Maintenance of Licensure: Medical Regulation with a Sheathed Sword

By Richard A. Whitehouse
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In May, I mark my sixth anniversary as executive director of the State Medical Board of Ohio. Looking back, I particularly recall my second case. So, this initial experience with the blame, and simply moves on to the next that merely picks up the pieces, assigns confinement ourselves to a regulatory system with the loss of a physician’s once promising career. It is in no small part a result of witnessing the patient harm associated with human and system-based errors — and often patient harm — could be avoided approaches more appropriate than using the sword properly associated with addressing more reckless behaviors. We need a better system of regulating the practice of medicine to address these cases if we are to save both patient lives and professional careers.

State medical boards have not done enough in this regard — until now. Historically, it has been the norm for regulators to stand idly by waiting for circumstances that call upon us to unsheathe the sword and impose traditional disciplinary measures only after patient harm occurs. However, the aftermath of such a system, while celebrated in the ranking of “tough” medical boards, leaves patient harm and lost careers in its wake. Certainly, any new idea that has the potential to avoid such an outcome presents us with a moral imperative.

State medical boards and the medical profession are facing an increasing demand for greater accountability and transparency. Despite these new buzzwords, the pressure for regulators to do more is not itself a new phenomenon. Reports from the Institute of Medicine have long called for dramatic changes in the U.S. health care system. The landmark To Err is Human report challenges health professional regulatory boards to improve patient safety by periodically re-examining and re-licensing providers “based on both competence and knowledge of safety practices.”

In 2004, the FSMB House of Delegates issued a policy statement suggesting “[s]tate medical boards have a responsibility to the public to ensure the ongoing competence of physicians seeking relicensure.” That statement calls upon all medical boards to do more to ensure the system of regulating physicians addresses issues related to human and systems-based error rather than standing by only to unsheathe the sword of discipline and assign blame once things have gone wrong.

Currently, Ohio and other medical boards rely upon continuing medical education as a mechanism to ensure some semblance of continued competency. But, this alone is not enough as there may be no relationship between the CME taken and the actual nature of the physician’s practice. Beyond this, the best that medical boards have offered in augmenting their regulatory efforts are complaint-driven programs limited to quality intervention, remediation, or rehabilitation. But, these efforts are still only reactive to events that would be avoidable if greater efforts are focused early on to ensure ongoing competency.

Clearly, medical regulation in the 21st century must be about more than simply licensure and discipline. Ohio has been a leader in rehabilitative and remediation programs that bring greater public value to the work of medical regulation. But, we

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The next component is “assessment of knowledge and skills.” This component requires physicians to determine on their own “what they need to know” to improve their practice. Physicians must demonstrate the knowledge, skills, and abilities necessary to provide safe, effective patient care within the framework of the six general competencies as they apply to their individual practice. This can be accomplished through patient and peer surveys, computer-based simulations, and practice relevant MOC/OCC examination.

The final component involves measurement of actual “performance in practice.” This component challenges physicians to assess exactly “how they are doing.” Physicians would demonstrate accountability for performance in their practice using a variety of methods that incorporate reference data to assess their performance in practice and guide improvement. Examples include 360 degree evaluations, analysis of practice data, and patient review.

The FSMB Guiding Principles underlying the integration of MOL into the process of licensure renewal include:

- supporting a commitment to lifelong learning and facilitating improvement in physician practice
- establishing requirements that are administratively feasible and developed in collaboration with other stakeholders
- ensuring patient care is not compromised or barriers to physician practice created
- creating a flexible infrastructure with a variety of options for meeting requirements
- balancing transparency with privacy protections

I am a member of a small group selected by the FSMB and charged with the development of a template that state medical boards may follow to implement their own state’s vision for MOL. What MOL will exactly look like in Ohio is yet to be determined. But, as we move in the direction of adopting the MOL concept in Ohio, I will be speaking to physician groups and associations to address their questions and solicit their input.

MOL represents a sea change in the approach of medical boards to medical regulation. It is a means for them to play a new role in ensuring a stable workforce of competent practitioners in the health care workplace. But, it will not happen overnight. In fact, MOL is recommended to be phased in by states incrementally over a ten-year period.

Many questions are yet to be resolved in the development of the MOL concept and some of these must necessarily be resolved by state medical boards. These include how MOL will apply to older physicians; whether nonclinically active physicians with active licenses must comply; and what physicians with inactive licenses must do to meet MOL requirements upon reentering active practice. One thing is certain. MOL must be implemented in a manner that is neither onerous to physicians nor deleterious to the health care workforce. Successful implementation of this plan will be defined by the degree to which it actually assists a physician’s practice and avoids the need for disciplinary action by the medical board.

If the best outcome in battle is achieved without unsheathing the sword, so too should medical boards strive to achieve their goal of public protection in such a manner as to avoid the disciplinary battle whenever possible. Among other things, this means doing more to ensure the ongoing competency of physicians to avoid human and systems-based errors. MOL accomplishes this thereby saving the sword of discipline for cases of reckless behavior. It is a better approach to protecting the public and preserving the integrity of the medical profession.

Comments welcome at richard.whitehouse@med.state.oh.us.

More information is available at the following sites:
FSMB-MOL  http://fsmb.org/mol.html

Editor’s note: The AMCNO board of directors was pleased to host Mr. Whitehouse at their January meeting. The board expressed a variety of concerns to Mr. Whitehouse with regard to the maintenance of licensure concept. Specifically, the AMCNO board raised concerns relative to the need for the state board to implement this new licensure process and asked Mr. Whitehouse if the state board could produce statistics and data that this change was warranted. The AMCNO board also commented that physicians are already beleaguered with enough rules and regulations without adding additional paperwork and forms to the licensure process. The AMCNO plans to monitor the progress of this initiative going forward. If any AMCNO member has specific concerns or comments about the MOL please make your comments/concerns known to both Mr. Whitehouse and the AMCNO Executive Vice President, Ms. Elayne Biddlestone at ebiddlestone@amcno.org.