

## **How Best to Respond if the USMLE Program Questions Your Passing Level Scores: Points to Consider**

The following points may help you decide how to respond to the USMLE Program's concerns about the validity of the passing level scores if you were involved with Optima University prior to your testing. You may have received a letter from the Secretariat of the United States Medical Licensing Examination which is a joint program of the Federation of State Medical Boards of the U. S., Inc. and the National Board of Medical Examiners. The letter may state that you have the right to have counsel accompany you to the hearing held by the Committee on Score Validity. This may be helpful but counsel should be consulted as soon as you are contacted by USMLE. The following demonstrates how helpful early attorney involvement may be. There are several reasons that based on our recent experience with the Committee that you should consider having an attorney help prepare your presentation and be present with you before the Committee.

They are as follows:

### 1. Importance of Experience

There are a limited number of attorneys who have ever appeared before the USMLE Committee of Score Validity or the Committee on Irregular Behavior. In Texas, we are probably the only law firm that does this type of work and have the experience of also representing doctors, attorneys, Judges, and other professionals before similar boards and panels on a national basis. Experience helps. You can see that on our website [www.bennettlawfirm.com](http://www.bennettlawfirm.com) has some specific information about our practice and the doctors, lawyers, and judges we have represented. You can also find out what other clients and attorneys have said about our representation by visiting [www.avvo.com](http://www.avvo.com) and go to the Robert S. Bennett - Houston, Texas site. We hope this information will be helpful when challenging the USMLE's assertions.

### 2. Raise questions about the United States Medical Licensing Examination Committee's assumptions

With our previous clients, we challenged the concerns and assumptions the Committee had regarding the validity of the passing level scores. We like to use an expert on statistical analysis and we try push USMLE or the Committee as to why they thought their assumptions re. The scoring or time conclusions were valid. The less variance there is in the scores the more likely there is no reason for challenging the results and thus requires less persuasion or justification. How was it determined which questions may have been compromised as opposed to simply being reused? This question is posed and should be answered favorably to the doctor whose scores are under review. If one investigates or challenges the USMLE assumptions, this may result in the opportunity to establish some points to argue that the Committee's assumptions are invalid, and thus the test

scores of the applicant are valid. An expert would also be helpful in pointing out or developing that the timing of the questions is so open to speculation that no real conclusion can be drawn from the timing results. The expert we used in our previous cases was excellent on all these points.

### 3. Presentation of expert testimony and other witnesses

One of the most important events at the hearing is the presentation of witnesses such as an MD or character witness. With all that the examinee needs and wants to explain at the hearing and the preparation necessary for questions that may be asked, does the doctor in question really want the responsibility of preparing and presenting witnesses? Even trying to find the right expert will be a lot to manage if done without professional help.

### 4. Organization of your defense

Trying to make decisions about what evidence to present, the witnesses to call and in what order, and preparing for the doctor's own cross examination is a lot to undertake. Just the order of all the evidence is a difficult decision and how this will impact the individual Committee members only comes with experience.

### 5. Dispassionate presentation

Appearing before the Committee on Score Validity, serving as both a witness and advocate, can be too much for even a seasoned attorney to undertake. The legal saying that the attorney who represents himself has a fool for a client, may also apply to the doctor who wants to be patient and physician. There may be arguments or evidentiary points that can best be made by someone whose training and experience would facilitate your presentation before the committee on score validity.

### 6. Stipulation of Facts and Agreement on Admission of documents

Objections can be made to documents and witnesses. If one does not have the training on how to do this, how does one know how to do it? Disclosure and candor are of the utmost importance in building rapport with the Committee, but, there is also a need to be prepared to oppose evidence and witnesses. This should be done in a diplomatic manner.

### 7. Personal Relationships

An attorney who has done administrative hearings and especially knows the staff of USMLE can streamline the presentation and try to remove any hostility or awkwardness that may be present. The professional relationship between the Committee and experienced counsel can serve as opening to facilitate a fair and desirable outcome.

#### 8. What does hiring an attorney signal?

Most doctors do not like the legal system and probably attorneys in general even less. But let the doctor get into legal trouble and the first call is not going to be the chief of staff. The USMLE is charged with making sure that tests are valid and ultimately with the protection of the profession and the public. Hiring an attorney if an inquiry results simply signals the doctor's appearance is considered important with the same degree of seriousness as the volunteer doctors who serve on the Committee hearing the case. Whether it is an issue of indeterminate score or inappropriate behavior, having an attorney present shows a proactive approach to the allegations and the desire to make as professional presentation as possible.

#### 9. Emotion is a factor from start to finish

Doctors are trained to bury any sign of emotion but they are not trained to handle a situation when they are both advocate and the accused. The Examinee will be very emotional when the USMLE letter arrives challenging the test results. There is then the feeling of being overwhelmed with emotions that include anger for doing nothing wrong. Have spent years in undergraduate, graduate, medical and post medical school, and with future career and livelihood plans being decided on facts that may not be subject to the doctor's control, it is simply common sense that an attorney can alleviate some of the stress and emotion that are involved that may harm the preparation that is necessary to show what really happened.

#### 10. Special Treatment

There is in any profession - professional courtesy and issues of scheduling and preference do come up. Individuals who appear before the Committees pro se (representing themselves) may be scheduled after clients with counsel or may find it more difficult to maneuver around minor irritants or obstacles. If the desire is to continue to make progress with one's medical career, an experienced attorney who has gone down the road before can help facilitate the committee hearing process and provide a comfort level. After spending over \$100,000.00 or more to obtain the opportunity to take Steps One and Two, does a few thousand more sound unreasonable to facilitate not having to repeat the exams.