each matter on a case-by-case basis; (4) whether a specialty board may impose something less than revocation or suspension of certification; and (5) the process for sanctioning a diplomate's certification.

The Definition of Restriction

Each specialty board requires its diplomates to have an unrestricted license, but each takes a different view of what type of action constitutes a "restriction." Several boards define restriction broadly to include any disciplinary action by a state medical board, including a censure or reprimand.[3,4,5] The American Board of Otolaryngology criteria, for example, provide that each diplomate agrees to revocation of the certificate if the diplomate's license is "revoked or shall have been disciplined or censured."[6]

Some specialty boards define "restriction" by listing sanctions common in state medical board actions, including a "requirement" or "obligation." This can include continuing medical education, but does not include a reprimand.[7,8,9,10] The American Board of Psychiatry and Neurology, for example, states that restrictions include "revocation, cancellation, suspension, condition, obligation, requirement, probation, forfeiture, surrender, failure to renew, prohibition against applying or renewing, lapse, inactive status or contingency."[11]

The American Board of Family Medicine (ABFM) has a more literal interpretation of the term "restriction"—and the most thorough description. The ABFM will revoke a diplomate's certification if the diplomate's license is revoked, suspended, surrendered, or "subject to practice privilege limitations."[12]

ABFM guidelines state that "practice privilege limitations" are "those which affect, restrict, alter, or constrain at any time or in any location, the practice of medicine or the right of a physician to treat a presenting patient."[12] A provision that applies to all physicians is not considered a practice privilege limitation. The guidelines helpfully contain a non-exclusive list of limitations that would result in a loss of certification: a restriction on self-treatment or treatment of family members, a limitation on prescribing, direct supervision during examination of patients, requiring the presence of a chaperone when examining patients, and a limitation on the number of hours or the location of a diplomate's practice.[12]

Interestingly, the ABFM guidelines specifically state that an order imposing probation—but without a practice privilege limitation—will not result in a loss of certification. The guidelines also exclude reprimands and letters of concern.[12]

A few specialty boards do not provide written guidance on the scope of the term "restriction." As will be seen below, a license restriction does not always result in a loss of certification.

Exemptions

Some specialty boards follow the recommendation of the ABMS and will permit a physician with a restricted license to retain certification if the physician is participating in a rehabilitation program or is restricted in a state in which the physician no longer practices.

1. Rehabilitation

A number of specialty boards will permit a disciplined diplomate to retain certification as long as the physician maintains compliance with the rehabilitation program and all conditions established by the state medical board.[3,12,13] Some boards apply the exemption to physicians with any disability. For example, the American Board of Nuclear Medicine policy exempts a diplomate with a restricted license if the restriction "has been put in place because of a disability," or "there are additional circumstances supporting the goal of physician rehabilitation that justify allowing the physician to be certified or maintain certification."[10]

Other specialty boards limit the exemption to diplomates with chemical dependency. The American Board of Pathology, for example, provides that diplomates will not be rendered ineligible when:

> …any suspension, probation and/or limitation of the diplomate's license is due to his/her entry into, and successful participation in and/or completion of, a rehabilitation or diversionary program for chemical dependency authorized by the applicable medical licensing authority …[13]

Some specialty boards require proof of sobriety for a period of time. The American Board of Internal Medicine, for example, will permit an applicant or diplomate with a history of substance abuse, but with documentation of at least one year of sobriety from a reliable monitoring source, to become certified or recertified.[7]

Two specialty boards limit this exemption to physicians enrolled in rehabilitation programs only if the physician's license has not been disciplined. The American Board of Orthopaedic Surgery exempts diplomates who successfully participate in a "non-disciplinary rehabilitation or diversionary program."[14] Similarly, the American Board of Psychiatry and Neurology exempts diplomates in an impaired physicians program only if the diplomate has not been reported to either the National Practitioner Data Bank or the Federation of State Medical Boards.[11]

