**Continuing Education Provider Sues Certifying Board on Antitrust Grounds**

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On September 13, 2022, the Association of Surgical Assistants (ASA), a national provider of continuing education for surgical assistants, sued the National Board of Surgical Technology and Surgical Assisting (NBSTSA), a national board that certifies surgical technologists and surgical assistants, in federal district court alleging that the NBSTSA violated the federal and Colorado antitrust laws that prohibit unreasonable restraint of trade and monopolizing.

The NBSTSA awards its Certified Surgical First Assistant (CSFA) credential to surgical assistants who meet its eligibility requirements and pass its CSFA examination. Certified Surgical First Assistants must recertify periodically by either retesting or continuing education. The Association of Surgical Technologists (AST) is an approver and provider of continuing education for surgical assistants. NBSTSA policy states that all continuing education for recertifying the CSFA certification “must be earned through AST-approved sources.”

The ASA petitioned the NBSTSA to recognize its continuing education courses as usable by CSFAs for recertification by continuing education. According to ASA’s complaint in this lawsuit, NBSTSA offered ASA the following two options for having its continuing education recognized for recertification of the CSFA credential:

* The first option was to avoid “reinventing the wheel,” whereby ASA could negotiate an arrangement with AST for AST [to process] the continuing education credit for ASA members…
* The other option was for ASA to provide NBSTSA with substantial proprietary and financial information without any indication that the provision of this information was required for the accrediting process.

In its complaint the Association of Surgical Assistants asserts that the National Board of Surgical Technology and Surgical Assisting is violating Section 1 of the federal Sherman Act that forbids any [unreasonable] contract, combination, or conspiracy in restraint of trade. Note the following from the complaint:

* …[NBSTSA leaders] conspired to cause NBSTSA to effectively boycott ASA.
* …NBSTSA’s actions have caused an unreasonable restraint on trade in the market space for continuing education credits for…surgical assistants by ensuring AST is the sole provider and processor of these credits in the nation.
* …NBSTSA’s actions have damaged ASA by devaluing the ASA membership and have prevented ASA from engaging in its business of providing and processing continuing education credits for…surgical assistants.

The ASA complaint also avers that the NBSTSA is in violation of Section 2 of the Sherman Act that prohibits monopolization and attempts at monopolizing. The complaint includes the following:

* …[NBSTSA leaders] caused NBSTSA to exclude ASA from seeking accreditation as a provider and processor of continuing education credits for…surgical assistants.
* As a result, [NBSTSA leaders] and NBSTSA ensured AST maintains the entire market share for providing and processing continuing education credits for…surgical assistants nationwide.
* NBSTSA has a longstanding relationship with AST, as referenced in the October 22, 2021, letter. NBSTSA stands to benefit by keeping AST as the sole provider and processor of continuing education credits for…surgical assistants.
* By refusing to allow ASA to apply for accreditation [of its surgical assisting continuing education], [NBSTSA leaders] and NBSTSA have created a monopoly in favor of AST by ensuring AST retains one hundred percent of the market share for providing and processing continuing education credits for…surgical assistants nationwide.

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