

*The American Association of
Social Security Disability Consultants*

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Mr. Michael J. Astrue, Commissioner
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 Commissioner Astrue,

For many years, disability consultants have been aware of the occasional destruction of their opinions (case assessments) by others who disagreed with their conclusions. Related problems have been the altering of opinions without the consultant’s knowledge or consent, the pressuring of consultants to produce opinions having specific conclusions, and the seeking of the opinions of specific consultants for the purpose of obtaining specific results (“doctor shopping”). We believe that these practices are inconsistent with the Social Security Administration’s interest in a fair and honest adjudicatory process and ask your help in bringing them to a halt.

In a recent survey of AASSDC medical and psychological consultants, two-thirds of the consultants responding stated that their own opinions or the opinions of other consultants had been destroyed. The survey also revealed that in 75 percent of the states represented in the survey, consultant opinions had been destroyed, and that 71 percent of consultants felt that the practice of seeking the opinions of specific consultants for the purpose of obtaining specific results (“doctor shopping”) was common. Our members indicate that practices vary a great deal from state to state.

Because there are no established methods for tracking consultant opinions generally, and because tracking the fate of a single consultant opinion can be time-consuming and at times difficult, we are not able to determine what portion of opinions have been destroyed or altered without the consultant’s knowledge or consent. At times these practices have been common and even described as “rampant.” We also have no measure of the frequency with which consultants have been pressured to allow or deny claims to influence State agency statistics, or to modify their opinions to allow or deny particular claimants.

Because the opinions of medical and psychological consultants are considered to be evi-

dence, and because the consideration of administrative findings of fact by State agency medical and psychological consultants must be treated as expert opinion evidence at later stages of review, we suspect that the destruction or surreptitious modification of the opinion of any consultant is illegal. In addition, pressuring consultants to modify their opinions to influence allowance or denial statistics, or to allow or deny specific claimants, and the practice of seeking the opinions of specific consultants for the purpose of obtaining specific results (“doctor shopping”) are manipulations of the adjudicatory process and are unfair to consultants, claimants and the public. They certainly are not in the Social Security Administration’s best interest.

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, requires that writings placed in records remain in the records permanently without alteration. When it is necessary to note changes in facts or in the opinions expressed, the records are amended but never altered or destroyed. We recommend that these practices be followed in the adjudication of disability claims.

We request that the Social Security Administration establish regulations prohibiting the destruction or alteration of medical consultant opinions, following the practices used by nearly all health care and governmental entities throughout the United States as a model. Such regulations should prohibit the pressuring of consultants or others in the formation of their opinions and discourage “doctor shopping.” The regulations should require that once finished, consultant opinions always remain as parts of the records, without alteration, and that changes be noted as additions to the records. The regulations should specify that no consultant should ever have his or her employment terminated or threatened because of his or her allowance or denial statistics. In designing suitable regulations, the members of the American Association of Social Security Disability Consultants will be happy to contribute their time and expertise.

Because consultant opinions normally become the initial and reconsideration decisions of the Social Security Administration, we consultants recognize our obligation to try to make sure that our opinions conform to all of the Social Security laws and regulations. We will continue to make every effort to create factually-based and programmatically correct decisions to the best of our abilities.

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