2. Not currently practicing in the state or states with restricted license

Some specialty boards permit diplomates to retain certification if the diplomate has a restricted license in a state where the diplomate is not currently practicing. This exemption generally applies only when the diplomate has unrestricted licenses in the states in which the diplomate is currently practicing, and those state medical boards must be fully apprised of the restrictions or adverse actions and have concluded the diplomate's license should not be restricted, suspended or revoked.[10,12,13]

The American Board of Neurological Surgery (ABNS) provides the rationale for this exemption:

> A Diplomate may have active and unrestricted licenses in all states where he or she practices, while licenses in other states may have been revoked or suspended for practice-related issues. This occurs, for example, when a Diplomate leaves a state where he or she got into trouble in order to get a fresh start elsewhere. It also may be the result of the Diplomate practicing in a state that has more lax enforcement standards than a state where he or she maintains a license but does not actively practice.
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> In general, the Board will track the actions of the state(s) where the Diplomate actively practices. Thus, so long as current, active, unrestricted licenses are maintained in each state where he or she actively practices, the ABNS typically will not suspend or revoke Certification. The Board reasons that the state where the Diplomate actively practices has primary responsibility for monitoring conduct. To the extent that all of the Diplomate's active license states have determined that history and conduct support a full, unrestricted license, the ABNS will generally defer to the decisions of those states.[15]

Some specialty boards have no express exemptions to the requirement that a diplomate have an unrestricted license. However, as described below, most of these boards use discretion to determine whether a restricted license should result in a loss of certification and may end up exempting physicians who fall into the categories described above.

SOME SPECIALTY BOARDS PERMIT DIPLOMATES TO RETAIN CERTIFICATION IF THE DIPLOMATE HAS A RESTRICTED LICENSE IN A STATE WHERE THE DIPLOMATE IS NOT CURRENTLY PRACTICING.

Discretion to view each matter on a case-by-case basis

While a few specialty boards appear to have no discretion when evaluating disciplinary action (a license restriction automatically results in a loss of certification),[11,16] the great majority of specialty boards retain discretion to consider each matter on a case-by-case basis, taking into consideration all the circumstances involved in the state medical board disciplinary action. While a revocation of a license will almost certainly result in a loss of certification, an action imposing a less severe sanction merely triggers a review by the specialty board.[3]

The American Board of Neurological Surgery (ABNS) has the most explicit statement on this topic:

> Although in most cases the outcome of an ABNS disciplinary action will track the guidance found in this document, fairness and due process require (and ABNS Rules and Regulations mandate) that each case be evaluated on its own merits. Every case is different and involves its own unique set of circumstances. Consequently, this document sets forth general guidelines only, and in certain cases deviation from the guidelines will be appropriate.[15]

Other specialty boards have slight variations in the way discretion is applied. The American Board of Emergency Medicine states that it has sole discretion to determine whether to investigate a license, to determine if its policy is fulfilled, and to determine if there is cause to revoke the certificate.[9]

The American Board of Internal Medicine states it will suspend or revoke a certification if the physician is prohibited from practicing medicine in one or more jurisdictions, but may impose sanctions if the physician has a restricted license.[7] The American Board of Medical Genetics and Genomics (ABMGG) will automatically revoke a certification if the physician loses a license due to behavior that is related to medical genetic practice, but has discretion in all other circumstances.[16]

FOR SOME SPECIALTY BOARDS, REVOCATION OR SUSPENSION OF THE CERTIFICATE APPEAR TO BE THE ONLY RESPONSE TO STATE MEDICAL BOARD DISCIPLINE.

The American Board of Obstetrics and Gynecology (ABOG) requires a diplomate to submit a written explanation regarding any "disciplinary or non-disciplinary action taken by a state medical board." The ABOG reviews the material and determines whether the physician will be allowed to enter the MOC process.[17]

Availability of a sanction other than revocation or suspension of certification

For some specialty boards, revocation or suspension of the certificate appear to be the only response to state medical board discipline.[8,18] Other boards have a variety of sanctions they can impose on a certificate, including probation, restriction, or issuing a letter of reprimand or concern.

