

**Webinar: *Orthopaedists at Risk: Navigating Industry Relationships***

Presented November 13, 2007

**Additional Questions as of November 19, 2007**

Participants of the webinar entitled “Orthopaedists at Risk: Navigating Industry Relationships” submitted many questions during the program that time did not permit the faculty members to answer. The following questions were submitted during the webinar, but were not answered during the broadcast. AAOS will continue to add questions and answers on this site.

Additional questions may be forwarded to: [IndustryConflicts@aaos.org](mailto:IndustryConflicts@aaos.org).

**U.S. Attorney and Consulting Agreements with Industry**

**Q: Should orthopaedic surgeons who consult with industry routinely retain legal counsel?**

A: We would always advise retaining counsel before entering into any contractual obligation.

**Q: What are the Government’s concerns regarding royalty agreements?**

A: We believe that the U.S. Attorney was concerned with the disclosure of all payments made to physicians of which royalties is obviously a portion.

**Q: Why has the federal government not yet pursued litigation against individual orthopaedic surgeons and only against the manufacturers? Is that next?**

A: Targets of criminal investigations are at the discretion of the prosecutor. It is typical with multiple defendants that a prosecutor will pursue particular defendants to build cases against other defendants. Consequently, it is possible that the U.S. Attorney in New Jersey will use information obtained in investigating manufacturers to pursue cases against physicians.

**Q: What will the government do with the \$300 million from the U.S. Attorney settlement with industry?**

A: The money will go into the government's coffers and could be used to offset the costs of investigating and prosecuting the defendant manufacturers.

### **Filing Grievances**

**Q: May Fellows file grievances against expert witnesses 15 years after the egregious behavior?**

A: The Professional Compliance Program Grievance Procedures, which the Board of Directors approved, permits grievances to be filed up to 10 years from the date of the alleged egregious. For alleged violations of the Standards of Professionalism (SOPs) on Orthopaedic Expert Witness Testimony, the expert opinion must have been provided on or after April 18, 2005, which is the effective date of the SOPs.

**Q: I was involved in a malpractice case as the defendant. The plaintiff's expert witness, an orthopaedic surgeon, provided inaccurate opinions that either deliberately ignored the facts of the case or favored the plaintiff. I believe his opinions were unethical. This happened prior to the SOPs. Is there a value in submitting a complaint at this time?**

A: AAOS may not accept grievances for matters that occurred prior to the effective date of the Professional Compliance Program or the SOPs. The date for grievances regarding orthopaedic expert witness testimony is April 18, 2005, which is the date the Fellowship adopted Bylaws amendments and the SOPs.

Fellows who have complete depositions or complete trial testimony from orthopaedic expert witnesses may wish to forward the testimony to IDEX, an independent company that maintains an extensive database of expert witness material. You may contact IDEX at 1/800-521-5596 for information on how to submit depositions or trial testimony.

### **Expert Witness Affirmation Statement**

**Q: How can I find out if I have signed the Expert Witness Affirmation Statement?**

A: You may access the database of Fellows and Members who have signed the Expert Witness Affirmation Statement at:  
<http://www3.aaos.org/member/expwit/ewmo/members.cfm>. You may also forward requests to [ProfessionalCompliance@aaos.org](mailto:ProfessionalCompliance@aaos.org).

**Q: How do I get a copy of the Expert Witness Affirmation Statement to sign?**

A: You may access the Expert Witness Affirmation Statement online at:  
<http://www3.aaos.org/member/expwit/ewmo/ewmain.cfm>. Please print out a copy, sign it and fax it to: 847-823-8028.

**Q: Why is there such a low rate of signing the Expert Witness Affirmation Statement?**

A: Approximately 33% of Fellows have voluntarily signed the Expert Witness Affirmation Statement. Fellows may be asked during deposition or trial whether they have voluntarily signed the Expert Witness Affirmation Statement. However, all Fellows are obligated to adhere to the Mandatory Standards in the SOPs on Orthopaedic Expert Witness Testimony. Only alleged violations of the SOPs may serve as the basis for a grievance to and adjudication by AAOS.