Title: Civil Liability Coverage for District Branch Ethics Investigations

Whereas:

1. Section 7.2 (Ethics Complaints) of the American Psychiatric Association Bylaws states:

"Complaints charging members of the Association with unethical behavior or practices shall be investigated, processed, and resolved in accordance with procedures approved by the Assembly and the Board."

1. Ethics complaints to the American Psychiatric Association are referred to the respective district branch for review and investigation
2. Section 12 (Indemnification of Officers and Trustees) of the American Psychiatric Association Bylaws states:

“The Association will indemnify, defend and hold harmless its Officers and Trustees, paid and unpaid, from any and all liability, including all expenses, legal fees and costs associated with any claim arising out of their position with the Association or damages resulting from their actions on behalf of the Association while serving as an Officer or Trustee. Officers and Trustees of the Association shall have no liability to the corporation or to the members for money damages for actions or failures to act as an officer or director. This provision shall not apply if the liability results from intentional infliction of harm, an intentional violation of criminal law, or receipt of a financial benefit to which the Trustee or Officer is not entitled. This provision is intended to provide the broadest indemnification and reimbursement permitted under the law.”

1. The American Psychiatric Association purchases Directors and Officers (D&O) Liability Insurance coverage for actions related to Association governance at a national level
2. There is no formal policy for the American Psychiatric Association to provide expenditures for litigation or other expenses related to a district branch ethics investigation
3. There is implied liability coverage for district branches through the APA’s D&O policy, however the policy deductible is $100,000
4. Most district branches would be unable to afford the current deductible for a single claim
5. Many district branches may be uninformed related to liability coverage issues, or may not have access to the policy itself
6. The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry contains mandatory minimum procedural requirements for an ethics investigation, specifically:
   1. Review for jurisdiction and statute of limitations
   2. Preliminary review for summary judgment (eg. no violation of Principles even if allegations were true)
   3. An initial review of the evidence (from Complainant, not necessarily from accused)
   4. Notice to the accused member by certified mail regarding accusation and member’s rights related to the proceeding
   5. Appointment of a three member hearing panel
   6. The hearing may consist of: opening and closing statements, direct and cross-examination of witnesses, questions from hearing panel members, consideration of extrinsic evidence
   7. The DB must make a transcript of the hearing available to the accused if requested, at the accused’s expense
   8. The DB executive council must review the hearing board’s decision
   9. Notice of appeal rights given to accused, if violation supported

Be It Resolved:

1. The American Psychiatric Association shall make a copy of the APA Director & Officer Liability policy available in electronic form to all district branches through the APA web site
2. The American Psychiatric Association shall amend the bylaws to include information regarding indemnification of district branches for liability related to ethics investigations
3. The American Psychiatric Association shall develop a written policy and protocol to provide expenditures to district branches specifically to support ethics investigations

Author:

Annette Hanson, M.D., Representative, Maryland Psychiatric Society

Sponsors:

Jennifer Palmer, M.D., President, Maryland Psychiatric Society

Brian Zimnitzky, M.D., Assembly Rep, Maryland Psychiatric Society

(To be added at Assembly):

Joseph C Napoli, MD, DLFAPA, Area 3 Representative

Wiliam Greenberg, M.D., Area 3 Deputy Representative

Mark Komrad, M.D., Representative, Southern Psychiatric Association

Elias Shaya, M.D., Representative, Maryland Psychiatric Society

Pat Triplett, M.D., President-Elect, Maryland Psychiatric Society

Marsden Maguire, M.D., Treasurer, Maryland Psychiatric Society

Estimated Cost:

Author: $0

APA:

Estimated Savings: None

Estimated Revenue Generated: None

Endorsed By:

Southern Psychiatric Association

Greater Long Island Psychiatric Society

Maryland Psychiatric Society

New Jersey Psychiatric Association

Pennsylvania Psychiatric Society

Psychiatric Society of Delaware

Washington Psychiatric Society

Key words: ethics, governance, policies and procedures, liability, district branch

APA Strategic Priorities:

Advancing Psychiatry

Education

Reviewed by Relevant APA Component: None

References:

1. American Psychiatric Association Bylaws. Accessed at: https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/operations-manual.pdf on September 14, 2017
2. American Psychiatric Association Executive Risk Coverage and Premium Summary
3. American Psychiatric Association. Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry. Accessed at: https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/Ethics/principles-medical-ethics.pdf