



DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
**BOARD OF PHYSICIAN QUALITY ASSURANCE**

4201 PATTERSON AVE. P.O. BOX # 2571 BALTIMORE, MD 21215-0095

Area Code 410-764-4777

FOR DEAF: Balto. 410-383-7555  
D.C. Metro 301-565-0451  
Toll Free No: 1-800-492-6836

**Declaratory Ruling 97-1**

RE: The use of Doctor of Medicine (M.D.) designation by a physician who has the degree of Doctor of Osteopathy (D.O.)

**INTRODUCTION**

On November 20, 1996, the Board of Physician Quality Assurance (the "BPQA") determined that a ruling was necessary to interpret the Maryland Medical Practice Act to determine the appropriate use of the designations of the degree of Doctor of Medicine (M.D.) and the degree of Doctor of Osteopathy (D.O.) The issue was raised after more than one inquiry was made regarding the use of the designations.

After discussion, the BPQA's Weekly Review Panel (the "WRP"), directed that the issue would be referred to the Practice of Medicine Committee (the "POMC") for further research and discussion with a recommendation regarding the use of designations to be made to the BPQA. The POMC considered the issue and made a recommendation that the BPQA issue a declaratory ruling.

The BPQA is authorized to issue declaratory rulings pursuant to State Government Article §§ 10-301 et seq. and the department of Health and Mental Hygiene Regulations found at 10.01.12., Governing Issuance of Petitions for Declaratory Ruling.

**RULING**

The BPQA ruled that a physician who is conferred the degree of Doctor of Osteopathy, may not use the M.D. designation in place of the D.O. designation. Conversely, The BPQA also ruled that a physician conferred the degree of Doctor of Medicine may not use the designation of D.O.

## BACKGROUND

Section § 14-505 of the Health Occupations Article, Annotated Code of Maryland, allows a physician to advertise only as permitted by the rules and regulations of the Board. COMAR 10.32.01.12 (D) (1) provides that an advertisement may not contain statements containing misrepresentations of fact.

The issue of misrepresentation of fact in connection with this matter was originally discussed by the BPQA at its WRP meeting of September 7, 1993, when an anonymous complaint was filed against an Osteopathic Physician. The complaint alleged misrepresentation by an Osteopath who was using the M.D. designation, thereby presenting himself as receiving a degree of doctor of medicine when, in fact, he had not been conferred that degree. After some discussion, the WRP concluded that because the Respondent graduated from an osteopathic school of medicine with a D.O. degree, he could not use the designation of M.D.

In February 1996 the issue was revisited when the BPQA received a letter from a physician in the process of hiring a D.O. in his medical practice. The physician asked the BPQA if there was a provision in The Maryland Medical Practice Act that allows a D.O. to be listed as an M.D. on signs, letterheads, and business cards. On February 27, 1996, the WRP again deliberated over the issue, and recommended a referral to the POMC for a definitive position on the issue.

The POMC discussed the issue, and agreed on April 18, 1996 that the BPQA does not confer medical degrees, and a physician should represent the degree that was awarded by the school attended. On October 17, 1996, the POMC discussed the issuance of a declaratory ruling. A recommendation for such was made to the full Board on November 20, 1996.

## ANALYSIS

According to *Education of the Osteopathic Physician*, a publication of the American Association of Colleges of Osteopathic Medicine, both doctors of medicine and doctors of osteopathy are physicians who have taken a prescribed amount of premedical training, graduated from an undergraduate college, and received four years of training in a medical school. They both use scientifically accepted methods of diagnosis and treatment, and are often licensed by the same state medical board. The philosophical difference is the osteopathic profession's emphasis on the importance of the musculoskeletal system in health and disease and the development and uses of manipulative diagnosis and treatment.

Based on this philosophical difference, several states have determined that graduates of osteopathic schools must use the D.O. designation when practicing medicine. In 1982, the United States Court of Appeals for the Third Circuit determined, in *Eatough v. Albano*, 673 F.2d 671 (3rd Cir. 1982), that the New Jersey medical board's statute requiring osteopathic physicians to use D.O. instead of M.D. after their name did not violate their equal protection rights of the First Amendment. The court determined that osteopathic physicians were not a suspect class entitled to strict scrutiny by the courts in determining whether their rights were violated. Instead, the court used the lower scrutiny of whether there was a rational basis for the state to require osteopathic physicians to use D.O. instead of M.D. In applying this test, the court held that based on the significant differences in the philosophy of osteopathic medicine and the differences in medical treatment offered by graduates of osteopathic schools, the state had a legitimate interest in assuring that members of the public were able to make an informed and intelligent choice when seeking medical care, and the requirement that osteopathic physicians use the D.O. designation was rationally related to that interest.

Since *Eatough* was decided, Missouri and California courts were asked to resolve the same issue. In *Brandwein v. California Board of Osteopathic Examiners*, 708 F.2d 1466 (9th Cir 1983) and *State Board of Registration for the Healing Arts v. Giffen, D.O.*, 651 S.W.2d 475 (MO 1983), each court followed the *Eatough* rationale and determined that the state had a rational basis for requiring osteopathic physicians to use the D.O. designation. In *Procario v. Ambach*, 561 F. Supp. 804 (N.D. New York 1983), doctors of osteopathy sued the State Board of Education for denying them of their equal protection right by refusing to grant them a doctor of medicine degree. The court followed the rationale in *Eatough* and determined that the state demonstrated a rational interest in maintaining the distinction between physicians whose education included substantial training in the manipulative theories and practices of osteopathy and those whose medical educations have not included such training.

