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## Legal Matters

## Prove It

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You can be licensed to drive a car, fly an airplane, provide patient care, carry a handgun, cut hair, practice law, sell insurance, and hundreds of other activities and occupations. Similarly, you can be certified in hundreds of areas like a certified financial planner, an Miniature Dairy Goat Association (MGDA) goat judge, a Risk and Insurance Management Society (RIMS)-certified risk management professional, or an International Board of Specialty Certification (IBSC)-certified flight paramedic. But what is the difference between a license and a certificate?

A license is issued by a governmental authority that allows a person to operate in a particular area and is necessary in all states. On the other hand, certificates are most commonly issued by nongovernmental entities that provide recognition of a level expertise in a certain area. In medicine, the state issues a physician, nurse, paramedic, or respiratory therapist a license to practice within that state but a certificate in a specialty area like emergency medicine, community paramedicine, or critical care nursing.

For example, a paramedic will likely have a paramedic certificate from the National Registry of Emergency Medical Technicians (NREMT). Generally, after completing a paramedic program, the school will facilitate a testing opportunity for the recent graduate to sit for the NREMT certificate. After passing the written and psychomotor examinations, NREMT will issue the new paramedic a certificate. From NREMT, this includes a lovely certificate suitable for framing as well as a wallet card with the paramedic's name, a unique ID from NREMT, and an expiration

*Editor's Note: While the information in this article deals with legal issues, it does not constitute legal advice. If you have specific questions related to this topic, you are encouraged to consult an attorney who can investigate the particular circumstances of your individual situation. If you have an issue you would like to see addressed in a future issue of AMJ, please contact the author at [clarkjrc@gwmail.gwu.edu](mailto:clarkjrc@gwmail.gwu.edu) to suggest a topic.*

date. The possession of a paramedic card is not enough to allow that individual to practice. Instead, nearly all states accept NREMT as proof of entry-level competency and will issue the paramedic a state license. Nursing follows a similar scheme in which a graduate nurse sits for examinations administered by the State Boards of Nursing Examiners, and upon successfully passing the nursing boards, the new registered nurse can obtain a state issued license.

Similarly, a specialty certification is not a license. Physicians can become board certified in their specialty area of practice (ie, emergency medicine). Nurses can obtain Certified Flight Registered Nurse (CFRN), Certified Transport Registered Nurse (CTRN), and Certified Emergency Nurse (CEN) by the Board for Certified Emergency Nursing for example, respiratory therapists may choose to pursue additional certification in a specialty area like Neonatal/Pediatric Specialty (NPS) certification by the National Board for Respiratory Care, and paramedics can earn their Certified Flight Paramedic (FP-C), Certified Critical Care Paramedic (CCP-C), and Certified Tactical Paramedic (TP-C) from the International Board of Specialty Certification. Just like the NREMT paramedic card, these specialty certifications have the certificant's name, a unique ID, and an expiration date, but none of these certificates allows a provider to practice. Authorization to practice must come from the state in the form of a license. The necessary documentation to practice seems fairly straightforward, but the disciplinary databases are filled with actions against providers who commit fraud or deceit in securing admission to practice.

In January 2019, a news story caught my eye in Pinellas County, Florida, with the following headline: "Former Air Ambulance Worldwide employee arrested for providing false nursing license."<sup>1</sup> In this case, Pinellas County Sheriff's Office detectives investigated a case of potential license fraud after it

was discovered that an individual had presented a fraudulent nursing license to his employer and provided medical care to patients over a 4-year period.

The employer discovered something wasn't what it should be during an internal audit in April 2018 and notified the Florida Department of Health that the "nurse" had provided a fraudulent State of Florida Registered Nurse license and license number. The license number had been held by a legitimately licensed registered nurse who had retired from Air Ambulance Worldwide.

The "nurse" in question was not licensed. In fact, he was not trained as a nurse at all and had held a paramedic license in Pennsylvania before being hired by Air Ambulance Worldwide. During his 4 years of employment, the ruse worked well, and he functioned as a flight nurse, a flight coordinator, and the director of medical services. He provided medical care to patients on approximately 53 medical flights as a "registered nurse." He admitted to detectives that the accusations were true. He was arrested and charged with 1 count of unlicensed practice of a health care profession.

The ultimate goal of licensure is to protect the public from harm. In most states, this extends to simply holding yourself out as a health care provider. All states have modeled their own framework to describe what unlicensed practice looks like in their state, but, generally, the unauthorized practice of medicine occurs when someone gives medical advice or treatment without a professional license. Practicing medicine without a license can be either a misdemeanor or a felony, with penalties ranging from fines to civil penalties to restitution to incarceration. Additionally, anyone found guilty of practicing medicine without a license will be liable for any foreseeable injury that results from the misconduct.<sup>2</sup> Additionally, if convicted, there may be a prohibition against being eligible for future licensure. Don't think that

volunteering can keep you safe; even without payment, unlicensed practice is still a crime.

