

Board Certification for Attorneys

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Board certification in medicine allows the public to verify that a physician is properly qualified in a particular specialty. The public relies on this information to make informed decisions about who to trust with their healthcare. For instance, how many of us would trust a doctor that is not board certified in orthopedic surgery to operate on our broken leg?

While today it is hard to imagine not having board certification for physicians, it took decades to establish this system. In 1908, Dr. Derrick T Vail argued for board certification in his presidential address to the American Academy of Ophthalmology and Otolaryngology. Dr. Vail proposed the system would define the areas of specialty in medicine, administer examinations testing the qualifications of physicians who seek to hold themselves out as specialists, and issue credentials to those physicians properly qualified as specialists.¹

A major step forward in developing this system occurred in 1933 when the American Board of Medical Specialties (ABMS), a not-for-profit organization, was formed "to create uniformity in physician certification² and to increase public awareness of the value of specialty certification." Today, the ABMS has 24 member boards offering board certification in different specialty areas.³ Approximately 82% of physicians in the United States are currently board certified.⁴

In light of the successful development of board certification for physicians, it is hard to understand why board certification for attorneys has been so much slower in catching on. With growing numbers of lawyers holding themselves out as qualified specialists on the internet, there is an increasing need for a uniform system the public can rely on for verifying which lawyers are actually qualified to entrust with their legal rights. Fortunately, there is a developing movement to increase board certification for attorneys.

Similar to Dr. Vail's call for a board certification system for physicians, in 1973 United States Supreme Court Chief Justice Warren Burger commented at the Sonnett lecture at Fordham Law School that "some system of certification for trial advocates is an imperative and long overdue step."⁵ The Chief Justice explained the absence of certification programs "has helped bring about the low state of American trial advocacy and a consequent diminution in the quality of our entire system of justice," and he argued board certification for trial lawyers is "basic to a fair system of justice."⁶

Chief Justice Burger's 1973 speech and the law review article summarizing it ushered in

the first phase of attorney board certification and by the end of the 1970s at least two private not for profit attorney certification boards formed. However, it was not until the early 1990s, following the United States Supreme Court's opinion in *Peel v. Atty. Registration & Disciplinary Comm'n*, 496 US 91 (1990), which assured attorneys had a free speech right to hold their legitimate board certifications out to the public, that institutional support for attorney certification was finally established. Starting in the early 1990s the American Bar Association's committee on legal specialization stepped into a role similar to that played by the ABMS in the medical profession, ushering in the modern era of attorney board certification. According to the committee:

Formal board certification of lawyers as specialists is a fairly recent phenomenon. Its genesis was a perceived need for the regulation of public claims of special competence and for assurance that, in the wake of liberalized advertising rules, such claims are not made in a manner that misleads the public.

There has long been widespread de facto specialization in the legal profession; still, most state disciplinary rules have for the past several decades prohibited lawyers from holding themselves out as specialists. The ABA Model Code of Professional Responsibility and, until August 1992, the Model Rules of Professional Conduct also recommended this approach.⁷

The ABA established stringent accreditation standards for attorney certification organizations. The National Board of Legal Specialty Certification (NBLSC), formerly known as the National Board of Trial Advocacy, was the first national certification board to have been accredited by the ABA, and it is the largest national certification board for lawyers. NBLSC also recently received ABA accreditation to offer board certification in civil pretrial practice, and will begin accepting applications for this board certification soon.

In addition to NBLSC, six other national attorney certification boards have been approved by the ABA, each of them a non-profit organization: the American Board of Certification; the American Board of Professional Liability Attorneys; the National Association of Counsel for Children; the National Association of Estate Planners & Councils Estate Law Specialist Board; the National College for DUI Defense.; and the National Elder Law Foundation.⁸ There are

now also twelve states that offer state sponsored attorney certification boards: Arizona, California, Florida, Louisiana, Minnesota, New Jersey, New Mexico, North Carolina, Ohio, South Carolina, Tennessee and Texas.⁹ Three of these states, Minnesota, Ohio and Tennessee, also accredit private certification boards, as do Alabama, Idaho, Indiana and Maine.¹⁰

A 2009 study by the ABA estimated there were over 35,000 attorneys board certified by ABA accredited or state sponsored board certification programs representing approximately 3 to 4% of practicing attorneys in the United States. According to this study, and listed in descending order by number of board certified attorneys, the specialties these lawyers are certified in are: civil trial practice; criminal trial practice; family law; real estate; estates, wills and trusts; bankruptcy; tax, workers' compensation, other, labor, elder law, natural resources, immigration; and administrative.¹¹

Thus, progress has been made in establishing certifying organizations and developing institutional support for attorney board certification. While the board certification system needs to become more uniform and widespread, momentum is growing in this direction. As the need for a reliable board certification system to properly inform the public of lawyers' qualifications grows, it may not be long before clients interviewing lawyers start routinely asking whether they are board certified in their specialty.

Mr. Rapoport is president-elect of the National Board of Legal Specialty Certification (NBLSC) and founding partner of Rapoport Law Offices, where he handles catastrophic personal injury and wrongful death cases.

¹www.wikipedia.org/wiki/American_Board_of_Medical_Specialties

²www.abms.org/About_ABMS ³www.certificationmatters.org/is-your-doctor-board-certified/search-now.aspx ⁴Wren and Rapoport, Specialization 501: Graduate Level, presented at the American Bar Association's National Specialization Roundtable April 1, 2011.

⁵Burger, The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice? 42 Fordham L.Rev. 227 (1973). ⁶Id. at 230, 239. ⁷A Concise Guide to Lawyer Specialty Certification, Presented By: The ABA Standing Committee on Specialization, p. 5, http://www.americanbar.org/content/dam/aba/migrated/2011_build/specialization/june2007_concise_guide_final.authcheckdam.pdf. ⁸http://www.americanbar.org/groups/professional_responsibility/committees_commissions/specialization/resources/resources_for_lawyers/sources_of_certification.html ⁹Id. ¹⁰Id. ¹¹Wren and Rapoport, Specialization 501 "Graduate Level", presented at the American Bar Association's National Specialization Roundtable April 1, 2011 Wren and Rapoport, Specialization 501 "Graduate Level", presented at the American Bar Association's National Specialization Roundtable April 1, 2011.