A survey of state medical boards issued in June 1996 by the BPQA resulted in twenty-nine replies. Of those states that replied, fourteen advised that doctors of osteopathy are licensed by a separate Board than are the doctors of medicine. Those states require physicians to use the designation that accurately reflects the degree conferred by the medical school attended. Of the remaining fifteen medical boards that license both, none allow the use of M.D. in place of D.O. or alternatively, D.O. in place of M.D. Seven of the fifteen medical boards offered specific statutory or case law prohibiting the use of one in place of the other. (A reference guide reflecting

specific statutory references is attached as Exhibit A.) The remaining eight do not have specific law, but argue that there is a fundamental difference in the philosophy of Doctors of Osteopathy and Doctors of Medicine, and the physician may only use the degree that was conferred upon graduation.

## **CONCLUSION**

The mission of the BPQA is to protect the citizens of Maryland through the effective licensure and discipline of physicians and allied health practitioners under its jurisdiction. In that sense it is reasonable to require practitioners to accurately represent their credentials; thus facilitating truth in advertising and, in turn, providing consumers with accurate information to use in making informed decisions about the persons who will provide their medical care.

## RESOURCES

1. Maryland Code Annotated, Health Occupations §14-101 et seq.
2. The Maryland State Board of Physician Quality Assurance Regulations Governing Advertising, COMAR 10.32.01.12.
3. Letter dated February 22, 1996 from Marc I. Leavey, M.D.
4. *Education of the Osteopathic Physician*, American Association of Colleges of Osteopathic Medicine. 1990. Rockville. pp 1-15.
5. *Eatough v. Albano*, 673 F.2d 671 (3rd Cir 1982).
6. *Brandwein v. California Board of Osteopathic Examiners*, 708 F.2d 1466 (9th Cir 1983).
7. *State Board of Registration for the Healing Arts v. Giffen, D.O.*, 651 S.W.2d 475 (MO 1983).
8. *Procario v. Ambach*, 561 F. Supp. 804 (N.D. New York 1983).
9. Survey of State Medical Boards, conducted June, 1996.
10. "Mission of the Board of Physician Quality Assurance", Board of Physician Quality Assurance Annual Report, 1996, pp 1.

**EXHIBIT A**  
**DECLARATORY RULING 97-1**

**STATUTORY SUPPORT FROM OTHER STATE MEDICAL BOARDS**

1. **OHIO:** section 4731.14 O.R.C. *The certificate shall be on a form prescribed by the board and shall indicate the medical degree held by the person to whom the certificate is issued. If the person holds the degree of doctor of medicine, the certificate shall state that he is authorized to practice medicine and surgery pursuant to the laws of this state. If the person holds the degree of doctor of osteopathic medicine, the certificate shall state that he is authorized to practice osteopathic medicine and surgery pursuant to the laws of this state.*
2. **OREGON:** section 677.184 of the Regulation of Medicine, Podiatry and Related Medical Services General Provisions *License to show degree held; display of license, use of degree on stationary and in displays. (1) On each license issued by it, the Board of Medical Examiners for the State of Oregon shall enter after the name of the person holding the license the degree to which the person is entitled by reason of the diploma of graduation from a school of medicine which, at the time of the graduation of such person, was approved by the board for purposes of ORS 677.100 . . . (3) In every letter, business card, advertisement, prescription blank, sign, public listing or display in connection with the profession of the person, each person licensed to practice medicine in this state shall designate the degree appearing on the license of the person*
3. **IDAHO:** section 40-47-50. "Osteopathy" defined; examination and certificate to practice; use of letters D.O. *(A) "Osteopathy" is defined as a complete school of medicine and surgery utilizing all methods of diagnosis and treatment in health and disease and placing special emphasis on the interrelationship of the musculoskeletal system to all other body systems. © Doctors of osteopathy shall use only the letters D.O. after their names when used in connection with their profession*
4. **KANSAS:** healing arts act section 65-2870. Persons deemed engaged in practice of osteopathy. *For the purpose of this act the following persons shall be deemed to be engaged in the practice of osteopathy or to be osteopathic physicians and surgeons: (a) Persons who publicly profess to be osteopathic physicians, or publicly profess to assume the duties incident to the practice of osteopathy, as heretofore interpreted by the supreme court of this state, shall be deemed to be engaged in the practice of osteopathy. Section 65-2885. Use of title by licensee. No person licensed hereunder shall use a title in connection with his name which in any way represents him as engaged in the practice of any branch of the healing arts for which he holds no license: Provided, however, That every such licensee when using the letters or term, "Dr. " or "Doctor" shall use the appropriate words or letters to identify himself with the particular branch of the healing arts in which he holds a license.*
5. **TEXAS:** healing art identification act article 4590e. Section 3. *Every person licensed to practice the healing art heretofore or hereafter by . . . the Texas State Board of Medical Examiners, . . . shall in the profession use of his name on any sign pamphlet, stationary, letterhead, signature, or on any other such means of professional identification, written or printed, designates in the manner set forth in this Act the system of the healing art which he is by his license permitted to practice . . . (2) If licensed by the Texas State Board of Medical Examiners on the basis of the degree Doctor of Osteopathy: physician and/or surgeon, D.O.; Osteopathic physician and/or surgeon; doctor, D.O.; doctor of osteopathy; osteopath; D.O.*