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Pharmacy Law Brief: Implications of Being a Specialist

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Pharmacy Law Brief:

Implications of Being a Specialist

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Question: I recently had occasion to visit my personal physician and while being taken back to the examination room as well as while sitting there I noticed all the diplomas and certificates she displays. I assume these are up in order to communicate her expertise to patients. But I'm wondering whether there are legal implications of this; for example, might the law hold her to a higher standard of performance because she holds herself out as having specialized expertise?

Response: The experience you report is something we likely all share. Displaying such diplomas and certificates is one way professionals communicate to others evidence of their documented expertise. They passed numerous examinations to earn their various academic degrees and, if "board certified," passed some form of examination created by those already in the specialty to establish their abilities in a certain area of practice.

But let's differentiate some of those wall displays. An academic degree is evidence of achievement in the academic realm but that is separate from licensure. It is the latter that authorizes one to engage in the practice of a profession. This authority to confer the lawful ability to practice a profession rests with the states. When the legislature defines the "scope of practice" for a profession in a "practice act" it establishes the parameters of professional activity.

Basic licensure authorizes the practitioner to perform all manner of professional activities that fall within that scope of practice. It is noteworthy, however, that some professionals decide to limit their activities to a subset of what the licensure confers, e.g., "practice limited to obstetrics" or "practice limited to children."

Finally, it also is possible that when a health professional is granted privileges by the board of directors of a hospital, the institution may limit the types of procedures that individual is authorized to perform within that setting, e.g., may deliver babies but may not do open heart surgery.

With all that as background, what are the legal implications of holding yourself out as a specialist? Focusing on the implications during a lawsuit alleging professional negligence, known colloquially as a malpractice case, the law first looks

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at whether some legal duty was owed to the patient and, secondarily, whether that duty was breached. Where does that legal duty originate? The law expects that one will perform at the level of a reasonable and prudent practitioner possessing the expertise of one engaging in that type of practice. So, the performance of a family medicine specialist would be evaluated in light of the performance of professional peers in that specialty, just as a neurosurgeon would have his or her performance measured against a standard created by others in that specialty.

And that's where all those diplomas and certificates become relevant. Those documents, along with the decision of the practitioner to define the activities in which he or she will engage, define the area in which the professional's performance will be measured against those of peers, individuals with the same training and experience as the defendant in the lawsuit. Becoming board certified is a voluntary undertaking, these days involving not only written examinations but also simulations to assess expertise.

A final note about terminology also is important. A physician seeking to become board certified usually must first complete a post-M.D. residency program. One who has completed that residency training receives a certificate, not an academic degree, and the certificate holder who has yet to take and pass the examination is said to be "board eligible," not board certified.