

## **SVS Requires Member Compliance with Expert Witness Testimony Guidelines**

In 2004 the Society for Vascular Surgery (SVS) Board of Directors approved Guidelines for Testimony by Vascular Surgeons as part of the Society's Professional Conduct Program. SVS members are expected to abide by these guidelines to remain a member in good standing.

The Guidelines for Testimony of Vascular Surgeons apply not only to sworn testimony provided in depositions or in courtroom proceedings, but also apply to any provision of expert medical opinions in litigation. They apply to Affidavits of Merit, (AOM) Certificates of Merit (COM), and other sworn or unsworn expert opinions required in many states before a professional liability case can be filed.

For example, the Professional Conduct Committee recently heard a case involving the provision of a COM by a vascular surgeon who never testified as a formal expert witness in the lawsuit, but whose COM was required for the suit to be maintained. The suit was dismissed prior to trial, but a charge of unprofessional conduct was brought against the member who signed the COM. The Committee concluded, after a hearing, that there was no violation on the part of the Respondent surgeon in his submission of the COM, but it was appropriate for the committee to review the contents of that COM and determine whether it violated the Guidelines for Testimony.

The following is the process for initiating charges of unprofessional conduct by one member against another:

1. Charges should be referred to the SVS legal counsel (address below) who will review the documents to determine whether they are complete and, if proven, whether they could be the basis for disciplinary action by the SVS. If the charges involve allegedly improper testimony a copy of the transcript should be included, with designations of the relevant lines and pages. If the charges are based on an allegedly improper Certificate or Affidavit of Merit, as discussed above, a copy of that document should also be included. The Committee will not address complaints involving testimony or submissions in cases that are still ongoing or are on appeal. The courts frown on any such activity on the basis that it could be considered improper intimidation of trial witnesses before a case has been concluded.
2. If there is a basis for disciplinary action, a full set of the charging documents will be sent to the charged vascular surgeon who will be asked to reply in whatever manner he or she sees fit. When both sides' submissions have been completed, they will be furnished to the Professional Conduct Committee who will meet in executive session to determine whether a prima facie case of unprofessional conduct has been laid out, thereby warranting a hearing. If the committee concludes that a hearing is warranted, one will be scheduled and both sides will be invited to attend, with counsel if they wish.
3. The committee will determine whether the charges have been sustained, if so, what disciplinary action should be recommended to the Board of Directors, i.e., written censure, suspension of membership for a definite time, or expulsion from the SVS. The committee may also, if it chooses, recommend the issuance of a private letter of admonition to the respondent, which is not considered a formal disciplinary action. Suspensions or expulsions are reportable to the National Practitioners Databank; letters of censure are not reportable.

The SVS's Professional Conduct Program is not a Statutory Peer Review Program, since the SVS reserves the right to publish the names of any members who are disciplined, and the committee's Reports and Recommendations, as well as the Board's Final Actions, are subject to discovery by subpoena in subsequent litigation, neither of which can be done under Statutory Peer Review Proceedings.

Since the Board of Directors determined that it would be unfair to apply the Professional Conduct Program retroactively, members can be disciplined only for violating the Expert Witness Guidelines after April 1, 2004 or the SVS' Code of Ethics after June 2, 2004.

Complaints and supporting documentation should be sent to: Russell M. Pelton, J.D., SVS Counsel, 77 West Wacker Drive, Suite 4100, Chicago, IL 60601.