

# Schedule A

## PROCEDURAL BACKGROUND

1. On April 18, 2003, the defendants served a subpoena on the American Academy of Professional Coders (“AAPC”) compelling the production of documents related to, *inter alia*, the AAPC’s “professional standards regarding the proper use of CPT codes,” “[a]ll educational and course materials that [the AAPC] have developed or utilized,” and “[a]ll documents concerning the incorrect use of CPT codes and CPT modifiers.” A copy of defendants’ subpoena is attached hereto as Exhibit 1.<sup>1</sup>

2. On June 2, 2003, defendants filed a motion to compel the production of documents covered by the defendants’ April 18, 2003, subpoena. A copy of defendants’ motion is attached hereto as Exhibit 3.

3. On July 18, 2003, the Special Master conducted a hearing concerning the defendants’ motion to compel. Counsel for the AAPC, Brenda L. Flanders, failed to appear at the hearing despite being informed of the hearing date, time, and teleconferencing logistics by the Special Master and by defendants’ counsel.<sup>2</sup>

4. On July 28, 2003, the Special Master issued an R&R recommending that “this court grant defendants’ motion to compel full compliance with [defendants’] subpoena.” A copy of the R&R is attached hereto as Exhibit 4.<sup>3</sup> The Court adopted the Special Master’s R&R on August 21, 2003 (D.E. 2267).

5. On September 15, 2003, defendants moved for sanctions against the AAPC for its failure to comply with the Special Master’s July 28 R&R and requested a

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<sup>1</sup> Defendants also served a subpoena *ad testificandum* on September 5, 2003. A copy of the subpoena is attached hereto as Exhibit 2.

<sup>2</sup> The Special Master’s and defendants’ unavailing attempts to secure the participation of counsel for the AAPC, Brenda L. Flanders, at the hearing are chronicled in the July 28, 2003 R&R. *See* Exhibit 4 at 2 n.1 & 4-5.

<sup>3</sup> Defendants’ extensive efforts to secure voluntary compliance from the AAPC are detailed in the R&R at pages 2-5.

discovery deposition of the AAPC to help determine what documents the AAPC has in its care, custody or control that are responsive to the subpoena but that have not been produced to the defendants. A copy of defendants' motion is attached hereto as Exhibit 5.<sup>4</sup>

6. On October 6, 2003, the Special Master conducted a hearing on defendants' motion for sanctions. A copy of the hearing transcript is attached hereto as Exhibit 6.

7. On October 7, 2003, the Special Master issued an R&R granting defendants' request for a discovery deposition of the AAPC. A copy of that R&R is attached hereto as Exhibit 7. The Special Master stated in that R&R that he "agree[s] with defendants that it is difficult to believe that the AAPC has such a scarcity of records. This is aggravated by Ms Flanders' less than enthusiastic efforts to cooperate, as evidenced by her perpetual unavailability." *Id.* at 2.

8. On October 21, 2003, the defendants conducted a discovery deposition of Terrill Curtis, the Executive Director of the AAPC. A copy of the deposition transcript is attached hereto as Exhibit 8.

9. On November 11, 2003, the defendants filed a motion for sanctions against the AAPC for its continuing violations of the Court's August 21, 2003, Order requiring the AAPC's full compliance with its subpoena in light of the testimony provided by Ms. Curtis during the discovery deposition. A copy of defendants' motion is attached hereto as Exhibit 9.

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<sup>4</sup> On or about August 25, 2003, the AAPC made a limited production to the defendants of its 2003 Study Guides and approximately 35 additional pages of other documents. The vast majority of these documents fell outside the "covered period" of the subpoena, which extends from August 4, 1990 to September 30, 2002. *See* Exhibit 5 at 8-9.

10. On November 13, 2003, the AAPC filed its Reply to the defendants' motion for sanctions, in which the AAPC claimed to be in full compliance with the subpoena. A copy of the AAPC's Reply is attached hereto as Exhibit 10.

