

Guidelines for Identification of Facial Plastic Surgeons

The intent of this document is to provide information that will help healthcare providers, payers, and regulators to identify the credentials of qualified facial plastic surgeons when granting privileges, compiling directories, making referrals, authorizing reimbursement, or regulating advertising.

Facial Plastic Surgery has been a recognized medical specialty for more than 50 years. Its organization as a medical specialty began in 1964, with the establishment of the American Academy of Facial Plastic and Reconstructive Surgery (“the Academy”). Since 1986, the specialty has had its own certifying body, the American Board of Facial Plastic and Reconstructive Surgery (“the Board”).

The American Academy of Facial Plastic and Reconstructive Surgery

The American Academy of Facial Plastic and Reconstructive Surgery is the AMA National Medical Specialty Society for Facial Plastic Surgery, representing that specialty in the American Medical Association’s (“AMA”) House of Delegates.

It is a non-profit organization housed in its own building with a full-time staff of nine.

Fellows of the Academy must be certified by a primary board of the American Board of Medical Specialties (“ABMS”), trained and experienced in Facial Plastic Surgery, actively engaged in such practice for three years, and submit cases acceptable to peer-review.

The Academy's Educational and Research Foundation conducts a year-long postresidency fellowship in Facial Plastic Surgery in connection with a number of academic institutions. It also provides a number of conferences and courses accredited by the Accreditation Council for Continuing Medical Education.

The American Board of Facial Plastic and Reconstructive Surgery

The American Board of Facial Plastic and Reconstructive Surgery is a certifying board with a full-time headquarters staff in its own building (separate from the Academy) in Alexandria, Virginia. The Board is a nonprofit corporation whose mission is to improve the quality of medical and surgical treatment available to the public by examining for professional expertise in Facial Plastic Surgery. The Board examines surgeons completing Academy Foundation fellowships as well as candidates for certification.

ABFPRS is sponsored by 26 national medical societies, including two national medical specialty societies of the AMA.

To achieve certification by the Board, a physician must have:

- completed a postgraduate residency program that includes training in Facial Plastic Surgery and is approved by the Accreditation Council for Graduate Medical Education (“ACGME”), or, in the case of Canadian physicians, the Royal College of Physicians and Surgeons of Canada

- ("RCPSC");
- achieved prior certification by one or both of the ABMS boards examining for competence in Facial Plastic Surgery: the American Board of Otolaryngology ("ABOto") or the American Board of Plastic Surgery ("ABPS"), or, for Canadian physicians, the RCPSC.
 - practiced Facial Plastic Surgery successfully for two years;
 - submitted a minimum of 100 detailed case reports acceptable to peer-review (50 from each of two consecutive years within the past five years);
 - successfully completed a two-day written and oral examination, which is psychometrically validated; and
 - pledged adherence to the Board's standards of ethics.

Recognition by Medical Schools

The specialty of Facial Plastic Surgery consists of surgeons who focus on plastic surgery of the face, head, and neck. Facial Plastic Surgery is a small component of plastic surgery residency programs, which train surgeons in plastic surgery, generally, from head to toe. Facial Plastic Surgery is a major component of ACGME-accredited otolaryngology/head-and-neck residency programs. Since 1975, otolaryngology programs have been required to devote 25 percent of their training to Facial Plastic Surgery to maintain accreditation. According to a 1998 survey of 118 U.S. and Canadian otolaryngology training programs,¹ 51 percent of otolaryngology programs reported having a division specifically designated for Facial Plastic Surgery training; another 18 percent planned to add one. With or without a separate division, 91.5 percent of otolaryngology programs reported one or more facial plastic surgeons on the faculty.

Facial plastic surgeons thus may have earned their primary certification from the ABPS, but more often they are certified by the ABOto. Many have earned additional certification from the American Board of Facial Plastic and Reconstructive Surgery.

The ABMS booklet, "Which Medical Specialist for You," states explicitly that "head and neck oncology and facial plastic and reconstructive surgery are fundamental areas of expertise" of the board-certified otolaryngologist.

