Your Reference Committee recommends the following consent calendar for acceptance:

RECOMMENDED FOR ADOPTION

1. Board of Trustees Report 15 – Specialty Society Representation in the House of Delegates – Five-Year Review
2. Council on Ethical and Judicial Affairs Report 1 – Competence, Self-Assessment and Self-Awareness
3. Council on Ethical and Judicial Affairs Report 3 – Amendment to E-2.2.1, “Pediatric Decision Making”
5. Resolution 002 – Protecting the Integrity of Public Health Data Collection

RECOMMENDED FOR ADOPTION AS AMENDED

6. Resolution 001 – Support of a National Registry for Advance Directives
7. Resolution 003 – Mental Health Issues and Use of Psychotropic Drugs for Undocumented Immigrant Children
8. Resolution 004 – Opposing the Detention of Migrant Children
9. Resolution 005 (Late Resolution 1001) – Affirming the Medical Spectrum of Gender

RECOMMENDED FOR REFERRAL


RECOMMENDED FOR NOT ADOPTION

(1) BOARD OF TRUSTEES REPORT 15 – SPECIALTY
SOCIETY REPRESENTATION IN THE HOUSE OF
DELEGATES – FIVE-YEAR REVIEW

RECOMMENDATION:

Madam Speaker, your Reference Committee recommends
that the recommendations in Board of Trustees Report 15
be adopted and the remainder of the report be filed.

Board of Trustees Report 15 presents the completed review of the specialty organizations
seated in the House of Delegates (HOD) that were scheduled to submit information and
materials for the 2018 American Medical Association (AMA) Interim Meeting in compliance

Board of Trustees Report 15 was introduced by the Board of Trustees, and no further testimony was offered. Your Reference Committee recommends that Board of Trustees Report 15 be adopted.

(2) COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS
REPORT 1 – COMPETENCE, SELF-ASSESSMENT AND
SELF-AWARENESS

RECOMMENDATION:

Madam Speaker, your Reference Committee recommends
that the recommendations in Council on Ethical and Judicial Affairs Report 1 be adopted and the remainder of the report be filed.

Council on Ethical and Judicial Affairs Report 1 examines physicians’ ethical responsibility of commitment to competence and is concerned with a broader notion of competence that deals with a physician’s wisdom and judgment about their own ability to provide safe, high-quality care “in the moment.” The report notes certain influences on clinical reasoning such as heuristics, habits of perception and overconfidence can lead to problems in effective reasoning. Hence, it is important for physicians to develop an informed self-assessment that leads to self-awareness of a physician’s own ability to practice safely in the moment and develop a “mindful practice” over the course of their lifetime to ethically maintain competence. The report proposes guidance to this end.
Your Reference Committee heard testimony that was largely supportive of Council on Ethical and Judicial Affairs Report 1. Hesitations were raised regarding circumstances in which physicians no longer possess the self-awareness to accurately assess their own competence, such as in the case of impairment. Testimony argued that impaired physicians should not be considered to be acting unethically. While your Reference Committee is sensitive to these concerns, its judgment is that these issues are duly addressed both by section (f) in the recommendations of this report as well as Opinion E-9.3.2 “Physician Responsibilities to Impaired Colleagues”. Therefore, your Reference Committee recommends that Council on Ethical and Judicial Affairs Report 1 be adopted as written.

(3) COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS
REPORT 3 – AMENDMENT TO E-2.2., “PEDIATRIC DECISION MAKING”

RECOMMENDATION:

Madam Speaker, your Reference Committee recommends that the recommendations in Council on Ethical and Judicial Affairs Report 3 be adopted and the remainder of the report be filed.

This report provides ethics guidance for physicians in relation to the concerns expressed in Resolution 3-A-16, “Supporting Autonomy for Patients with Differences in Sex Development (DSD),” responding to Board of Trustees Report 7-I-16 of the same title, and Resolution 13-A-18, “Opposing Surgical Sex Assignment of Infants with Differences of Sex Development. Council on Ethical and Judicial Affairs Report 3 recommends that Opinion E-2.2.1, “Pediatric Decision Making,” be amended in lieu of Resolution 3-A-16 and 13-A-18, and provides guidance to physicians on providing compassionate, humane care to all pediatric patients, while negotiating with parents/guardians to develop a shared understanding of the patient’s medical and psychosocial needs and interests in the context of family relationships and resources. The report considers the continuum of pediatric decision-making between interventions about which there is consensus in the professional community, whose benefits are significant and significantly outweigh the risks they pose, and decisions that carry significant risks of harm or about which currently available evidence suggests offer little prospect of clinical benefit or cannot be reasonably expected to achieve the intended goal. The report also considers whether decisions about DSD should be different from other decisions, and advises seeking a shared understanding of goals for care in creating treatment plans that respect the unique needs, values and preferences of pediatric patients and their families.