The American Board of Dermatology can place a diplomate's certification on "provisional restriction" when "circumstances could be rectified without adversely impacting the diplomate's ability to practice dermatology." The provisional restriction will last no more than two years, at which time the certificate will either be revoked or reinstated.[19] A number of boards may place a diplomate's certification on probation for a fixed or indefinite period of time.[3,10,11,15,17,20]

The ABMGG has discretion to revoke, suspend, issue a letter of censure, a letter of concern "or take such other actions as the ABMGG may deem appropriate to the particular circumstances before it."[16] The American Board of Physical Medicine and Rehabilitation (ABPMR) may issue a letter of reprimand "or other actions that the ABPMR believes to be warranted in order to protect third parties, the public or the ABPMR."[21] The American Board of Plastic Surgery may issue a "private letter of inquiry and/or reprimand," or delay admissibility to an exam.[22]

While the American Board of Neurological Surgery (ABNS) can revoke or suspend a certificate, the ABNS "will typically send a letter of reprimand or concern" if a diplomate's license has been revoked or suspended for a non-practice related issue, or if a state takes an action less severe than revocation or suspension. The ABNS can also require participation in MOC for diplomates with non-time-limited certification."[15]

The American Board Surgery (ABS) states that "normally, the state action will be duplicated." However, the ABS "may choose at its discretion to adopt either a more lenient or more stringent condition on the certificate if warranted by the nature of the disciplinary infraction."[23]

Process for terminating certification

Most specialty boards have a written process to determine whether a diplomate meets the eligibility criteria following an action by a state medical board. Many boards provide the diplomate notice and an opportunity to be heard prior to sanctioning a certificate.[3,8,10,15,16] Other specialty boards will sanction the certificate, then provide the diplomate an opportunity to appeal the decision.[13,23] Some permit the physician to appear and present evidence before a panel or committee,[24] while others do not.[11,20]

SOME BOARD ACTIONS DESCRIBE THE TRANSGRESSION IN GREAT DETAIL, AND SOME ARE MORE GENERAL AND VAGUE. EACH STATE MEDICAL BOARD USES ITS OWN NOMENCLATURE TO DESCRIBE ITS ACTIONS.

The American Board of Internal Medicine (ABIM) may have the most elaborate process for sanctioning a certificate. The process includes notifying the physician that its Credentials and Certification Committee (CCC) will decide whether to recommend a sanction in 45 days; providing copies of the evidence, the procedures, and the possible sanction; providing an opportunity for a written submission, and the right to appeal an adverse decision with an in-person hearing before a panel.

If, after reviewing the documents submitted by the physician, the CCC decides to recommend a sanction, it provides the diplomate with the factual basis for the determination and the process to appeal the decision and have a hearing. The CCC advises the diplomate that while a recommended sanction is not final and does not affect certification status, a diplomate is not eligible to participate in the certification process.

At the appeal hearing, the panel permits the diplomate or the diplomate's attorney to present information and call witnesses. The panel has discretion to affirm, rescind or modify the recommended sanction, or impose an alternative sanction. The decision of a majority of the appeal panel is the final decision of the ABIM.[7]

Some specialty boards have limited grounds upon which a diplomate may appeal a decision to sanction a certificate. For example, the American Board of Anesthesiology (ABA) will provide a formal review only when a diplomate can show that the ABA's action was inconsistent with ABA policies or not supported by the evidence available to the board when the action was taken.[5] The American Board of Plastic Surgery requires the physician to prove that the decision was arbitrary and capricious, and that there was no material basis for the decision or that there was a complete absence of facts to support the decision.[22]

The American Board of Psychiatry and Neurology gives a diplomate a 30-day notice and an opportunity to submit updated documentation. However, the diplomate has no opportunity for a hearing or to appeal an adverse decision. When the license becomes unrestricted, the diplomate may seek reinstatement of the certification by paying a reinstatement fee and passing the MOC exam.[11]

