

ABIM Commences Process of Revoking Board Certifications For Utilization Of Test Preparation Companies

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As reported last week in the Wall Street Journal, the American Board of Internal Medicine (ABIM) has commenced the process of revoking, suspending or otherwise sanctioning the certification of 139 physicians for what it terms “morally unfit” behavior related to the taking of various test preparatory classes. Physicians in New York State have begun to receive formal letters from ABIM, advising them of the board’s punitive measures, prior to any due process being afforded the affected physicians. The actions appear to stem from information obtained by ABIM in a lawsuit commenced against Arora Board Review and several other test preparation courses (as well as the principals of the companies) for purported infringement of ABIM copyrights by reprinting and utilizing written questions from previous ABIM examinations. According to ABIM representatives, participants in the courses were encouraged to share questions from memory with the companies immediately after taking the ABIM certification examination, in violation of the policies set forth by ABIM for all physicians taking the exam. Physicians who utilized Arora to prepare for the exam were provided with questions obtained through other physicians who had previously completed ABIM examinations.

The “punishment” appears to vary from the proverbial “slap on the wrist” to outright revocation and a multi-year ban on retaking the examination. Although ABIM has stated that it is only taking punitive measures against physicians who shared their test questions with the preparatory corporations, Abrams, Fensterman, et. al. (AF) has already been retained by several clients who did not provide their test questions to the companies. It appears, despite what ABIM claims, that it has decided to take punitive measures against physicians who merely utilized services offered by these test preparation companies,

even if the physician did not provide any post-exam information to them. The penalties handed out were not uniform, nor was there any indication that, at the time the courses were taken by AF clients, ABIM objected to the courses now under scrutiny.

The most harrowing part of this process is that ABIM decided to make unilateral decisions of revocation or suspension based upon information it received in the lawsuit without providing any prior notice or due process to the affected physician, or affording the physician an opportunity to refute any conclusions or allegations. Indeed, the ABIM is only offering the physician a post-revocation opportunity to “provide information [the physician] would like ABIM to consider”. Moreover, ABIM is only accepting these “responses” by email, thus apparently refusing to afford the physician any formal or meaningful appeal process.

Based upon the preliminary information we have reviewed, it is our opinion that the actions of ABIM have been inappropriate, arbitrary and capricious, defamatory and clearly injurious. Further, questions have been raised as to the true motive behind ABIM’s actions, given its sanctioning of other test preparatory companies which indicates a possible conflict of interest and raises restraint of trade concerns.

For more information about the American Board of Internal Medicine/Arora matter, please contact David Verschell, (516) 328-2300.