Defining the practice of medicine itself creates a slippery slope.<sup>3</sup> Clearly, performing procedures, providing a diagnosis, and prescribing medications are within the realm of practicing medicine, but what about providing medical advice? Advice might be thought to be the practice of medicine when the person giving the advice claims that they are a licensed health care provider. Conversely, authors of magazine articles and website posts that offer general tips are not engaging in the practice of medicine.

To explore the issue further, consider the 2017 case of *Maryland Board of Physicians, et al v Geier*.<sup>4</sup> In this case, the Maryland Board of Physicians notified Dr. Geier that it had received a complaint against him regarding his management of a child with autism. Geier was licensed as a physician in the state of Maryland at the time of the complaint. The complaint alleged that Dr. Geier was 1) practicing outside of the scope of his expertise and the prevailing standard of care for autism, 2) experimenting on children without a rational scientific theory or the supervision of a qualified review board, and 3) failing to provide appropriate informed consent regarding the potential side effects of Lupron and similar drugs, AbbVie Inc, North Chicago, Illinois USA.<sup>4</sup>

The board suspended Dr. Geier's right to practice medicine, asserting that the "public health, safety or welfare imperatively required emergency action" because of certain medical practices engaged in by Dr. Geier. The board also formally charged Dr. Geier with violations of the Maryland Medical Practice Act.<sup>5</sup> Five months after his license was suspended, the board issued amended charges against Dr. Geier for prescribing medicine to family members while his license was suspended. After amending its complaint, the board charged Dr. Geier with 1) unprofessional conduct in the practice of medicine; 2) willfully making or filing a false report or record in the practice of medicine; 3) willfully failing to file or record any medical record as required under law; 4) practicing medicine with an unauthorized person or aiding an unauthorized person in the practice of medicine; 5) gross overutilization of health care services; 6) failing to meet standards, as determined by peer review, for the delivery of quality medical care; and 7) failing to keep adequate medical records.

The original complaint was filed in 2006 and finally in August 2012, an administrative law judge issued a proposed decision upholding the summary suspension of Dr. Geier's license and followed up with a 126-page proposed decision, recommending that

the charges against Dr. Geier be upheld and that his license be revoked.

Here is the twist that makes the importance of confirming licensure. While the complaint against Dr. Geier was being investigated, the board found that Dr. Geier's son, David Geier, was assisting in Dr. Geier's practice including determining a diagnosis for a patient, determining which blood tests the patient required, and then ordering the tests. David Geier was charged with practicing medicine without a license in violation of 2017 Maryland Code, Health Occupations, Title 14.<sup>5</sup> The board imposed a \$10,000 fine. Without the initial complaint against Dr. Geier, the unlicensed practice of his son may never have been discovered.

The scope of the problem is larger than one might expect. For example, the Indiana Attorney General's office files at least 1 cease and desist complaint a month ordering individuals to stop practicing medicine without a license.<sup>6</sup>

Because licensure fraud is so prevalent, don't trust just a copy or take an individual's word in place of due diligence. Essentially, you should "demand proof" of licensure or certification. Some simple steps to take that can reduce fraudulent acts are to require that you see the original of their license or certification, search the state's professional licensing website to confirm that they are licensed, search the specialty certification website to confirm that they are properly credentialed, and check to see if they have any prior disciplinary actions.<sup>7</sup>

Nursing has a robust system for accessing and reporting disciplinary actions.<sup>8</sup> State Boards of Nursing disciplinary actions are considered public information according to administrative law. The boards also report disciplinary action to Nursys,<sup>9</sup> which is the only national database for verification of nurse licensure, discipline, and practice privileges for registered nurses and practical nurses/vocational nurses licensed in participating jurisdictions, including all states in the Nurse Licensure Compact. Federal law requires that all disciplinary actions taken against a health care professional's license be reported to the National Practitioner Data Bank. The National Practitioner Data Bank is a confidential information clearinghouse created by Congress to improve health care quality, protect the public, and reduce health care fraud and abuse in the United States.<sup>10</sup>

Understanding the difference between licensure and certification is the first step in uncovering licensure fraud. Practitioners of a licensed occupation must have a license issued by a governmental organization in order to practice. The licensure process is involuntary. By contrast, certification is

voluntary. You do not have to be certified in order to practice, but the 2 often go hand in hand.

Preventing practice without a license starts with putting in place checks and balances that look critically at the documentation presented. If your program or agency requires that an employee's file contains copies of current licensure and certification, you should demand originals that are copied for the file and returned to the employee to maximize accountability. With editing software, very real fakes can be produced with minimal effort, so verification with the issuing agency or body is the next step to ensure licenses and certificates are valid.

All of these steps help mitigate the risk to your organization and reduce potential litigation for your organization from patients and the public who may be harmed by the imposter. It is all of our duty to prevent harm and protect the public. We must take that charge seriously and cannot allow unlicensed or improperly credentialed individuals to practice medicine. Discovering fraud isn't as easy as looking at a piece of paper.

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