

Editorial

Does the American Association of Neurological Surgeons seek to limit members from testifying for patients/plaintiffs through proceedings resembling a kangaroo court and/or star chamber?

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I am told by lawyers that it is ever more difficult to find surgeons willing to testify for the plaintiff in a legal malpractice suit, in part due to actions by professional medical societies. In an earlier editorial (“Why I testify for some patients/plaintiffs, and against some doctors/defendants”), I opined that “...the American Association of Neurological Surgeons’ (AANS) Professional Conduct Committee (PCC) appears to me to spend more time trying to deter surgeons from testifying for the patient/plaintiff through their grievance procedures, than it does in dealing with this problem.”^[1] The problem referred to is unnecessary or inappropriate spine surgery.

The AANS’ PCC Proceedings: First, the AANS proceedings resemble both a Kangaroo Court and a Star Chamber. By Kangaroo Court, I mean one which seems to me to give the appearance of a legal procedure/process, but “...in which the principles of law and justice are disregarded or perverted” (www.merriam-webster.com/dictionary). And, by “Star Chamber”, I mean one “...characterized by secrecy and often being irresponsibly arbitrary and oppressive” (www.merriam-webster.com/dictionary).

With these two definitions in mind, let’s examine the AANS’ PCC proceedings regarding the AANS’s Code of Ethics and Expert Witness Rules. These proceedings give the appearance, in my opinion, of a legal process. For example, the “complainant”, a neurosurgeon who was previously a defendant in a lawsuit against him/her, brings a written “grievance” against the neurosurgeon (respondent) who testified for a

patient/plaintiff against that neurosurgeon. The plaintiff’s neurosurgeon (respondent) then has to respond in writing to the complainant/defendant neurosurgeon’s grievance. According to the rules, the PCC then “...will review the written submissions made by both sides and reach a decision on whether or not a prima facie case has been presented, justifying a hearing...”, and a hearing date is set. At the hearing, the complainant and respondent neurosurgeons are allowed to bring a lawyer.

So far, the process gives the appearance in my opinion of a legal procedure. However, the AANS wrote the

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“laws” (i.e., the Code of Ethics and Expert Witness Rules), specified the procedures (process), named the “jury” (PCC panel of AANS members), and acts as the judge (i.e., the PCC panel and AANS Board decide). Further, the proceedings are held in private. In fact, no one except the PPC, the complainant, the respondent, their lawyers, and witnesses (during their testimony) can attend. Notably, a written transcript of the proceedings is produced, but kept secret, even from AANS members, who were not part of the proceedings.

The actual proceedings, are, therefore, kept secret, with the process and rules of evidence set by the AANS. In short, it gives the appearance in my opinion of being one-part Kangaroo Court (i.e., gives the appearance of a legal proceeding, but they are perverted), and one-part Star Chamber (i.e., secret and arbitrary).

Do These Proceedings Have the Effect of Deterring Neurosurgeons From Testifying Against Other Neurosurgeons? In other words, what is the evidence for my opinion that the AANS’ PCC “...appears to spend more time trying to deter surgeons from testifying for the patient/plaintiff through their grievance procedures, than it does in dealing with...” the problem of unnecessary, or inappropriate spinal surgery? Shouldn’t the AANS be dealing with this latter issue?

We don’t know how many grievances are dismissed vs. heard. And, are the cases that are heard overwhelmingly brought against plaintiffs’ experts? I asked the legal counsel of the AANS to provide the information about the number of cases heard by the PPC, the reason for the grievances, and the outcomes. I was told by AANS counsel via email that even members cannot have this information, -- once again secret, just like a Star Chamber.

However, a 2007 letter to the editor of *Neurology Today* provided an answer to my question. Dr. Iverson, a neurologist, wrote: “Our neurosurgical colleagues at the

American Association of Neurological Surgeons (AANS) received 50 or 60 complaints and have censured, suspended, or expelled 36 members in the last 23 years. In 14 years the AAN (American Association of Neurology), with two and one-half times the membership of the AANS, has censured one member and suspended or expelled none.”^[2] The author, Dr. Iverson, took these data as “...damning testimony regarding the ineffectiveness of the current AAN grievance process.”^[2] His comments, however, speak to the underlying motive behind these grievance proceedings, and raise the question as to whether the purpose of the AANS’ PCC is to deter neurosurgeons from testifying against other neurosurgeons? Note somehow, Dr. Iverson gained access to the information that was denied to me.

I would welcome the AANS to prove me wrong, by providing data for at least the last 20 years of the grievances submitted to the AANS, and furthermore, those who were selected to be evaluated by the PCC. In addition to the PPC’s decision, this should include stating the AANS’ Code of Ethics and Expert Witness Rules (www.myaans.org) violated, and whether the individuals (i.e., respondents) in question testified for the plaintiff or defendant. Without this information, how can we assess whether the policies of the AANS’ PCC have the effect of deterring experts from giving objective, honest opinions about any case?

REFERENCES

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