

# The AAN disciplinary process

## Indispensable to neurologists



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FAAN

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The US public and politicians are increasingly focused on quality of care<sup>1</sup> and on the prevention of medical errors as issues that demand attention and action.<sup>1,2</sup> Patients' complaints about their physicians and public reporting of quality measures and physician errors are now facts of medical practice. In this environment, neurologists, as all physicians, may look to their professional organization for help when patients file unsupported complaints with their professional organization or when a fellow member provides improper expert witness testimony.

The American Academy of Neurology (AAN) has long maintained policies that specify the professional responsibilities of neurologists, including guidelines for expert witness testimony. Even the first (1948) Constitution and By-Laws of the Academy specified the responsibility of the Board (initially the "Board of Trustees") "to investigate ... professional misconduct on the part of any member of the academy." Accordingly, the Academy has addressed complaints from patients and from neurologists in the past. However, there has been an increasing number of complaints in the past decade and a new recognition on the part of the Academy Board of Directors that such complaints need prompt attention and resolution.

Most neurologists' information about malpractice actions is based on their own experience as an expert witness or as a defendant or on the anecdotes of colleagues or from course presentations. In the past, I was comfortable acting or appearing for a defendant neurologist but extremely uncomfortable appearing for a plaintiff against a neurologist. I have, therefore, declined to appear for either, despite recognizing that I should arguably be obligated to testify as to the truth, regardless of the people involved. I justified my decision to decline to appear by my editorship of *Neurology*® (1996–2007) and subsequently by my AAN position in the Academy "Presidential line" (2007–present).

Recent data on medical liability claim frequency<sup>3,4</sup> indicate that 50% of neurologists have been sued,

nearly 4% in the 12 months 2007–2008. This percent is slightly greater than that for the average physician (42%) but much lower than some other specialties such as neurosurgery (79%), with over 18% of neurosurgeons sued in the most recent year.<sup>4</sup>

In this issue of *Neurology*®, 2 attorneys who serve as counsel for the AAN join with the Chair of the Ethics, Law and Humanity Committee—a joint committee of the American Neurological Association, the Child Neurology Society, and the AAN—to present the current system that the AAN developed and employs to respond to the complaints of patients about their neurologist and to the concerns of the neurologists who believe themselves victims of inaccurate or otherwise inappropriate testimony or have witnessed unprofessional behavior by other neurologists: a complaint.<sup>5</sup> The article highlights that the majority of complaints reaching the higher levels of review are complaints by neurologists concerning improper expert witness testimony of neurologists, since patient complaints are generally either unsubstantiated, or more appropriately dealt with by others (for example, hospitals or states). The authors present the data on the substance and number of complaints, the length of time taken to reach a decision regarding action on the complaints, and the process used to reach a decision. They also consider the appeal process followed in the event a responding member disagrees with the recommended disciplinary action.

There has been an impressive and increasing number of complaints filed over the past 6 years: 58, over half of them in the past 2 years. Six complaints resulted in disciplinary action being recommended. Sanctions included reprimands and suspension, with 3 members resigning membership to avoid disciplinary action. (Such disciplinary action will proceed if they reapply for membership). The fact that a member has resigned to avoid disciplinary action may be brought to the

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court's attention through questioning in subsequent medical liability cases.

Also impressive is the recent acceleration of the handling of complaints, decreasing from taking over 2 years to taking only 6 months in the past 2 years: AAN member neurologists' and patients' complaints are dealt with rapidly. This decrease in time to resolution reflects attention to the matter by both the AAN Board of Directors and the AAN legal staff.

Not all specialty societies are willing to review patient or member complaints. An informal survey of the executive staff of other societies suggested that the disciplinary review process is much less active in most. There have been few publications concerning any society's process and experience with complaints. Neurosurgery is a notable exception.<sup>6</sup> A review of their experience with complaints from 1996 to 2006 noted a much higher percent of sanctions (68%) of neurosurgeons found to have offered improper expert witness testimony than was the case for neurologists as reported by Hutchins et al.<sup>5</sup>

One could conclude from the Hutchins et al.<sup>5</sup> report that one should not practice neurology today without having access to the disciplinary process they describe. Being sued for malpractice is an unpleasant experience at best, even though the majority of claims are dismissed (65%) or settled (26%) (and in the 5% proceeding to trial, the defendant prevailed in 90%).<sup>4</sup> However, if one is involved in a legal dispute and believes an Academy member has offered inaccurate expert witness testimony, an AAN member can seek redress. Moreover, the Academy's process of handling complaints from members may well serve as a deterrent to biased expert witness testimony and is unquestionably of importance for AAN members.

As quality measures and medical errors receive greater public scrutiny,<sup>1,2</sup> it can be anticipated that the number of substantiated patient complaints will increase. Moreover, the unwillingness of the US

Congress and President to address tort reform makes it certain that malpractice litigation will continue to thrive.<sup>7</sup> It will be important for the Academy to continue to monitor and to be prepared to contend with an increasing number of complaints.

## DISCLOSURE

Dr. Griggs serves as Chair of Executive Committee of the Muscle Study Group, which receives support from pharmaceutical companies; has served on scientific advisory boards for The National Hospital Queen Square and PTC Therapeutics, Inc.; serves on the editorial boards of *NeuroTherapeutics* and *Current Treatment Opinions in Neurology*; receives royalties from the publication of *Andreoli and Carpenter's Cecil Essentials of Medicine, Eighth Edition* (W.B. Saunders Company, 2000, 2004, 2007, and 2010) and *Cecil Textbook of Medicine, 24th Edition* (Saunders, 2000, 2004, 2008, and 2010 [in press]); and has received research support from TaroPharma and the NIH (NINDS T32 NS07338 [PI and preceptor], 2 U54 NS059065-06 [PI], R01 NS045686-05 [PI], and NINDS 525326 [Co-PI]), the Food and Drug Administration, and the Muscular Dystrophy Association.

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