11. On November 17, 2003, defendants contacted the AAPC concerning the existence of documents related to the AAPC's Ethics Committee, which "serve[s] as an advisory committee to screen and provide review functions for issues or potential issues that may appear 'unprofessional or unethical' according to the Mission Statement of AAPC or the Code of Ethics." A copy of this letter is attached as Exhibit 11.

12. On December 2, 2003, defendants filed a request for costs associated with the discovery deposition because of the inconsistencies between Ms. Curtis' testimony she gave at the discovery deposition and that she gave in other proceedings. A copy of defendants' motion is attached as Exhibit 12.

13. After further attempts to secure documents identified during the deposition of Ms. Curtis, the defendants filed a motion on December 10, 2003, to compel a site visit of the AAPC headquarters.<sup>5</sup> A copy of the defendants' motion is attached hereto as Exhibit 14.

14. On December 17, 2003, the AAPC filed its opposition to the defendants' motion.<sup>6</sup> A copy of defendants' reply is attached hereto as Exhibit 16.

15. The Special Master conducted a hearing on the defendants' motion on December 17, 2003.

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<sup>5</sup> At the urging of the Special Master, the parties attempted to negotiate the terms of a voluntary site visit. Copies of the relevant correspondence are attached hereto as Exhibit 13.

<sup>6</sup> The Special Master ordered the AAPC to file its Reply "no later than Tuesday December 16, 2003." *See* E-mail from Rodolfo Sorondo, dated Dec. 10, 2003, attached hereto as Exhibit 15. As noted above, the AAPC filed its response late without seeking the consent of the Special Master or the defendants.

16. On December 19, 2003, the Special Master issued an R&R concerning the protocols for a site visit of the AAPC headquarters in Salt Lake City, Utah. A copy of the Special Master's R&R is attached hereto as Exhibit 17.

17. On December 22, 2003, the defendants sent the AAPC a letter requesting dates for the site visit. A copy of the defendants' letter is attached hereto as Exhibit 18.

18. On December 22, 2003, the AAPC sent a letter to defendants stating that the AAPC would be "filing an objection to any recommendation regarding an on-site visit." A copy of the AAPC's letter is attached hereto as Exhibit 19.

19. On December 22, 2003, defendants sent the AAPC a letter informing it that the Court set a hearing for January 5, 2004 (D.E. 2723) in order to entertain all objections to any pending R&Rs. A copy of this letter is attached hereto as Exhibit 20.

20. On January 5, 2004, the AAPC failed to appear at the hearing to register any objections to the R&R. The relevant portion of the hearing transcript is attached hereto as Exhibit 21.

21. On January 6, 2004, the AAPC apparently sent its "Motion for Reconsideration and/or Objection to Report and Recommendation" directly to the "Clerk of the Courts for Honorable Federico A. Moreno." A copy of the AAPC's filing is attached hereto as Exhibit 22.

22. On January 8, 2004, the defendants sent a letter to the AAPC in an attempt to schedule a site visit since the AAPC "failed to either appear at the [January 5] hearing or register any objections" to the Special Master's December 19, 2003, R&R. A copy of this letter is attached hereto as Exhibit 23. Defendants received no response to this letter.

23. On January 16, 2004, the defendants contacted the AAPC in an attempt to schedule the site visit contemplated by the Special Master's December 19, 2003, R&R. At this time, the AAPC stated that the AAPC had filed an objection to that R&R and would not schedule such a site visit until the matter is resolved. On that day, the AAPC transmitted a copy of its objection to defendants.

24. On January 20, 2004, defendants filed an Emergency Motion for Extension of Time to Reply to the American Academy of Professional Coders' Motion for Reconsideration and/or Objection to the Special Master's Report and Recommendation (D.E. 2823). This motion was still pending at the time this Reply was filed.

25. On January 20, 2004, the Court entered a Notice of Filing concerning the AAPC's January 26, 2004 objection (D.E. 2834).<sup>7</sup>

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<sup>7</sup> The Court also filed an Order Directing Brenda L. Flanders, Esq. to File Motion to Appear *Pro Hac Vice* on January 20, 2004 (D.E. 2833).