Recognition by Organized Medicine

The AMA, as noted above, recognizes the Academy as the representative of the specialty in its House of Delegates. The AMA also has established "facial plastic surgery" as a subspecialty designation surgeons may choose within the field of otolaryngology for purposes of AMA record-keeping. In 1998, the AMA approved publication of the Archives of Facial Plastic Surgery to its prestigious series of scientific journals.

Even general plastic surgeons, who generally have attempted to thwart competition from facial plastic surgeons, recognize in their journals the specialty of Facial Plastic Surgery. In the June 1991 edition of Plastic Surgery News, published by the (now) American Society of Plastic

¹ Simons, R.L. Perspective: Committed to Excellence. *Archives of Facial Plastic Surgery*. Vol. 1, No. 1. 1998.

Surgeons, the general plastic surgeons refer, for instance, to the successful treatment of a complex facial fracture by “an otolaryngologist who specializes in facial plastic surgery.”²

Recognition by Medical Regulators

The Federal Trade Commission (“FTC”) has recognized the importance of allowing an otolaryngologist/head-and-neck surgeon to list specialization in Facial Plastic Surgery. In August 1987, the FTC successfully brought action against a medical society that had attempted to limit disclosures by an otolaryngologist/head-and-neck surgeon of his subspecialization in facial plastic and reconstructive surgery. (See American Medical News, March 4, 1988, pp. 3,41.). (The United States Supreme Court has held it illegal for state regulators to limit the list of specialties a professional may use in describing a professional practice. In re RMJ, 455 U.S. 191 [1982].).

Moreover, regulators have recognized the right of ABFPRS diplomates to disclose their credential.

The Medical Boards of California, Florida, Oklahoma, Texas and Colorado have adopted regulations attempting to describe legitimate certifying boards. All have recognized the American Board of Facial Plastic and Reconstructive Surgery as legitimate, and all permit disclosure of certification by that board in physician advertising. These actions continue the right of ABFPRS diplomates to disclose certification in all 50 states, U.S. territories, and Canadian provinces.

There Are Several Legitimate Non-ABMS Boards

Several legitimate non-ABMS certifying boards exist. They typically require as a prerequisite ABMS certification in a primary specialty and further examination in the subspecialty. As noted above, the American Board of Facial Plastic and Reconstructive Surgery has achieved recognition by every

² American Society of Plastic and Reconstructive Surgeons, Plastic Surgery News, June 1991, p. 1: “Surgeons Active in Sports Injuries.”

In testimony of April 4, 1989, before the United States Congress, the President-elect of the then-named American Society of Plastic and Reconstructive Surgeons, the general plastic surgeons’ national society, admitted that otolaryngologists/head-and-neck surgeons are “fully qualified” to perform facial plastic surgery:

ASPRS has absolutely no argument with the fact that board-certified otolaryngologists who are trained in facial cosmetic surgery are fully qualified to perform facial cosmetic surgery.

He observed that the otolaryngologists/head-and-neck surgeons receive “officially sanctioned cosmetic surgery training” in the region of the face:

Within the current 23 recognized boards, this would include officially sanctioned cosmetic surgery training within two of those boards, [the] American Board of Plastic Surgery, and the American Board of Otolaryngology representing cosmetic surgery of the face.

Testimony before the Subcommittee on Regulation, Business Opportunities and Energy of the House Small Business Committee, April 4, 1989.

state that has attempted to determine which certifying boards are legitimate. Two other boards have also achieved recognition.

The Chairman of the Federal Trade Commission observed in Congressional testimony on May 31, 1989, that such "non-ABMS boards" can provide "legitimate board certification," stating:

[L]egitimate board certification from either ABMS or non-ABMS boards can be an important indicator of advanced training and skill.

Over the course of the last decade, the AMA staff has developed a draft of "Guidelines for Truthful Advertising of Physician Services." Because limitations on physician advertising can raise serious legal issues, the staff of the Federal Trade Commission participated in the process. Those Guidelines recognize that there are legitimate non-ABMS boards and attempt to describe which may be disclosed in advertising. The Guideline states:

Non-affiliation with ABMS does not indicate that an organization has inadequate review criteria or procedures.

