REPORT OF THE BOARD OF TRUSTEES

B of T Report 11 - A-07

Subject: Recommendations to Modify AMA Policy to Ensure Inclusion for Transgender Physicians, Medical Students and Patients

Presented by: Cecil B. Wilson, MD, Chair

Referred to: Reference Committee on Amendments to Constitution and Bylaws (Richert E. Quinn Jr., MD, Chair)

INTRODUCTION

This report asks the House of Delegates to modify existing American Medical Association (AMA) policy prohibiting discrimination by sex, color, creed, race, religion, disability, ethic origin, national origin, and sexual orientation by adding or substituting language to ensure protection and equality relating to gender identity issues.

The Board of Trustees has approved the recommendations included in this report as presented by the AMA Advisory Committee on Gay, Lesbian, Bisexual, and Transgender (GLBT) Issues. The Advisory Committee was established in 2004 to broaden AMA member outreach and provide advice and counsel to the Board of Trustees on policy matters that bear directly on GLBT physicians, students, and patients.

The Advisory Committee conducted a thorough review of AMA policies prohibiting discrimination and recommended that modifications be made to include gender identity, citing the importance of addressing the needs of transgender patients and transgender physicians and medical students.

DISCUSSION

Transgender individuals face complex medical, psychological, and social issues. Within the health care system issues of discrimination and unique access barriers to important medical and social support services can occur. These challenges are often beyond the control of the transgender patient. As a result, transgender individuals often view themselves and/or are perceived by others as the most marginalized sector of the GLBT community and are uniquely at risk for adverse health outcomes.

Transgender physicians and medical students also may face difficulties as they progress through their medical education, post-graduate training, and subsequent professional career. The Advisory Committee has shared reports from transgender physicians and medical students who have experienced discrimination in the residency application process or in their practice environment or hospital settings, as a result of openly declaring their transgender status. These medical professionals have been unable to refer to AMA policy because of the absence of gender identity in existing policy.

1 RECOMMENDATIONS
2
3 In recent years, our AMA has strengthened policy, programming, and advocacy efforts to increase
4 diversity in the profession and the AMA, eliminate racial and ethnic health disparities, and serve
5 the varied interests of its constituents. The establishment of the Advisory Committee on GLBT
6 Issues has advanced these efforts by demonstrating AMA responsiveness to GLBT physician
7 issues, increasing member involvement, highlighting the health disparities experienced within the
8 GLBT patient population, and recommending ways for the AMA to acknowledge and address
9 those needs.
10
11 As an integral part of that process, the Board of Trustees recommends that the following be
12 adopted and the remainder of the report be filed:
13
14 1. That our AMA act on House of Delegates policies that are listed in Appendix I to this
15 report in the manner indicated (Modify Current HOD Policy) and;
16
17 2. That our AMA forward the policies that are listed in Appendix II to this report to the
18 Council on Ethical and Judicial Affairs requesting consideration of the modifications
19 indicated. (Directive to Take Action)

Fiscal Note: Staff cost estimated at less than $500 to implement.

APPENDIX I: Recommendations for Modifying Current Policies by the House of Delegates:

KEY:
Deleted sections = ~~strikethrough~~
Added language = underscore

Policy H-65.976
Nondiscriminatory Policy for the Health Care Needs of the Homosexual Population
Our AMA encourages physician practices, medical schools, hospitals, and clinics to broaden any nondiscriminatory statement made to patients, health care workers, or employees to include " sexual orientation, sex, or ~~perceived gender~~ gender identity in any nondiscrimination statement. (Res. 414, A-04)

Policy H-65.979
Sexual Orientation and/or Gender Identity **as an Exclusionary Criterion for Youth Organization.**
Our AMA asks youth oriented organizations to reconsider exclusionary policies that are based on sexual orientation or gender identity. (Res. 414, A-01)

Policy H-65.983
Nondiscrimination Policy
The AMA affirms that it has not been its policy now or in the past to discriminate with regard to sexual orientation or gender identity. (Res. 1, A-93; Reaffirmed: CCB Rep. 6, A-03)

Policy H-65.992
Continued Support of Human Rights and Freedom
Our AMA continues (1) to support the dignity of the individual, human rights and the sanctity of human life, and (2) to oppose any discrimination based on an individual's sex, sexual orientation, gender identity, race, religion, disability, ethnic origin, national origin or age and any other such reprehensible policies. (Sub. Res. 107, A-85; Modified by CLRPD Rep. 2, I-95; Reaffirmation A-00)

