

Add Article XI: INDEMNIFICATION

The Association shall indemnify any present or former volunteer of the Association including Directors, officers, Committee officers and Committee members as well as any present or former employees or agents of the Association, to the fullest extent possible against expenses, including attorneys' fees, judgments, fines, settlements and reasonable expenses, actually incurred by such person relating to his or her conduct as a Director, officer, Committee officer, Committee member, volunteer, employee or agent of the Association, except that the mandatory indemnification required by this sentence shall not apply (i) to a breach of the duty of loyalty to the Association; (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law; (iii) for a transaction from which such person derived an improper personal benefit; or (iv) against judgments, penalties, fines and settlements arising from any proceeding by or in the right of the Association, or against expenses in any such case, where such person shall be adjudged liable to the Association.

Service on the Board of Directors of the Association, or as an officer, Committee officer, Committee member, volunteer, employee or agent thereof, is deemed by the Association to have been undertaken and carried on in reliance by such persons on the full exercise by the Association of all powers of indemnification which are granted to it under this Article and the District of Columbia Nonprofit Corporation Act as amended from time to time. Accordingly, the Association shall exercise all of its powers whenever, as often as necessary and to the fullest extent possible, to indemnify such persons. Such indemnification shall be limited or denied only when and to the extent provided above unless the District of Columbia Nonprofit Corporation Act or other applicable legal principles limit or deny the Association's authority to so act. This Article and the indemnification provisions of the District of Columbia Nonprofit Corporation Act (to the extent not otherwise governed by controlling precedent) shall be construed liberally in favor of the indemnification of such persons.

Statement of Necessity:

In 1992, the AAPM Board of Directors approved adding an indemnification clause to the AAPM Bylaws. However, this motion was never moved forward to the Membership for approval. This was brought to the attention of the Rules Committee in 2007 which then requested input from Legal Counsel. The following was the opinion received:

“Technically, it may be unnecessary for AAPM to insert an indemnification clause into its bylaws under D.C. corporate law. D.C. Code Ann. Section 29-301.113(b) states that any person who serves as a volunteer of the corporation shall be immune from civil liability except under certain defined circumstances involving willful conduct, criminal conduct, improper personal benefits (fraud, extortion, embezzlement, etc.) and/or bad faith. The statute only applies if the non-profit corporation maintains liability insurance with coverage limits of not less than \$200K per individual claim and \$500K per total claims arising from the same occurrence. The statute does not absolve AAPM of liability

for negligent acts performed by the volunteer, it just insulates the volunteer himself or herself from direct liability.

While this statutory provision will operate to insulate any volunteers of AAPM (Committee members) if they are sued in D.C., it has no effect in other jurisdictions where other law controls. Other jurisdictions may have similar statutes in place, but that is a risk assessment that the corporation would have to make. Under contractual arrangements, AAPM could specifically require that any litigation under the contract would be governed by the laws of D.C., but in personal injury scenarios, I'm afraid that the jurisdiction of the case is pretty much out of our control. Therefore, Murray and I think that since your Board has already authorized the insertion of an indemnification clause into the governing documents, and that uncertainties exist with respect to potential liabilities in jurisdictions other than D.C., it would be prudent to go ahead and draft an indemnification clause for incorporation into the AAPM bylaws at the Board's discretion.”

Comments from the Membership:

There were no comments submitted or made during the Annual Business Meeting.