

CALIFORNIA DELEGATION (4,405)

2004 AMA INTERIM MEETING – HIGHLIGHTS

As of Tuesday, December 7, 2004

(733)

Expert Witness in Medical Liability Issues, Qualifications and Code of Conduct: Adopted as amended the recommendations of Board of Trustees Report 8, with the remainder of the report filed. BOT Report 8 states:

1. That our AMA develop model state legislation that would adopt standards similar to Federal Rule of Civil Procedure 26(a)(2)(B) applicable to experts testifying in medical liability cases in state court.

2. That Policy H-265.992, which encourages medical societies to review complaints of false testimony and, when appropriate, expel or otherwise sanction those medical society members who have testified falsely, be reaffirmed.

Policy H-265.992, Expert Witness Testimony, states:

Our AMA: (1) encourages each state medical society to work with its state licensing board toward the development of effective disciplinary measures for physicians who provide fraudulent testimony;

(2) provides legal and advocacy support to those medical and specialty organizations that seek to devise programs designed to discipline physicians for unprofessional conduct relative to expert witness testimony;

(3) continues to study and work with interested organizations to address the inherent difficulties in conducting the peer review of physicians who provide expert witness testimony;

(4) continues to educate physicians about ethical guidelines and professional responsibility regarding the provision of expert witness testimony;

(5) encourages each state medical society to work with its state licensing board to grant any out-of-state expert witness physician a temporary license at a nominal fee or at no cost for the express purpose of expert testimony on a per case basis, such that the expert witness is subject to the peer review process.

(6) encourages each state medical society to assist its state licensing board in the peer review process of expert witnesses by providing an expert witness committee program similar to the one in the state of Florida;

(7) works with the Federation of State Medical Boards to address problems regarding out-of-state expert witnesses; and

(8) acts as a clearinghouse for advice and support as the state medical associations develop their own expert witness committee programs. (BOT Rep. 18, I-98; Reaffirmed: Res. 221, A-99; Reaffirmation, A-00; Reaffirmed: Res. 16, A-03)

3. That Policy H-265.991 be rescinded, as it duplicates Policies H.265-992[2] and H.265.994[2].

4. That Policy H-265.994[3](b) be clarified by division into subparagraphs (b) and (c), to state as follows:

(b) The AMA opposes payment of contingent fees for all types of medicolegal consultations, including management services provided by firms engaged in locating physician consultants. Where necessary, the AMA supports state legislation making it illegal for medicolegal consulting firms to take a contingent fee in personal injury litigation. Such arrangements threaten the integrity and the compensation goals of the civil justice system. Like the individual expert witness, the role of the medicolegal consulting firm, which locates and supplies experts, should be one of limited service to the judicial process. Contingent fee arrangements are plainly inconsistent with the scope of this responsibility.

(c) The AMA supports the right to cross examine physician expert witnesses on the following issues: (i) the amount of compensation received for the expert's consultation and testimony; (ii) the frequency of the physician's expert witness activities; (iii) the proportion of the physician's professional time devoted to and income derived from such activities; and (iv) the frequency with which he or she testified for either plaintiffs or defendants. The AMA supports laws consistent with its model legislation on expert witness testimony.

5. That Policy H-265.994[a] be modified to state as follows:

The AMA believes that the minimum statutory requirements for qualification as an expert witness in medical liability issues should reflect the following: (i) that the witness be required to have comparable education, training, and occupational experience in the same field as the defendant or specialty expertise in the disease process or procedure performed in the case; (ii) that the occupational experience include active medical practice or teaching experience in the same field as the defendant; (iii) that the active medical practice or teaching experience must have been within five years of the date of the occurrence giving rise to the claim; and (iv) that the witness be certified by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association or by a board with equivalent standards.

6. That the Expert Witness Affirmation Statement, attached hereto, be adopted and posted on the AMA web site. (BOT Report 8)