Policy H-180.980
Sexual Orientation and/or Gender Identity **as Health Insurance Criteria.**
The AMA opposes the denial of health insurance on the basis of sexual orientation or gender identity. (Res. 178, A-88; Reaffirmed: Sub. Res. 101, I-97)

Policy H-225.961
Medical Staff Development Plans
1. All hospitals/health systems incorporate the following principles for the development of medical staff development plans: (a) The medical staff and hospital/health system leaders have a mutual responsibility to: cooperate and work together to meet the overall health and medical needs of the community and preserve quality patient care; acknowledge the
constraints imposed on the two by limited financial resources; recognize the need to preserve the hospital/health system's economic viability; and respect the autonomy, practice prerogatives, and professional responsibilities of physicians. . . .

(h) Staff privileges for physicians should be based on training, experience, demonstrated competence, and adherence to medical staff bylaws. No aspect of medical staff membership or particular clinical privileges shall be denied on the basis of sex, race, age, creed, color, national origin, religion, disability, ethnic origin sexual orientation, gender identity or physical or mental impairment that does not pose a threat to the quality of patient care. . . (BOT Rep. 14, A-98)

Policy H-295.955
Teacher-Learner Relationship In Medical Education
The AMA recommends that each medical education institution have a widely disseminated policy that: (1) sets forth the expected standards of behavior of the teacher and the learner; (2) delineates procedures for dealing with breaches of that standard, including: (a) avenues for complaints, (b) procedures for investigation, (c) protection and confidentiality, (d) sanctions; and (3) outlines a mechanism for prevention and education. . . .Certain behaviors are inherently destructive to the teacher-learner relationship. Behaviors such as violence, sexual harassment, inappropriate discrimination based on personal characteristics must never be tolerated. Other behavior can also be inappropriate if the effect interferes with professional development. Behavior patterns such as making habitual demeaning or derogatory remarks, belittling comments or destructive criticism fall into this category. On the behavioral level, abuse may be operationally defined as behavior by medical school faculty, residents, or students which is consensually disapproved by society and by the academic community as either exploitive or punishing. Examples of inappropriate behavior are: physical punishment or physical threats; sexual harassment; discrimination based on race, religion, ethnicity, sex, age, sexual orientation, gender identity, and physical disabilities; repeated episodes of psychological punishment of a student by a particular superior (e.g., public humiliation, threats and intimidation, removal of privileges); grading used to punish a student rather than to evaluate objective performance; assigning tasks for punishment rather than educational purposes; requiring the performance of personal services; taking credit for another individual's work; intentional neglect or intentional lack of communication.
On the institutional level, abuse may be defined as policies, regulations, or procedures that are socially disapproved as a violation of individuals' rights. Examples of institutional abuse are: policies, regulations, or procedures that are discriminatory based on race, religion, ethnicity, sex, age, sexual orientation, gender identity, and physical disabilities; and requiring individuals to perform unpleasant tasks that are entirely irrelevant to their education as physicians. . . . (BOT Rep. ZZ, I-90; Reaffirmed by CME Rep. 9, A-98; Reaffirmed: CME Rep. 2, I-99)

Policy H-295.969
Nondiscrimination Toward Medical School and Residency Applicants ~~on the Basis of Sexual Orientation~~
Our AMA urges (1) the Liaison Committee on Medical Education to amend the Standards for Accreditation of Medical Education Programs Leading to the MD Degree, Part 2, Medical Students, Admissions to read: "In addition, there must be no discrimination on the basis of sex, age, race, creed, national origin, gender identity, or sexual orientation"; and (2) the Accreditation Council for Graduate Medical Education to amend the "General Essentials of Accredited Residencies, Eligibility and Selection of Residents" to read:

"There must be no discrimination on the basis of sex, age, race, creed, national origin, gender identity or sexual orientation." (Res. 12, A-89; Reaffirmed: Sunset Report, A-00)

Policy H-440.885
National Health Survey
Our AMA supports a national health survey that incorporates a representative sample of the U.S. population of all ages (including adolescents) and includes questions on sexual orientation, gender identity, and sexual behavior. (CSA Rep. 4, A-03)

Policy G-630.130
Discrimination
It is the policy of our AMA not to hold meetings or pay member, officer or employee dues in any club, restaurant, or other institution that has exclusionary policies based on gender, race, color, religion, national origin, gender identity, or sexual orientation. (Res. 101, I-90; Reaffirmed: Sunset Report, I-00; Consolidated: CLRPD Rep. 3, I-01)