State Medical Boards

While there is a degree of variability in the criteria and processes used by the 24 ABMS specialty boards when evaluating state medical board disciplinary orders, there is also inconsistency among the 70 state medical boards in crafting those disciplinary orders. This is primarily due to the fact that each state medical board is bound by its own state laws governing its disciplinary process. Some state medical boards can issue letters of concern or offer "non-disciplinary" remedial plans or corrective action agreements. Some board actions contain specific findings of unprofessional conduct, while others state only allegations. Some board actions describe the transgression in great detail, and some are more general and vague. Each state medical board uses its own nomenclature to describe its actions.

...STATE MEDICAL BOARDS SHARE INFORMATION AND BEST PRACTICES IN MEDICAL REGULATION, BUT THERE HAS BEEN NO EFFORT TO USE CONSISTENT TERMINOLOGY IN DISCIPLINARY ORDERS.

With the help of FSMB, state medical boards share information and best practices, but there is little incentive to use consistent terminology in disciplinary orders.

Ironically, some of the inconsistency in state medical board actions is due to the insertion of language

designed to convince a specialty board that a license is not restricted, and that specialty board certification should not be affected. A state medical board action may state that a particular provision is not to be construed as a restriction, that a physician's license is "unencumbered" or that an action is "non-disciplinary."

To add additional complexity, when the FSMB transmits a disciplinary order to the ABMS, the FSMB categorizes the action by choosing from among 268 action codes and 234 basis codes. This may make the task of interpreting and evaluating state medical board orders even more challenging.

The specialty boards are acutely aware of the inconsistency in state medical board action and the difficulty it imposes. Two specialty boards explicitly address this inconsistency in their criteria. The American Board of Ophthalmology (ABO) states:

> Each licensing entity may use different terminology to describe a final action affecting a candidate or diplomate's medical license. The terms a licensing entity may use with respect to a final action may include but are not limited to: revocation; surrender; suspension; reprimand; disciplinary action; administrative matter; practice improvement; probation; restricted license; letter of concern; special conditions or requirements; or, a no action letter.[3]

The ABO further states that it takes an "expansive view" of what constitutes final disciplinary action "given the lack of consistency of terminology used by each licensing entity."

The American Board of Neurological Surgery explains that in deciding what action to take, "the Board will focus on the substance of the state action, rather than the state's characterization since different states use different phrases to describe their actions."[15]

Efforts to Address the Issue

Since the early 1990s, several groups have attempted to address this issue. These groups made a number of recommendations, but few have been carried out.

At the annual meeting of the Federation of State Medical Boards (FSMB) in 1992, the House of Delegates adopted a resolution stating that a physician who has a restricted license and is allowed to practice clinical medicine under state medical board supervision and is complying with all the terms and conditions of the license restriction, should be allowed to be a candidate for specialty board certification or re-certification.[25]

In 1998, the FSMB House of Delegates adopted a resolution calling for dialogue with specialty boards to develop mechanisms allowing physicians with physical or mental disabilities to obtain and maintain specialty board certification without compromising public protection.[25]

The following year, the FSMB House of Delegates adopted a resolution that the FSMB will continue discussions with the ABMS and the American Osteopathic Association (AOA) regarding the issue of recertification of physicians with licensure restrictions. The resolution also stated that the FSMB will explore alternate mechanisms to allow physicians to be eligible for specialty recertification while preserving medical board oversight of their recovery program.[25]

A STATE MEDICAL BOARD ACTION MAY STATE THAT A PARTICULAR PROVISION IS NOT TO BE CONSTRUED AS A RESTRICTION, THAT A PHYSICIAN'S LICENSE IS 'UNENCUMBERED' OR THAT AN ACTION IS 'NON-DISCIPLINARY.'

