

# Court stops class action that would have worsened doctor shortage

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In a win for the nation's patients and physicians, a federal appellate court opinion recently halted a lawsuit from being certified as a class action—a classification that would have threatened to impede or chill the medical community's efforts to use international medical graduates (IMGs) to ease a physician shortage.

The 3rd U.S. Circuit Court of Appeals reversed a district-court decision that would have allowed a lawsuit that several patients filed against the Educational Commission for Foreign Medical Graduates (ECFMG) to move forward as a class action.

The patients allege negligent infliction of emotional distress after being treated by an ECFMG-certified IMG who falsified a Social Security card and later lost his medical license and his ECFMG certification. The appellate court said the lower court erred in its decision certifying a class action and sent the case back to the lower court for further proceedings.

The Litigation Center of the American Medical Association and State Medical Societies had joined the Pennsylvania Medical Association (PAMED) and the Association of American Medical Colleges in filing a friend-of-the-court brief that supported the ECFMG and asked the 3rd Circuit to overturn the lower court decision in the case, *Russell et al. v. Educational Commission for Foreign Medical Graduates*.

“Class certification in this case would ... result in undesirable consequences both for class members and for the medical community,” the brief told the court. “Class members who previously were unaware of their doctor's misuse of a social security number would, under plaintiff's theory of the case, suffer emotional distress upon learning about it through class notice. This result alone should preclude class certification.”

In addition, the brief said “allowing class certification would bring potential class liability to any entity that has a role in allowing IMGs—of which there are currently almost 223,000 in this country—to practice medicine, chilling the medical community’s efforts to provide access to care across America and, in particular, in patient communities of need.”

The brief explained that the nation is facing a serious physician shortage of physicians and with 23% of all licensed physicians in the U.S. being IMGs, they are “a large and critical portion of the physician population in this country, the need for which is exacerbated by an aging population and presently a pandemic.”

Almost 21 million Americans live in parts of the country where foreign-trained physicians account for at least half of all physicians. Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center’s case-selection criteria.

## Lower court erred

The case stems from Oluwafemi Charles Igberase’s quest to become a physician in the U.S. He passed medical licensing and English-language examinations and received ECFMG certification, but a residency program didn’t accept him.

Two years later, he rearranged his name, changed his birthdate and said he had never before applied. He again received certification, but the ECFMG invalidated it and revoked his first certification after learning of the falsification. In 1996, the man again applied for ECFMG certification and created a new name, John Nosa Akoda. He ultimately received a Maryland medical license, but in 2016 signed a plea agreement and pleaded guilty to misuse of a Social Security number to fraudulently obtain a medical license and admitted Akoda was a pseudonym. The ECFMG invalidated his foreign doctor certification and the Maryland Board of Physicians revoked his medical license.

Among the several patients who sued the ECFMG for certifying the man are a patient who received an unplanned emergency cesarean section and others whose children he delivered. While the U.S. District Court for the Eastern District of Pennsylvania said the women’s lawsuit could proceed as a class action, the appellate court said the lower court erred.

Among other things, “the court does not explicitly discuss whether the effect certification of the issue class will have on the effectiveness and fairness of resolution of remaining issues,” the appellate court said in its ruling. “If an issue-class jury finds that the [ECFMG] owed plaintiffs a legal duty that it subsequently breached, the commission may face undue pressure to settle, even if their breach did not cause plaintiff’s harm.”