Policy D-65.996
Nondiscriminatory Policy for the Health Care Needs of the Homosexual Population
Our AMA will encourage and work with state medical societies to provide a sample printed nondiscrimination policy suitable for framing, and encourage individual physicians to display for patient and staff awareness-as one example: "This office appreciates the diversity of human beings and does not discriminate based on race, age, religion, ability, marital status, sexual orientation, sex, or ~~perceived gender~~ gender identity." (Res. 414, A-04)

Policy D-295.995
Adoption of Sexual Orientation Nondiscrimination and Gender Identity in LCME Accreditation
Our AMA will urge the Liaison Committee on Medical Education to expand its current accreditation standard to include a nondiscriminatory statement related to all aspects of medical education, and to specify that the statement must address sexual orientation and gender identity. (Res. 305, A-99)

Policy D-515.997
School Violence
Our AMA will collaborate with the US Surgeon General on the development of a comprehensive report on youth violence prevention, which should include such issues as bullying, racial prejudice, discrimination based on sexual orientation or gender identity, and similar behaviors and attitudes. (CSA Rep. 11, I-99)

(**Note:** A recommendation to modify **Policy B-6.4024** was included in the Advisory Committee report to the Board and approved. However, action is no longer necessary since the policy was subsequently revised by the Council on Constitution and Bylaws, as follows: ~~To receive appeals filed by applicants who allege that they, because of sex, color, creed, race, religion, disability, ethnic origin, national origin, sexual orientation, gender identity, or age, or for any other reason unrelated to character or competence have been unfairly denied membership in a component and/or constituent association, to determine the facts in the case, and to report the findings to the House of Delegates. If the Council determines that the allegations are indeed true, it shall admonish, censure, or in the event of repeated violations, recommend to the House of Delegates that the constituent and/or component association involved be declared to be no longer a constituent and/or component~~

~~member of the AMA;~~ **The revised language (6.524) is as follows:** To receive appeals filed by applicants who allege that they, because of sex, color, creed, race, religion, disability, ethnic origin, national origin, sexual orientation, gender identity, or age, or for any other reason unrelated to character or competence have been unfairly denied membership in a component and/or constituent association, to determine the facts in the case, and to report the findings to the House of Delegates. If the Council determines that the allegations are indeed true, it shall admonish, censure, or in the event of repeated violations, recommend to the House of Delegates that the constituent and/or component association involved be declared to be no longer a constituent and/or component member of the AMA;)

APPENDIX II: Recommended Modifications for Consideration by the Council on Ethical and Judicial Affairs:

KEY:
Deleted sections = ~~strikethrough~~
Added language = underscore

Policy E-9.03
Civil Rights and Professional Responsibility
Opportunities in medical society activities or membership, medical education and training, employment, and all other aspects of professional endeavors should not be denied to any duly licensed physician because of race, color, religion, creed, ethnic affiliation, national origin, sex, sexual orientation, gender identity, age, or handicap. (IV) Issued prior to April 1977; Updated June 1994.

Policy E-10.05
Potential Patients
(1) Physicians must keep their professional obligations to provide care to patients in accord with their prerogative to choose whether to enter into a patient-physician relationship. (2) The following instances identify the limits on physicians' prerogative: (a) Physicians should respond to the best of their ability in cases of medical emergency (Opinion 8.11, "Neglect of Patient"). (b) Physicians cannot refuse to care for patients based on race, gender, sexual orientation, gender identity, or any other criteria that would constitute invidious discrimination (Opinion 9.12, "Patient-Physician Relationship: Respect for Law and Human Rights"), nor can they discriminate against patients with infectious diseases (Opinion 2.23, "HIV Testing"). . . Greater medical necessity of a service engenders a stronger obligation to treat. (I, VI, VIII, IX) Issued December 2000 based on the report "Potential Patients, Ethical Considerations," adopted June 2000. Updated December 2003. * Considerations in determining an adequate level of health care are outlined in Opinion 2.095, "The Provision of Adequate Health Care."

Policy E-9.12
Patient-Physician Relationship: Respect for Law and Human Rights
The creation of the patient-physician relationship is contractual in nature. Generally, both the physician and the patient are free to enter into or decline the relationship. A physician may decline to undertake the care of a patient whose medical condition is not within the physician's current competence. However, physicians who offer their services to the public may not decline to accept patients because of race, color, religion, national origin, sexual orientation, gender identity, or any other basis that would constitute invidious discrimination. Furthermore, physicians who are obligated under pre-existing contractual arrangements may not decline to accept patients as provided by those arrangements. (I, III, V, VI) Issued July 1986; Updated June 1994.