The principal author of the AMA Draft Guidelines, AMA's Associate General Counsel, identified the American Board of Facial Plastic and Reconstructive Surgery as "having the same building blocks of quality assurance" as ABMS boards in a letter of April 10, 1991, to the staff of the Federal Trade Commission. He described such legitimate boards as follows:

Boards which use the same building blocks of quality assurance as ABMS, but which are not included within the ABMS umbrella. Most of these boards cover a subspecialty of an existing ABMS board or are duplicative of existing boards. A few are for new specialties, and some may have an application pending for ABMS recognition. Examples include . . . the American Board of Facial Plastic and Reconstructive Surgery.

Certifying boards may choose to exist outside the ABMS or may be excluded from the ABMS by turf-protection rules that allow an incumbent board to stake out an area and claim to be the only board for that field.

There is general agreement in the AMA Draft Guidelines and in the laws of the various states that have considered the issue that a legitimate board, whether or not affiliated with ABMS, must do three things:

1. Require a residency accredited by ACGME (or some equivalent organization) that includes training in the area of medicine for which certification is offered,
2. Require peer review of clinical practice experience, and
3. Require completion of a rigorous examination of knowledge in the area of medicine for which certification is offered.

The American Board of Facial Plastic and Reconstructive Surgery meets those criteria.

Legal Issues

The First Amendment to the U.S. Constitution prohibits a state licensing entity from banning a licensed professional's advertisement of certification by a legitimate certifying board.

The U.S. Supreme Court decided that issue in the case of Peel v. Attorney Registration and Disciplinary Commission of Illinois, 496 U.S. 91, 110 S.Ct. 2281, 110 L.Ed. 83 (1990). There, the disciplinary authority adopted a regulation limiting use of the word "certified" in professional advertising. The authority invoked that rule to discipline an attorney for disclosing his board certification by an unapproved certifying board, even though that certifying board had made "inquiry into petitioner's fitness" and was not one that "issued certificates indiscriminately for a price." Accordingly, the U.S. Supreme Court held the licensing agency had violated the First Amendment right of the attorney to disclose the information to prospective clients.

A long line of cases comes to the same result: Ibanez v. Florida Dep't of Business and Professional Regulation. Board of Accountancy, 512 U.S. 136, 114 S.Ct. 2084, 129 L.Ed.2d 118 (1994) (licensing authority's regulation violated First Amendment in its prohibition of disclosure of certification by unapproved certifying board in financial planning); In re RMJ, 455 U.S. 191, 102 S.Ct. 929, 71 L.Ed. 2d 64 (1982) (rule limiting advertising to an approved list of specialties is unconstitutional); Parker v. Commonwealth of Kentucky Board of Dentistry, 818 F.2d 504 (6th Cir. 1987) (blanket ban on dentist's use of descriptive terminology to explain specialty practice area unless the dentist is licensed as a specialist in that area violates the First Amendment); In re Johnson, 341 N.W.2d 282 (Minn. 1983) (blanket prohibition on disclosure of certifying board held unconstitutional).

Position of the American Board of Facial Plastic and Reconstructive Surgery

In view of this acceptance of Facial Plastic Surgery by medical schools, organized medicine, and medical regulators, the Board supports recognition of the ABFPRS credential in privileging decisions, provider directories, referral systems, physician advertisements, and reimbursement authorizations.

Such recognition of the specialty reflects the public's interest in finding out useful information about physicians in terms they can understand. A study by Decima Research of 250 residents of Ontario in July 1991 concluded that only 3 percent were familiar with the medical procedures that otolaryngologists perform. Of those eight persons out of 250 who believed they knew what otolaryngologists do, two said otolaryngologists correct deformities of the foot, and one said they repair tendons in the knee.³

Indeed, as a matter of medical ethics, U.S. physicians are required to disclose information about their specialization in terms the public can understand. Opinion 5.02 of the AMA's Council on Ethical and Judicial Affairs states: "Because the public can sometimes be deceived by the use of

³ Decima Research, "Public Awareness of Otolaryngologists Performing Facial Plastic Surgery," July 8, 1991.

medical terms or illustrations that are difficult to understand, physicians should design the form of communication to communicate the information contained therein to the public in a readily comprehensible manner.”

In the Decima Research study, 90 percent of respondents believed it would be helpful (66 percent said much more helpful) if the professional title of surgeons described in general terms what medical procedures that surgeon is qualified to perform.