

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON SPECIALIZATION
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association reaccredit the following
2 designated specialty certification programs for lawyers:

- 3
- 4 Elder Law program of the National Elder Law Foundation of Tucson, Arizona;
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- 6 Legal Professional Liability program of the American Board of Professional Liability
7 Attorneys of Malverne, New York; and
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- 9 Medical Professional Liability program of the American Board of Professional Liability
10 Attorneys of Malverne, New York.

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12 FURTHER RESOLVED, That the American Bar Association withdraws accreditation of the
13 Accounting Professional Liability program of the American Board of Professional
14 Liability Attorneys of Malverne, New York.

REPORT

Background

The Standing Committee on Specialization makes this recommendation within the framework of three previous resolutions passed by the House of Delegates. At the 1993 Midyear Meeting, the House adopted Standards for Accreditation of Specialty Certification Programs For Lawyers and delegated to the Standing Committee on Specialization the task of evaluating programs sponsored by organizations that apply to the ABA for accreditation.

The adoption of the accreditation standards in February 1993 followed an August 1992 House resolution requesting that the Association develop standards for accrediting private organizations that certify lawyers as specialists and that the Association establish and maintain a mechanism to accredit such organizations that meet those standards.

The 1992 resolution affirmed the belief that a national accreditation mechanism administered by the Association according to uniform standards would be the most efficient and effective means of dealing with a multiplicity of organizations that are offering, or planning to offer, certification programs.

At the 1999 Annual Meeting, the House extended the initial period of accreditation from three to five years. In addition, the House lengthened the period of reaccreditation from every third year to every fifth year.

ABA accreditation is intended to work in harmony with whatever regulatory approach a state might adopt. It is designed to relieve states of the expense and administrative burden of establishing their own program, while allowing final regulatory authority to rest with the states.

Standards - Summary of Key Provisions

The Standards for Accreditation of Specialty Certification Programs for Lawyers, hereinafter "Standards", are organized into eight sections. Sections 1 through 3 deal with purpose, definitions and authority; Section 4 sets out the specific requirements that an organization must meet in order to be accredited; Sections 5 and 6 deal with re-accreditation and revocation of accreditation; Section 7 provides authority to the Standing Committee on Specialization to implement the Standards; and Section 8 deals with amendment procedures.

Sections 1 and 2 - Policy and Definitions: Section 1 establishes Association policy with respect to accreditation of specialty certification programs. The Standards require an accredited organization to demonstrate that lawyers certified by it possess an enhanced level of skill and expertise, are substantially involved in the specialty area of certification, and that the organization foster professional development. Section 2 defines several terms commonly used throughout the document.

Section 3 - Authority: This section provides that the House of Delegates, as the official policy-making body of the Association, will act upon each application for accreditation and reaccreditation.

This Standard recognizes that accreditation granted by the Association will be subordinate to any approval process established by a state. ABA accreditation may be a credential that a certifying organization would present to a state when applying for state approval of its certification program. It is further recognized that states may establish standards that are more or less stringent than the Association's Standards for Accreditation.

Section 4 - Accreditation Requirements: The purposes of the certifying organization must include the identification of lawyers possessing an enhanced level of skill and expertise, and the development and improvement of the professional competence of lawyers. Such organization's organizational, financial resources, as well as the experience, background and education of key personnel, must be adequate to carry out its certification program on a continuing basis in a manner consistent with the Standards.

A majority of those persons reviewing applications for certification of lawyers as specialists in a particular area of law must be lawyers who have substantial involvement in the specialty area. An organization's certification requirements must be applied uniformly and without discrimination. Exceptions are recognized for state or local laws and regulations imposing higher requirements and the natural consequence of reasonable experience requirements.

The Standards require that each specialty area in which certification is offered must be described in terms which are understandable to the potential users of such legal services and which will not lead to confusion with other specialty areas. Each specialty certification program sponsored by a certifying organization must be evaluated separately with the Standing Committee retaining authority to approve, modify or reject any proposed specialty definition.