In 2004, the ABMS established a disciplinary action notification service (DANS) to assist its specialty boards by efficiently transmitting information on state medical board discipline to the individual specialty boards.[26]

In 2012, the North Carolina Medical Board proposed a resolution that the FSMB convene a meeting with the ABMS and AOA Bureau of Specialists to collaborate on strategies to achieve the common goal of avoiding unintended limitations of specialty board certification and recertification based on state board disciplinary action, while protecting the public and maintaining high standards of specialty practice, and calling on the FSMB to report back to the House of Delegates on its progress at the 2013 Annual Meeting. Both the ABMS and the FSMB Board of Directors testified in support of the resolution and expressed a willingness to participate in a workgroup to develop recommendations for the use of disciplinary information by specialty boards.[27]

In 2013, the ABMS DANS workgroup issued a report finding that specialty boards were not consistent in their handling of state medical board discipline, and that state medical boards were not consistent in determining whether an order restricts a medical license. The workgroup noted that state medical boards may state in a disciplinary order that a license is unencumbered or the action is "non-disciplinary" to avoid labeling the license as being restricted. The workgroup also noted that the Federation of State Physician Health Programs expressed a concern over what it described as the reflexive or automatic response to state medical board disciplinary action, and asked specialty boards to examine actions on a case-by-case basis.[26]

The workgroup recommended, among other things, that the ABMS (1) provide state medical boards with information on specialty board disciplinary processes to highlight the implications of state medical board discipline; (2) ask state medical boards if action has been taken against a diplomate's license instead of asking if the license is "restricted," avoiding the need to interpret the varying definitions of "restricted" used by state medical boards; (3) develop guidance for specialty boards on how physicians participating in physician health programs report their participation and progress, including both voluntary and mandated participation; (4) review state medical board discipline on a case-by-case basis with the ultimate goal of determining whether a physician can successfully practice medicine as defined by the specialty board; and (5) advocate that state medical boards adopt uniform sanction guidelines to facilitate consistency in state medical board disciplinary actions.[26]

THE SPECIALTY BOARDS ARE ACUTELY AWARE OF THE INCONSISTENCY IN STATE MEDICAL BOARD ACTION AND THE DIFFICULTY IT IMPOSES.

In June 2013, the North Carolina Medical Board hosted a roundtable of various stakeholders in the health care field to address the issue of collateral consequences of state medical board action. The board issued a report stating that the primary goal of all participants was safe, high-quality patient care, and that each participant should respect the processes and mission of others to achieve this goal. All participants acknowledged the potential adverse effects of individual bodies' decisions, but stated that these potential effects should not determine action taken by other entities.[28]

The participants recommendations included: (1) stakeholders should work to develop common terminology of medical board actions, ideally at a national level, that would allow accurate comparison between different jurisdictions and subsequent actions; (2) state medical boards should provide a degree of detail in their orders to help other entities more accurately determine their own actions; (3) licensees and their attorneys should engage with specialty boards prior to negotiating consent orders to anticipate the consequences of consent orders, and to promote the drafting of orders that accomplish the goals of the licensing board, the physician and the specialty board; (4) specialty boards should allow their diplomates to continue with Maintenance of Certification activities so that once a restriction is lifted, they are able to return to active certification status immediately; (5) physician health programs should be supported; and that, (6) the North Carolina Medical Board should introduce a resolution at the 2014 FSMB annual meeting requesting assistance from the FSMB.[28]

In 2014, the FSMB House of Delegates adopted the resolution brought by the North Carolina Medical Board that the FSMB continue to communicate with entities that use state medical board actions as a basis for their actions to explore ways to accomplish their missions while taking measured, appropriate and proportionate action in response to public board actions involving a physician.[29]

In 2015, the Washington Medical Commission proposed a resolution that the FSMB establish a workgroup to develop model language in board actions and to coordinate with the ABMS to better understand the types of actions and language that will affect board certification and to promote consistent outcomes among the state medical boards and the ABMS. The House of Delegates referred the resolution to the FSMB Board of Directors for further study and to report back to the House of Delegates.[29]

