

North Carolina Medical Board
Investigative Disciplinary Committee
September 21, 2011

William Walker, Chairperson, Pamela Blizzard, Karen Gerancher, MD, Eleanor Greene, MD, Thomas Hill, MD

Open Session:

Survey of the Effect of NCMB Disciplinary Actions on Board Certification

NCMB Leadership seeks objective data with which to assess claims made by defense counsel representing physicians in disciplinary proceedings that actions taken against licensees will adversely impact physician's standing with their specialty board. NCMB staff reviewed FSMB policy, interviewed FSMB staff and polled the umbrella organization the American Board of Medical Specialties and its member boards on the issue. Findings are set forth below.

FSMB Activity

The relationship between state licensing board action and resulting specialty board action has been the subject of ongoing discussions and formal Federation of State Medical Board policy for about two decades. The Federation authored a White Paper on the issue in the early 1990's which has dwindled to minor historical importance due to the passage of time and a changed environment. Respectively, the FSMB policies set forth below demonstrate the Federation's belief that physicians practicing under a restricted license who are compliant with the terms and conditions of the restriction should be permitted to maintain board certification and that physicians with license limitations due to physical and mental disability should be able to maintain specialty board certification while preserving state medical board oversight over the physician's recovery.

130.002 License Restriction/Board Certification

License Restriction/Board Certification

It is the position of the FSMB that a physician who has a restricted license and is allowed to practice clinical medicine under board supervision and is complying with all the terms and conditions of his/her license restriction, should be allowed to be a candidate for specialty board certification, re-certification or maintenance of certification.

HD, April 1992

HD, May 2005, Revised

130.003 License Restrictions and Specialty Board Certification

The FSMB shall establish an ongoing dialogue with allopathic and osteopathic specialty boards regarding restrictions on medical licenses due to a mental or physical disability and specialty board certification. The primary purpose would be to develop mechanisms

allowing physicians with physical or mental disabilities to obtain and maintain specialty board certification without compromising public protection.

HD, April 1998

The FSMB will continue discussions with the American Board of Medical Specialties and the American Osteopathic Association regarding the issue of eligibility for specialty recertification of physicians with licensure restrictions. The FSMB will explore the possibility of developing alternate mechanisms which would allow physicians to be eligible for specialty recertification while preserving medical board oversight of their recovery program.

HD, April 1999

ABMS does subscribe to FSMB's Disciplinary Action Notification System (DANS) and the ABMS makes the information it receives available to its member specialty boards. However, the FSMB does not know what the specialty boards do with that information, what policies specialty boards have in place concerning the information, or what internal processes they implement in terms of restricting application for membership, revoking diplomates' membership, or curtailing recertification as a result of state board discipline.

ABMS Activity

We contacted Dr. Sheldon Horowitz of ABMS to ask about specialty board policies and procedures concerning state medical board disciplinary actions. ABMS has not compiled any data from its 24 member boards regarding their policies and procedures for addressing state board discipline. ABMS confirmed that it does subscribe to FSMB's DANS system and makes the information available to its member boards. ABMS mandates that member boards require an applicant or diplomate to have a full, unrestricted and valid license in at least one state. ABMS member boards are also required to have a structured review process in place for dealing with state board discipline and ABMS reports it is in the early stages of developing a standardized process for its member boards to collect and act upon state board disciplinary data.

ABMS Member Boards

We sent an email survey to the 24 ABMS member boards and received twelve responses. Somewhat predictably, there is significant variation in the level of detail provided by the respondents as well as in the comprehensiveness of their policies and procedures. Two merely note that they review all state board disciplinary actions "on a case by case basis" while others cite extensive policy. Despite the significant variation among the relatively small sample of boards responding to the survey, superficial similarities appear among the specialty boards' policies and procedures. However, once we leave the opposite ends of the spectrum of state medical board severity of discipline, there are no discernible trends in how specialty boards handle state board discipline of their diplomates.

Full and Unrestricted License

All respondents reported that ABMS mandates that its member boards require their diplomates to have a full and unrestricted license to practice in good standing in at least one state. Thus, a license restriction in one state for a physician holding multiple state licenses will not affect his or her specialty board certification. However, three of the twelve respondents have a more stringent requirement mandating that licensees of multiple states must have full and unrestricted licenses in all states where licensed.

Restriction, Suspension and Revocation

A number of years ago, ABMS member boards reached consensus that they would only receive DANS reports concerning state board disciplinary actions that restrict, suspend or revoke a physician license. "Suspension" and "revocation" are clearly defined terms but there seems to be some variance in how the specialty boards define restrictions.

Only the American Board of Psychiatry and Neurology provided its own definition of "restriction" which follows:

Restrictions include but are not limited to any disciplinary action, revocation, cancellation, suspension, condition, agreement, stipulation, probation, forfeiture, surrender, plea agreement, settlement agreement, failure to renew, prohibition against applying, lapse, inactive status or contingency in any way relevant to a license and/or the physician's privilege to practice professionally that resulted from or is based on personal or professional misconduct, professional ethics, moral turpitude, criminal charges, indictments and/or convictions, and professional competence and/or malpractice.

There is significant variation among the boards in how aggressively they address state medical board disciplinary information. As a general rule, none track or take action against licensees based on private or public letters of concern. And all take action when a licensee licensed in a single state has his or her license revoked or suspended. However, other than these examples from the opposite ends of the disciplinary spectrum, there is little to no consistency in outcome among the boards.

Reporting

About one quarter of the respondents note a requirement that the physician inform the specialty board of a state board disciplinary action. Two require notice within sixty days of the final action. One requires immediate notification by the licensee and notes that they also review other sources for information. The remainder rely solely on DANS and NPDB.

Due Process Proceedings

The majority of boards report the availability of some sort of due process proceeding. Most are conducted by an ethics committee after paper review by board staff of state board final disciplinary orders. One notable exception, the American Board of Psychiatry and Neurology, does not offer a due process hearing at all, and deems the diplomate to

be immediately stripped of certification once a state license restriction is imposed. Notice to the ABPN is not necessary to trigger the specialty board revocation, although a licensee is required to inform the ABPN immediately.

Standards Applied to Initial Applicants, Current Diplomates and Candidates for Reinstatement

The boards consistently apply their respective policies and procedures to initial applicants for certification, current diplomates and those seeking to renew their certification status. The boards are also consistent in their requirement that all limitations and restrictions must be removed by the state licensing board before a candidate will be considered for reinstatement to the specialty board and reinstatement is done on a case by case basis.

Conclusion

The relationship between state licensing board action and resulting specialty board action has been the subject of ongoing discussions and formal Federation of State Medical Board policy for about two decades. Prior to NCMB's inquiry, there was no comprehensive survey in existence to demonstrate all specialty boards' policies and procedures for collecting and acting upon state medical board disciplinary information. NCMB undertook a survey of ABMS-member boards and received responses from about half of the organizations. Superficial commonalities exist: all receive DANS alerts from ABMS based on FSMB data; all have a policy in place concerning limitations, suspensions and revocations of a state medical license as mandated by ABMS; nearly all afford some sort of due process hearing; and all apply their policies consistently to initial applicants, current diplomates and candidates for reinstatement. In terms of outcome of discipline, none take action on private or public letters of concern and all take action when a physician licensed in a single state has his or her license suspended or revoked. Beyond that, there is a wide variation in specialty board action based on state board discipline with few discernible trends.

Proposed Physician CME Audit Process