A lawyer certified as a specialist must show substantial involvement in the specialty area during the three-year period immediately preceding application to the certifying organization; devoting to the specialty no less than 25 percent of the total practice of a lawyer engaged in a normal full-time practice.

The Standards also require a minimum of five favorable references, a written examination, a minimum of 36 hours of continuing legal education in the specialty area in the three-year period preceding the lawyer's application, and that the lawyer be admitted to practice in good standing in one or more jurisdictions.

A certifying organization must establish and maintain an appeal procedure that provides lawyers who are denied certification an opportunity for review of the decision by an impartial decision-maker. The Standards require that certified lawyers apply for recertification within a period no longer than five years and that certifying organizations are required to maintain a procedure for revocation of certification. Certifying organizations must also require lawyers to report their disbarment or suspension from the practice of law in any jurisdiction.

Sections 5 and 6 - Accreditation Period, Reaccreditation and Revocation: The period of accreditation is five years. Prior to the end of the accreditation period, accredited organizations are required to apply for reaccreditation, which may be granted upon a showing of continued compliance with the Standards. Accreditation may be revoked if an applicant organization ceases to exist or ceases to operate its certification program in compliance with the Standards.

Sections 7 and 8 - Authority to Implement and Amendment: The Standards give the Standing Committee authority to interpret the Standards, adopt rules, procedures and a fee schedule, consider and evaluate applications, make recommendations to the House of Delegates as to the approval of applications, and recommend the revocation of accreditation. The Standards became effective upon their adoption by the House of Delegates. The power to approve an amendment to the Standards is vested in the House of Delegates.

Applicants for Reaccreditation

Applicant Organization #1: National Elder Law Foundation

Specialty Area: ***Elder Law***

A non-profit entity, the National Elder Law Foundation (NELF) was formed in 1993 for purposes of developing and improving the professional competence of lawyers in the area of elder law.

The NELF certification standards are designed to improve the quality of the elder law bar and encourage elder law practitioners to strive toward excellence and recognize those attorneys who are experts in the elder law field. NELF certification serves the public by providing a mechanism by which referring attorneys and the public can identify attorneys who specialize in elder law.

Applicant Organization #2: American Board of Professional Liability Attorneys

Specialty Areas: ***Accounting Professional Liability***
Legal Professional Liability
Medical Professional Liability

The American Board of Professional Liability Attorneys (ABPLA) is a non-profit organization located in Malverne, New York and was incorporated in 1977.

The purpose of the American Board of Professional Liability Attorneys is assist consumers and other lawyers in identifying qualified, competent and experienced professional liability specialists and to establish a program of training directed toward these specialties among newly admitted attorneys who evince the initiative, desire and necessary drive to complete a

prescribed course of supervised training and postgraduate education in preparation for eligibility for the examination leading to certification by the American Board of Professional Liability Attorneys.

Reaccreditation and Evaluation Procedures

In evaluating the programs recommended for reaccreditation, the Standing Committee followed the procedures it adopted on March 2, 1993, as amended on April 24, 1993, June 27, 1995, January 5, 1996, July 8, 1999, July 21, 2001, November 1, 2002, and November 2006. A copy of the "Standards," and "Governing Rules" used by the Standing Committee in evaluating applications for reaccreditation are attached to this report as Appendix A.

Two organizations, which operate four ABA accredited specialty certification programs, filed applications for reaccreditation with the Standing Committee in June and July 2007. The applications were accompanied by payment of a reaccreditation fee for each specialty certification program for which the applicant sought reaccreditation.

In order to ensure that each of the programs continues to comply with ABA Standards, the Standing Committee required that the following documents accompany applications for reaccreditation:

- i. Current versions of the applicant's governing documents, including articles of incorporation, bylaws, and resolutions of the governing bodies of the applicant or any parent organization, which resolutions relate to the standards, procedures, guidelines or practices of the applicant's certification programs;
- ii. Biographical summaries of members of the governing board, senior staff and members of advisory panels, certification committees, examination boards and like entities involved with the certification process, including specific information concerning the degree of involvement in the specialty area of persons who review and pass upon applications for certification;
- iii. All materials furnished to lawyers seeking certification, including application forms, booklets or pamphlets describing the certification program, peer reference forms, rules and procedures, evaluation guides and any other information furnished to the public or the media regarding the certification process;
- iv. A copy of the last examination given to applicants for specialty certification, along with a description of how the exam was developed, conducted and reviewed; a description of the grading standards; and the names of persons responsible for determining pass/fail standards. The examinations were made available, on a confidential basis, for review by a person or persons designated by the Standing Committee, with the understanding that the applicant, at its option, may rule

examination reviewers ineligible for certification through the applicant organization for a period of three years from the time of such designation; and

- v. Such other materials or information deemed necessary by the Standing Committee.

