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(FINAL)

ETHICS ADVISORY PANEL
OPINION #93-89 REQUEST #432
Issued October 19, 1993

Attorney A represents Doctor X in various matters, including an investigating by the Board of Medical Licensure and Discipline ("the board"). Attorney B, who is not professionally affiliated with Attorney A, is serving as co-counsel with Attorney A in representing Doctor X in the matter before the board. Attorney A has learned that the board has engaged Doctor Y as an expert to review records relating to the allegations against Doctor X. Attorney A has represented Doctor Y in a number of malpractice actions and in proceedings brought by the board. Attorney A proposes that Attorney B cross-examine Doctor Y in the matter before the board and inquires as to whether this arrangement is ethically permissible.

Rule 1.7 entitled "Conflict of Interest: General Rule" provides as follows:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Under the facts of this inquiry, it does not appear to the Panel that the representation of Doctor Y is directly adverse to the representation of Doctor X, nor does it appear that the representation of Doctor X will be materially limited by Attorney A's responsibilities to

Doctor Y. The Panel therefore concludes that Rule 1.7 does not prohibit the continued representation of Doctor X by Attorney A and that Attorney B, as co-counsel, is permitted to handle the cross-examination of Doctor Y. The Panel, however, reminds Attorney A of his/her obligation not to reveal or use confidential information obtained during the representation of Doctor Y to Doctor Y's disadvantage.