

If physicians face legal threat, AMA Litigation Center has their backs

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If you can imagine checking your internet news feed to see if your work influenced the U.S. Supreme Court, then perhaps you have an idea what it's like to work for the Litigation Center of the American Medical Association and State Medical Societies.

A slew of Supreme Court decisions traditionally are released in late June. The decisions released late last month included two cases the AMA worked on: One involving issues of medical ethics and regulating free speech, and another addressing antitrust issues in a way that could affect where physicians are allowed to refer patients.

Oral arguments were also made in a third case, *Trump v. Hawaii*, involving opposition to the president's proclamation to broadly prohibit visas for people from certain Muslim-majority nations.

In addition, the Litigation Center is also involved with cases before 13 state supreme courts.

The Litigation Center was established in 1995 and has provided physicians with legal assistance and expertise in some 300 cases while advancing AMA policies through the U.S. legal system in courts, administrative agencies, and alternative dispute-resolution bodies, according to its 2018 annual report.

"Some of the cases the Litigation Center has taken on have set important legal precedents, while others have had broad, practical implications for the medical profession or for patients. And some have, simply, been the right thing to do," said AMA Trustee Georgia A. Tuttle, MD, a Lebanon, New Hampshire, dermatologist who is a member of the center's executive committee.

"The Litigation Center's docket of cases casts a wide net over the medical-legal landscape, including physician payment issues, medical staff privileges, medical liability issues, peer review and scope-of-practice issues," Dr. Tuttle added.

Standing up to powerful adversaries

The Litigation Center’s annual report explains that “it is impossible to create a definite list of criteria” for determining whether it will accept a case as the parties, merits and case posture all play a role—along with its potential to clarify an issue of general interest to physicians, its potential for setting a precedent, and the type and level of assistance being requested.

There are three basic types of cases the Litigation Center gets involved in.

The first involves a physician or physician group “with a meritorious legal position” being opposed by an adversary—such as a government, managed care organization or hospital—with much greater resources. The center may support these parties with a financial grant, in-kind services, or public recognition of support.

While having a broader “scope of applicability” plays a factor in choosing cases, the center will sometimes advocate for physicians where there is a particular interest within a state or for a limited area of practice such as insurance industry practices, government regulations or scope of practice. The center may join as a party to the lawsuit or provide financial support.

When there is potential for legal precedent to be set, the center will file an amicus brief advising the court about the legal and public policy interests at stake and urge them to make rulings consistent with AMA policy.

A case’s potential impact on the patient-physician relationship will certainly get the center’s attention.

“That’s one of the reasons for the existence of the AMA: to protect the patient-physician relationship from undue influence of the government or lawyers,” Dr. Tuttle said. “We will fight—in the courts, with legislators and regulators—to protect the sanctity of that foundational relationship in medicine, even if it might sometimes be seen as politically incorrect to do it.”

There may be certain cases the center wouldn’t get involved in unless the state medical society requests it.

Providing indispensable protection

The Litigation Center notably helped bolster physicians’ legal efforts at Tulare Regional Medical Center, where the board terminated the rural California’ hospital’s medical staff organization, removed

elected staff officers, installed a slate of appointed officers, and approved new bylaws and rules drafted without staff input.

There was no ambiguity with AMA policy in this case, which says should be an independent medical staff. The hospital unquestionably violated that fundamental principle.

The Litigation Center's help was acknowledged with a California Medical Association formal "resolution of gratitude," which stated that "the support of the AMA and the Litigation Center was indispensable to protecting medical staff rights" throughout the state.