Upon receipt of the applications for reaccreditation, an ABA staff advisor conducted a preliminary review of the material submitted by the applicants. The staff advisor's review also took into account information provided by the sponsoring organizations as part of the annual reporting process and that provided in connection with the initial application for accreditation. The staff advisor evaluated the application materials for completeness and continued conformance with the Standards, noting omissions in the materials submitted in support of the applications for reaccreditation; where additional information was needed or item required clarification, the staff advisor contacted the appropriate sponsoring organization.

Once the staff advisor determined that the applications for reaccreditation were complete, the staff advisor provided each organization's reaccreditation application for and supporting materials (with the exception of the certification examinations) to the members of the Accreditation Review Panel for their independent review. Certification examinations were sent exclusively to the appointed examination reviewers.

The Accreditation Review Panel, appointed by the Standing Committee, consisted of a chair and two members and an examination reviewer for each of the specialty certification programs seeking reaccreditation. Applicants were provided notice, in writing, of the names and affiliations of the members of the Accreditation Review Panel and the examination reviews. The reaccreditation procedures provide certifying organizations the opportunity to object for cause to the appointment of examination reviews. The names and brief biographies of Accreditation Review Panel members are listed below:

Accreditation Review Panels

National Elder Law Foundation

Accreditation Review Panel

Julia Orzeske, Chair (Indianapolis, IN) Ms. Orzeske is the Executive Director of the Indiana Commission for Continuing Legal Education. The Commission is an agency of the Indiana Supreme Court and is responsible for regulating mandatory CLE, specialization, and the mediator registry in Indiana. She has been with the Commission since 1994. She has served as chair of the Organization of Regulatory Administrators for Continuing Legal Education and is the current management committee chair for that organization. She was the general chair for the Indiana State Bar Association meeting in October 2006. She is the immediate past chair of the ISBA PLEADS section. Ms. Orzeske is a member of the ABA Standing Committee on Specialization.

Meaghan Harper (Minneapolis, MN) Ms Harper graduated from the University of Minnesota Law School in 1981 and practiced in civil trial law. In 2003, she became the manager of the

Minnesota State Bar Association's Certified Legal Specialists program, with approximately 700 certified specialists in two specialty areas. She recently accepted another position at the MSBA as Section Services Director, where she will remain involved with the existing certification program and will encourage the development of new specialty areas. She is a member of the ABA Standing Committee on Specialization.

Wendy Weiss (Trenton, New Jersey) Bachelor of Science, 1980, Lehigh University; J.D., 1983, Delaware Law School. Member of the New Jersey and Pennsylvania Bars. Ms. Weiss practiced personal injury defense law, primarily medical and nursing malpractice, from 1983 to 1987. Since late 1987, Ms. Weiss has worked for the New Jersey Supreme Court, managing the operations and functions of the Board on Attorney Certification, the Certification Committees, and staff, as well as performing other tasks related to appeals before the Court. She is a former member of the ABA Standing Committee on Specialization.

Examination Reviewer

Walter T. Burke (Albany, NY) Mr. Burke is founder of the Albany, NY-based firm of Burke & Casserly, P.C. The firm specializes in planning for all phases of life. He is actively involved in the area of Elder Law; he is actively involved with the ABA and serves as Chair of the Elder Law Committee of the Senior Lawyers Division. He is the former Chair of the Elder Law Section of the New York State Bar Association and participated as Coordinator of the White House Mini-Conference on Aging and served as an Official Observer at the White House Conference on Aging in Washington, DC.

