How the AMA acts as the physician’s powerful ally in the courts

FEB 19, 2020

Tanya Albert Henry
Contributing News Writer

It can be easy to forget just how important a role the judicial system plays in shaping the laws and institutions that affect how physicians practice medicine.

But the reality is that after the celebration and fanfare of passing a hard-fought-for law at the state or federal level, someone can file a lawsuit challenging what physicians just worked to get passed to better their ability to care for patients.

A lawsuit also has the potential to change the status quo of something that physicians may take for granted; for example, the norms surrounding medical staff privileges or peer review. Or a lawsuit can change the status quo for the better, such as helping to establish patients’ right to appropriate transgender health care.

And that is why the Litigation Center of the American Medical Association and State Medical Societies brings lawsuits, files amicus briefs, provides financial grants or in-kind services, or becomes actively involved in litigation important to physicians.

“In our system of checks and balances, judges have the final word on the most important issues facing physicians and patients—issues ranging from professional liability to privacy to government interference,” said Brian Vandenberg, AMA senior vice president and general counsel. “So, it’s important that courts hear from the AMA as the unified voice of physicians on issues that impact the health of the nation.”

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, and read these three great news articles profiling recent AMA Litigation Center activity.
1. **More physicians being sued by patients they’ve never treated**
   Can physicians be held liable in cases in which they’ve never treated the patients experiencing the adverse outcome? That’s a question that is increasingly being put before the courts, and one explored during an AMA education session.

2. **Five big medical court cases that made a difference this year**
   The AMA and the Litigation Center covered a lot of legal ground in 2019, from the U.S. Supreme Court and state courts, where the nation’s oldest and largest physician organization served as a powerful, unified voice for the nation’s doctors and their patients. Learn more about how the AMA made its powerful impact felt in judicial advocacy.

3. **Why the HHS conscience-rights rule was blocked in court**
   In a win for physicians and their patients, a federal court blocked a Trump administration-backed conscience rights rule the AMA and other medical associations opposed in an amicus brief because the change would “radically disrupt medical care and endanger the health and lives of patients.”

---

**When does the AMA get involved?**

For the AMA Litigation Center to get involved in any case, it first must meet two criteria.

First, the AMA Litigation Center position must be consistent with AMA policies. For example, AMA policy on medical witness testimony state that courts should only allow expert medical testimony that is “widely accepted theories of medical science” or “theories that are supported by a respectable minority of experts in the field at issue,” so any involvement in a case involving expert medical testimony must support that position.

Second, the medical society of the state where the case is to be filed must support the AMA Litigation Center getting involved. So, if the case is based in Oregon, the Oregon Medical Association would need to be OK with the AMA Litigation Center’s involvement.
If the case meets those two standards, members of the AMA Litigation Center Executive Committee then further examine the details and decide whether to provide assistance.

“We get involved in the cases that are most impactful to physicians and patients, either because the case has significant national implications or because of its importance in a particular state, local community or practice specialty,” Vandenberg said. “Our docket of cases in state and federal courts across the county reflects the AMA’s alliance with state and specialty medical societies, and the broad spectrum of issues facing physicians and patients, nationally or locally.”

Factors to consider

While it is impossible to write a definitive list of criteria to determine whether the AMA Litigation Center Executive Committee will accept a case, the parties, merits and case posture all matter. In addition, Executive Committee members will consider these items when reviewing whether to get involved in a case:

- Do the legal issues presented extend or clarify the case law on a matter of interest to physicians generally?
- What is the precedential value of the case? For example, the level of the court, jurisdiction and nature of legal proceeding are considered.
- What is the scope of applicability of the case determination? For example, is it a state, regional, national or specialty-specific matter?
- What type and level of assistance is the AMA Litigation Center being asked to provide?
- What are the likely chances of the case succeeding on the merits?
- What allocation of AMA Litigation Center resources would the proposed case require?
- What contribution are others making, including the parties and the person who has requested support?
- What is the comparative value of selecting a particular case compared to other pending and likely litigation requests?
- What are the potential nonfinancial costs? For example, would litigation make political and other options less feasible?
- What is the state medical society and AMA membership status of any individual physician that the AMA Litigation Center is requested to support or oppose?
- Are options other than litigation available?

Curious about whether the Litigation Center is involved in a case or issue that you care about? Try searching the AMA Litigation Center Case Summary Finder.

Copyright 1995 - 2021 American Medical Association. All rights reserved.