At its 2017 annual meeting, the FSMB issued the results of a survey of state medical boards showing that less than a quarter of boards consider the impact of specialty board certification or hospital privileges before imposing disciplinary action.[30] The FSMB also revealed the results of an internal study to explore whether ABMS specialty boards

generally take action when the state medical board discipline is severe. The FSMB found that 4,301 physicians were sanctioned by a state board in 2010, and that 2,745 were certified by an ABMS board prior to being disciplined. Of the 2,745 who were certified, 34% were not certified in 2014, while 66% retained certification. Of the 2,745 disciplined physicians, 701 received a severe action (revocation, suspension, surrender), and 2,513 received a less severe action. More than two-thirds of the physicians who received a severe sanction were no longer certified in 2014, while 23% of physicians who received a less severe action were no longer certified in 2014.[31] While not surprising that severe discipline is more likely to lead to a loss of certification, it is noteworthy that almost a quarter of physicians with less severe discipline were no long certified.[31]

Conclusion and Recommendations

Resolving the long-standing problem of state medical board action adversely affecting specialty board certification will require the ABMS, state medical boards, and the FSMB to collaborate to develop consistent and uniform criteria, processes, and actions with predictable outcomes. The collaboration can include implementing the following recommendations, many of which were made by the ABMS DANS workgroup and the North Carolina Roundtable.

- The ABMS should work with its member boards to develop uniform criteria and a uniform process for evaluating state medical board discipline. This may include the following principles:
  - Specialty boards should ask state medical boards if any action has been taken against a diplomate's license instead of asking if the license is "restricted." This will avoid the need to interpret the varying definitions of "restricted" used by state medical boards and allow specialty boards discretion to determine if the physician should be certified.
  - Specialty boards should review state medical board action on a case-by-case basis and consider all relevant evidence to determine whether a physician can successfully practice medicine as defined by the specialty board.
  - Specialty boards should give strong consideration to permitting a physician to retain certification when the physician has been deemed to be safe to practice with conditions by a state medical board, particularly physicians successfully participating in physician health programs or other rehabilitation programs.
- State medical boards should consider developing uniform sanction guidelines with common and plain terminology. This would allow more accurate comparison between different jurisdictions, make it easier for specialty boards to evaluate state medical board disciplinary actions, and facilitate a consistent approach by specialty boards. This can include agreeing on a definition of terms such as revocation, suspension, restriction, and probation, and can include creating a small number of categories of actions, such as:
  - Serious actions (which could include revocation, surrender, suspension, and restriction)
  - Remedial or corrective actions (CME, creating practice protocols, and minor limitations on practice, such as limiting number of hours worked)
  - Censures and reprimands
  - Non-disciplinary actions (modification of an order that does not add requirements, termination of an order, surrender of a license not under investigation)
- The FSMB should consider simplifying its 267 action codes and 234 basis codes to a small number of easily-understood categories. This can be aligned with the effort by state medical boards to create a small number of broad categories of actions.

Completing these steps will result in a more uniform and consistent approach with predictable outcomes and will benefit all stakeholders. State medical boards will understand what sanctions will likely result in a loss of certification and, in appropriate cases, will be able to craft discipline to help a physician improve his or her practice without losing specialty board certification. ABMS specialty boards will be able to interpret state medical board action and determine whether a physician is still eligible for certification. Physicians

STATE MEDICAL BOARDS SHOULD CONSIDER DEVELOPING UNIFORM SANCTION GUIDELINES WITH COMMON AND PLAIN TERMINOLOGY. THIS WOULD ALLOW MORE ACCURATE COMPARISON BETWEEN DIFFERENT JURISDICTIONS...

who are facing discipline will be able to make more informed decisions when navigating the disciplinary process. And, ultimately, state medical boards and ABMS specialty boards will be better able to meet their individual missions of protecting the public and improving the quality of health care. ■