American Board of Professional Liability Attorneys

Accreditation Review Panel

Twila Larkin (Chair, Albuquerque, NM) Ms. Larkin is in private practice in Albuquerque, specializing in Family Law. She was admitted to practice in 1996 and is a member of the State Bar of New Mexico, the First and Second Judicial Districts and the American Bar Associations. She is a frequent speaker on family law issues and is a member of the Standing Committee on Specialization.

James Carr (Denver, CO) Mr. Carr is a member of the Councils of TIPS and the Government and Public Sector Division and the ABA Commission on Law and Aging. He has served on the Denver Bar Association Board of Trustees and the Colorado Bar Association Board of Governors. He is active in law-related education programs and volunteer mediation. Mr. Carr is a member of the ABA Standing Committee on Specialization.

Honorable Melissa May (Indianapolis, IN) Judge May has been a member of the Indiana Court of Appeals since April 1998. She is a member of the National Association of Women Judges, Indiana Judges Association, American Judicature Society, and the Indiana Continuing Legal Education Commission where she chaired the Specialization Committee. Judge May is a former member of the ABA Standing Committee on Specialization and currently serves as Special Advisor to the Committee.

Examination Reviewer-Accounting Professional Liability

N/A Not seeking reaccreditation of Accounting Professional Liability

Examination Reviewer-Medical Professional Liability

Professor Maxine Harrington (Fort Worth, TX) Professor Harrington is a former partner in a firm where she was lead counsel in medical malpractice cases. She is currently an associate professor of law at Texas Wesleyan University School of Law and teaches Torts, Health Law, Medical Malpractice, and Bioethics and the Law.

Examination Reviewer-Legal Professional Liability

Lucian Pera (Memphis, TN) Mr. Pera practices in the area of general commercial litigation and counsels and represents lawyers, law firms and others in the area of ethics and professional responsibility. He serves for 5 years as a member of the ABA Special Commission on the Evaluation of the Rules of Professional Conduct (also known as “Ethics 2000”). He has served as Chair of the Tennessee Bar Association Standing Committee on Ethics and Professional Responsibility.

Based on information received from the ABPLA, following a vote of their Board of Directors, the ABPLA asked that accreditation be withdrawn for the Accounting Professional Liability Program. They have had no certified lawyers for the past several years and had no applications from lawyers interested in becoming certified in Accounting Professional Liability. In the opinion of the Board of ABPLA, there is insufficient interest within the legal community to sustain a program in Accounting Professional Liability.

In addition to reviewing each applicant’s reaccreditation application materials, members of the Accreditation Review Panel considered the information on the reaccreditation evaluation forms and comments provided by the examination reviewers who evaluated the written examinations on a confidential basis. Based upon this review, the Accreditation Review Panels concluded that the applicants' programs continue to comply with the ABA Standards.

In making a final recommendation regarding reaccreditation of the four programs, the procedures authorize the Standing Committee to consider the final reports of the Accreditation Review Panels, the application and supporting documents originally submitted by the certifying organizations and any further materials which the organizations submit for consideration.

The Standing Committee formally considered the final reports of the Accreditation Review Panels at its meeting on November 9, 2007 and determined that the lawyer specialty certification programs that are the subject of this report continue to comply with the requirements of the ABA Standards for Accreditation of Specialty Certification Programs for Lawyers. We therefore recommend to the House of Delegates that the programs be granted reaccreditation for a five year period. The Standing Committee further recommends to the House of Delegates that accreditation for the Accounting Professional Liability Program be withdrawn.

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Respectfully submitted,

Timothy W. Bouch, Chair
February 2008

GENERAL INFORMATION FORM

Submitting Entity: American Bar Association Standing Committee on Specialization

Submitted By: Timothy W. Bouch, Chair

1. Summary of Recommendations

The recommendation requests that the American Bar Association grant reaccreditation to the Legal Professional Liability and Medical Professional Liability certification programs of the American Board of Professional Liability Attorneys, and the Elder Law program of the National Elder Law Foundation, and withdraw accreditation from the Accounting Professional Liability certification program of the American Board of Professional Liability Attorneys. These programs have been reviewed under procedures adopted by the Standing Committee on Specialization in accordance with the Standards for such programs adopted and authorized by the House of Delegates in February 1993.

