

*The American Association of
Social Security Disability Consultants*

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October 23, 2008

Ms. Linda S. McMahon
Deputy Commissioner for Operations
Social Security Administration
6401 Security Boulevard
Baltimore, Maryland 21235

Re: The Destruction and Alteration of Consultant Opinions, Opinions
Created Under Duress and “Doctor Shopping”

Dear Ms. McMahon,

Thank you for your thoughtful letter in response to our August 24, 2008 letter to Commissioner Astrue about the destruction and alteration of consultant opinions and related matters.

Despite the denials by the Presidents of the National Association of Disability Examiners and the National Council of Disability Determination Directors of knowledge of these problems, with two-thirds of consultants and consultants in three-fourths of the states represented in our recent survey stating that their own opinions or the opinions of other consultants had been destroyed, we have no doubt that this practice continues and is not rare. In fact, within the past week I have learned of two instances, in separate disability determination services, in which at least three documents were destroyed and one consultant was forced by end-of-line “quality” reviewers to rewrite his/her opinion twice until the decision changed from a denial to an allowance. We hold these practices to be abuses of the adjudicatory process and not in the interest of the Social Security Administration or the public.

Certainly we all want to have an adjudicatory process which is openly honest and beyond reproach. Certainly we also all agree that these issues are as important as issues such as the accuracy of decisions and the confidentiality of medical records. Therefore we ask,

Has the Social Security Administration made its position on these important issues clear in its communications to those who deal with consultants and their opinions and to the public? If not, should the Social Security Administration not make its position clear?

Has the Social Security Administration defined procedures for the creation and preservation of opinion evidence without alteration, and has the Social Security Administration published those procedures in the Code of Federal Regulations and its operations manuals?* If not, should those procedures not be defined and published?

Has the Social Security Administration included the subjects of the proper treatment of opinion evidence, avoiding the pressuring of consultants and avoiding “doctor shopping” in educational materials, such as the *Disability Examiner Basic Training Program*, in its video training or in other training materials? If not, should these subjects not be included?

Certainly we can all agree that attention to the handling of opinion evidence is important in maintaining the public’s confidence in our adjudicatory process. Is there then no better alternative than to adopt the national standard for the creation and preservation of records, practiced in over 5,000 hospitals in the United States and countless nursing homes, clinics, laboratories and government entities, which requires that writings placed in records remain in the records permanently without alteration and that changes be recorded as additions to the records? Is it not most reasonable to ask that consultants never be pressured to produce opinions in order to create specific outcomes or threatened because of their allowance or denial rates?

Realizing our mutual interest in having an honest and open adjudicatory process, I and the members of the American Association of Social Security Disability Consultants look forward to working with you and the Social Security Administration in the resolution of these problems.

Sincerely yours,

Alan L. Cowles, M.D., Ph.D.
President

* POMS DI 26510.089, revised on October 17, 2008 is an exception.

cc: Commissioner Michael J. Astrue