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References

1. American Board of Medical Specialties. Policy on Licensure Standards for Certification and Maintenance of Certification. 2007.
2. American Board of Medical Specialties. Standards for the ABMS Program for Maintenance of Certification. Approved January 15, 2014.
3. The American Board of Ophthalmology. Rules and Regulations. Revised September 2018.
4. The American Board of Thoracic Surgery. Maintenance of Certification in Thoracic Surgery Booklet of Information 2018.
5. The American Board of Anesthesiology. Primary Certification Policy Book. Revised February 2017.
6. The American Board of Otolaryngology. Booklet of Information. Updated January 2018.
7. The American Board of Internal Medicine. Policies & Procedures for Certification. January 2019.
8. The American Board of Allergy and Immunology. Policies and Procedures. Updated in 2019.
9. The American Board of Emergency Medicine. Policy on Medical Licensure. Updated July 2018.
10. The American Board of Nuclear Medicine. ABNM Policy on Licensure Standards for Certification and Maintenance of Certification. Approved February 16, 2015. https://www.abnm.org/index.php/moc-policy/abnm-policy-on-licensure/. Accessed June 7, 2019.
11. The American Board of Psychiatry and Neurology. 2019 General Information and Board Policies. Presentation at ABMS Conference 2016, "DANS (Disciplinary Action Notification System)", https://www.abms.org/media/120017/tues_4_janda_boardresponsesdans.pdf. Accessed June 7, 2019.
12. American Board of Family Medicine. Guidelines for Professionalism, Licensure, and Personal Conduct. Revised April 30, 2018.
13. The American Board of Pathology. Continuing Certification Booklet of Information. Revised February 2019.
14. The American Board of Orthopaedic Surgery. Rules and Procedures for the Maintenance of Certification/Recertification Examinations. Revised January 2019.
15. The American Board of Neurological Surgery. Guidelines for Disciplinary Actions. The American Board of Neurological Surgery website. https://www.abns.org/7623-2/. Accessed June 7, 2019.
16. The American Board of Genetics and Genomics. Disciplinary Review Policy and Procedures. Revised March 2017.
17. The American Board of Obstetrics and Gynecology. 2018 Specialty Maintenance of Certification Bulletin. Revised March 23, 2018.
18. The American Board of Colon and Rectal Surgery. General Information. 2018.
19. The American Board of Dermatology. Bylaws. Revised June 25, 2014. The American Board of Dermatology website. https://www.abderm.org/public/about-the-american-board-of-dermatology/bylaws.aspx. Accessed June 7, 2019.
20. The American Board of Radiology. Bylaws. Approved October 20, 2017. The American Board of Radiology website. https://www.theabr.org/about/abr-bylaws. Accessed June 7, 2019.
21. The American Board of Physical Medicine and Rehabilitation. Disciplinary/Sanctions Policy. Effective January 2015.
22. The American Board of Plastic Surgery. Discipline Policy. Revised November 29, 2016.
23. The American Board of Surgery. Booklet of Information. 2017-2018.
24. The American Board of Urology. 2018 Information for Applicants and Candidates. 2018.
25. Federation of State Medical Boards. Public Policy Compendium 2018-19. Policies 100.4, 220.1, 220.2. (In 2005, the FSMB House of Delegates revised the 1992 resolution to add the term "maintenance of certification" to the end of the resolution.)
26. American Board of Medical Specialties. Committee on Oversight and Monitoring of Maintenance of Certification Report and Recommendations, Disciplinary Action Notification Service Working Group Report. May 2013.
27. Federation of State Medical Boards. Report of resolutions from 2012 FSMB annual meeting.
28. The North Carolina Medical Board. Report Collateral Consequences Roundtable. June 19, 2013.
29. Federation of State Medical Boards. Actions by the FSMB House of Delegates. April 25, 2015.
30. Report of resolutions from 2017 FSMB annual meeting.
31. Data provided to author by FSMB.