2. Approval by Submitting Entity

At its meeting on November 9, 2007, the Standing Committee on Specialization voted unanimously that it submit this recommendation to the House of Delegates for consideration at the 2008 Mid-Year Meeting.

3. Has this or a similar recommendation been submitted to the House of Board previously?

Yes. These specialty certification programs were accredited by the House of Delegates at the 1995 Mid-Year Meeting and reaccredited at the 1998 and 2003 Mid-Year Meetings. Other certification programs were accredited by the House at the 1993 and 2004 Annual Meetings, as well as at the 1996 and 2004 Mid-Year meetings. Additionally, the six lawyer certification programs that were accredited by the House at the 1993 Annual Meeting were reaccredited at the 1996, 1999, and 2004 Annual Meetings.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

At its August 1992 meeting, acting upon a recommendation proposed by 16 state and local bar associations, the House of Delegates passed a resolution calling for the Association to establish standards for accrediting private organizations that certify lawyers as specialists and to establish and maintain a mechanism to accredit such organizations that meet those standards. In February 1993, the House of Delegates adopted the Standards for Accreditation of Specialty Certification Programs for Lawyers, and delegated to the Standing Committee the task of evaluating organizations that apply to the Association for accreditation.

5. What urgency exists which requires action at this meeting of the House?

To comply timely and effectively with the House resolutions cited above.

Prompt action is necessary in order to prevent ABA accreditation of the four programs under consideration to lapse and to continue to assist the states in regulating private certifying organizations.

6. Status of Legislation

Not applicable

7. Cost to the Association

There are no unreimbursed costs associated with the reaccreditation of specialty certification programs as proposed in the recommendation. The costs associated with the reaccreditation process are defrayed by fees charged to the organizations seeking reaccreditation.

Expenses are kept to a minimum by utilizing volunteers to serve as members of the Accreditation Review Panels, which evaluate the applications for reaccreditation. Existing staff members who provide services to the Standing Committee act as program advisors and administrators. Activities requiring in-person meetings are conducted at regularly scheduled and funded meetings of the Standing Committee on Specialization. Other functions needed for the evaluation process are conducted by mail, fax and telephone conference call. Costs associated with these functions, as well as those incurred in the printing of materials, are reimbursed out of the aforementioned fees.

8. Disclosure of Interest

None

9. Referrals

This report with recommendations will be submitted to the Senior Lawyers Division, the Commission on Law and Aging and the Section of Real Property, Estate and Trust Law, Standing Committee on Medical Professional Liability, Litigation, Tort Trial and Insurance Practice Section and the General Practice, Solo and Small Firm Division.

10. Contact Person (Prior to the Meeting)

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11. Contact Person (Who will present the Report to the House)

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EXECUTIVE SUMMARY

1. Summary of Recommendation

That the American Bar Association grant reaccreditation to the Elder Law certification program of the National Elder Law Foundation, and the Legal Professional Liability and Medical Professional Liability certification programs of the American Board of Professional Liability Attorneys. Also, that the American Bar Association withdraw accreditation for the Accounting Professional Liability certification program of the American Board of Professional Liability Attorneys. These programs have been reviewed under procedures adopted by the Standing Committee on Specialization in accordance with the Standards for the Accreditation of Specialty Certification Programs for Lawyers, adopted by the House of Delegates in February 1993.

2. Summary of Issue

To respond to a need to regulate certifying organizations, the House of Delegates adopted standards for accreditation of specialty certification programs for lawyers, and delegated to the Standing Committee the task of evaluating organizations that apply to the ABA for accreditation and reaccreditation.

3. Explanation of How Proposed Policy Position Will Address Issue

The recommendation addresses the issue by implementing previous House resolutions calling on the ABA to evaluate certifying organizations that apply for accreditation and reaccreditation.

4. Summary of Minority Views or Opposition

The Standing Committee on Specialization approved the proposed recommendation unanimously. No opposition has been identified.