Different legal situations require different responses. It could be providing an expert witness for a physician facing a politically motivated, personal attack, or filing an amicus brief with the appellate court, or joining a case as a plaintiff, or even paying the cost of the lawsuit.

In recent months, the Litigation Center of the American Medical Association and State Medical Societies has done all four and, at its open meeting held during the 2023 AMA Annual Meeting in Chicago, representatives of the center explained how and why these actions were taken.

Not all of these proceedings occur in court.

The most high-profile of these actions took place in a marathon hearing before the Indiana Board of Medical Licensing in an action brought on by the Indiana attorney general against ob-gyn Caitlin Bernard, MD, MSCI, who performed an abortion on a 10-year-old girl from Ohio—a state that had recently outlawed abortion after six weeks of pregnancy even in cases of rape or incest. (These abortion restrictions, however, have since been blocked by a court order.)

Before performing the procedure, however, Dr. Bernard discussed the case with a reporter from an Indianapolis newspaper, prompting the state’s attorney general to file an administrative complaint with the licensing board—even though Dr. Bernard never identified the patient and followed the reporting requirements mandated by both the Indiana Departments of Health and Child Services.

**Why Dr. Bernard’s actions were “exemplary”**

“I firmly believe that Dr. Bernard acted appropriately,” said ob-gyn Peter A. Schwartz, MD, chair of the AMA Council of Ethical and Judicial Affairs, who was asked by the Litigation Center to serve as an expert witness on Dr. Bernard’s behalf.
“She had a responsibility to speak out on behalf of women’s health and she protected her patient’s personal health information,” Dr. Schwartz said. “She exhibited exemplary behavior.”

Dr. Schwartz was the last witness of the 14-hour hearing—which was then followed by more than an hour of public deliberation—and he was asked if Dr. Bernard violated medical ethics or her patient’s privacy rights as defined by HIPAA.

Dr. Bernard is employed by the Indiana University (IU) School of Medicine and IU Health Physicians, and Dr. Schwartz noted that an IU Health representative testified that an in-house review of Dr. Bernard’s behavior found no evidence that she had abrogated either HIPAA or IU confidentiality requirements.

Dr. Schwartz cited the nine AMA Principles of Medical Ethics of which four applied to this case, and mentioned No. 9 in particular: “A physician shall support access to medical care for all people.”

“Including a 10-year-old rape victim,” he added.

HIPAA allows for releasing patient information if it is suitably deidentified by the removal of 18 specific items. Dr. Schwartz said the licensing board focused on No. 18, which is “any other unique identifying number or characteristic.”

There was an argument that Dr. Bernard released protected information when she described her patient as a 10-year-old rape victim from Ohio.

“That’s not a unique identifier—a unique situation, maybe—but not one that identifies the person,” Dr. Schwartz said, and then he asked rhetorically if there was a group of young people, would it be possible for someone to identify who in the group was 10, who was from Ohio, or who was six weeks pregnant?
“I don’t think so,” he said.

Dr. Schwartz also described what Dr. Bernard said during her testimony.

Caitlin Bernard, MD, MSCI
“Dr. Bernard’s testimony was long, arduous, honest and respectful,” Dr. Schwartz said. “She explained what she did. She explained why she did it. She explained how she protected her patient while still speaking up for all other women, both pregnant and not pregnant.

“She was an exceptional representative of women's health,” he added. “And I was proud she is an AMA member.”

Also showing appreciation for Dr. Bernard, was then-AMA president, Jack Resneck Jr., MD, now AMA immediate past president, who also had praise for the Indiana physician.

“Our policy has been very clear, that protecting reproductive health care access—including access to abortion—also means protecting physicians who take part in that evidence-based care,” Dr. Resneck said.

“That’s true when we are fighting state laws that criminalize evidence-based care, it’s true when we are fighting in court when individual judges—with no medical or scientific background—try to take FDA-approved medications that have been out for more than 20 years off the market,” he added. “And it’s true when we are fighting because a regulatory body or politician has gone after and tried to harm the reputation and licensure of an individual high-quality physician.”

Dr. Resneck then noted that Dr. Bernard was attending the Litigation Center’s open meeting and she received a standing ovation from attendees.

“You are for standing up for your patients and for our profession,” Dr. Resneck told her.
The board did not suspend Dr. Bernard’s license as the attorney general requested, but it did issue three $1,000 fines.

At the Annual Meeting, Dr. Bernard received the AMA Foundation’s inaugural Courage in Women’s Health Advocacy Award, which recognizes deserving physicians dedicated to clinically advancing women's health or demonstrating courageous advocacy in support of women's health.

**ACA on trial again**

In *Braidwood Management vs. Becerra* (PDF), a case that attacks the Affordable Care Act’s provision mandating that insurance cover preventive services without patient cost sharing, the AMA has filed amicus briefs in the district and appellate courts supporting the federal government’s effort to maintain the provision.

Numerous studies prove the safety and efficacy of the Food and Drug Administration-approved drugs used for PrEP, said Stephen Parodi, MD, vice chair of the AMA Integrated Physician Practice Section Governing Council.

About 233 million people were enrolled in plans required to cover preventive services without cost-sharing, added Dr. Parodi, also the associate executive director of The Permanente Medical Group, which is a member of the AMA Health System Program.

Plaintiffs are also seeking to enjoin the recommendations for covered preventive services put forth by the U.S. Preventive Services Task Force.

“I'm pleased to say that, at our last interim meeting, the AMA and the House [of Delegates] stated that we believe that these preventative services, including PrEP, are essential,” Dr. Parodi said.
A federal appellate court in New Orleans has ordered an administrative stay on a lower-court ruling that would have stripped patients of the right to access some preventive care services with no out-of-pocket costs.

**Win on Montana vaccine law**

In *Montana Medical Association et al. v. Knudsen* (PDF), a federal court ruled that Montana physicians and other health professionals in private practice, in hospitals, and in certain federally funded facilities will be able to take necessary steps to stop vaccine-preventable infectious diseases from spreading in their offices.

The court issued a permanent injunction that prevents Montana officials from enforcing a law that bars health professionals from knowing the vaccination status of employees or patients. State lawmakers passed the statute in 2021 in response to the COVID-19 pandemic, but the law applied to all vaccines, whether it was for measles, mumps, flu, rubella, tetanus or the like.

The Litigation Center provided financial support for the suit brought by the Montana Medical Association, the Montana Nurses Association and patients with compromised immune systems who sued the state’s attorney general over the statute.

The U.S. District Court for the District of Montana Missoula Division in December agreed with the MMA and the others, ruling that the law is unconstitutional and preempted by federal law. That decision is being appealed.

**Taking on deceptive payer practices**

The Litigation Center—along with the Washington State Medical Society and Medical Society of New Jersey—are plaintiffs in *AMA/Stewart vs. Cigna* (PDF), in a class-action lawsuit alleging the company intentionally underpaid patients’ medical claims.

They allege Cigna failed to pay the medical claims based on physicians’ contracts with third-party network payer MultiPlan Corp. Instead, Cigna applied its own, lower payment methodology for nonparticipating physicians and other health professionals.

“Further, Cigna regularly includes deceptive statements in its communications with Cigna members,” the suit states. The company’s explanation-of-benefits forms misrepresent that physicians and other health professionals “have agreed to accept a lower payment and that patients bear no additional responsibility. These deceptive EOBs damage the professional and business relationships between
patients and physicians."

Parties are awaiting a decision on Cigna’s motion to dismiss the case.

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.