Testimony on Council on Ethical and Judicial Affairs Report 3 was largely supportive. Critical testimony noted that much of the language of the report was satisfactory, but felt that it lacked adequate language addressing the care of intersex patients. Testimony suggested that the bulleted points on pages 5 and 6 of the report on the topic of decision-making in these circumstances would assuage concerns if it was adopted in the recommendation. All other groups and individuals who testified were satisfied with this report. Additionally, there were several personal testimonies of individuals and families directly affected by congenital adrenal hyperplasia (CAH). These individuals felt that their experiences with shared decision-making were the right choice for them and that surgical
treatment decisions were created together with their medical team in contrast to considering such surgeries to be “medically sanctioned violence.” Your Reference Committee noted the majority of testimony was in support of this report and that the report created a very balanced and appropriately broad view of pediatric decision making, one that is applicable beyond those issues related only to intersex and DSD. Therefore, your Reference Committee recommends that Council on Ethical and Judicial Affairs Report 3 be adopted and the remainder of the report be filed.

(4) COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS

REPORT 5 – PHYSICIANS’ FREEDOM OF SPEECH

RECOMMENDATION:

Madam Speaker, your Reference Committee recommends that the recommendations in Council on Ethical and Judicial Affairs Report 5 be adopted and the remainder of the report be filed.

Council on Ethical and Judicial Affairs Report 5 responds to referred Resolution 6-I-17, “Physician’s Freedom of Speech,” which asks the AMA to amend Opinion E-1.2.10, “Political Action by Physicians.” This report references Opinions within the Code of Medical Ethics that provide guidance with respect to physicians’ rights to express themselves on matters of social and political importance and underscores physicians’ rights to due process when their conduct is subjected to disciplinary review. The report also notes that constitutional protection for “freedom of speech” does not apply to private places of employment, and that private employers generally have the power to terminate an employee because of the employee’s speech. The Council views the situation of physicians who express personal views on political and social issues online like that of physicians who participate professionally in the media; physicians should recognize that even when they speak personally, they are likely to be viewed by the public through the lens of their professional status and relationships with health care institutions. The report recommends that Resolution 6-I-17 not be adopted.

The only testimony heard on Council on Ethical and Judicial Affairs Report 5 was given by the authors of the original resolution, who suggested referral. Your Reference Committee concluded that resolution 6-I-17 is calling for an amendment to ethics policy by making an argument grounded on concerns of First Amendment constitutional rights, which your Reference Committee believes to be a constitutional issue rather than an ethical issue. Further, the resolution’s recommendation is one framed as a constitutional issue of “Freedom of Speech,” but more accurately reflects employment law as the grievance described is one between physicians and their employers and not one of government restrictions of physician speech. Therefore, your Reference Committee recommends that CEJA Report 3 be adopted, but if the authors of Resolution 6-I-17 wish to create House policy, they may submit a new resolution.
(5) RESOLUTION 002 – PROTECTING THE INTEGRITY OF PUBLIC HEALTH DATA COLLECTION

RECOMMENDATION:

Madam Speaker, your Reference Committee recommends that Resolution 002 be adopted.

Resolution 002 asks that our AMA advocate for the inclusion of demographic data inclusive of sexual orientation and gender identity in national and state surveys, surveillance systems and health registries. The resolution also asks that our AMA advocate against the removal of such demographic data from these registries without plans for updating measures of these data.

Your Reference Committee heard testimony that unanimously supported Resolution 002. Speakers noted that such data collection is essential to providing high-quality care according to evidence-based medicine, and that efforts to develop guidelines and determine best practices depend on the availability of data about the populations being treated. Your Reference Committee recommends that Resolution 002 be adopted.

(6) BOARD OF TRUSTEES REPORT 14 – PROTECTION OF PHYSICIAN FREEDOM OF SPEECH

RECOMMENDATION A:

Madam Speaker, your Reference Committee recommends that recommendation 1 in Board of Trustees Report 14 be amended by addition and deletion to read as follows:

1. That our American Medical Association strongly oppose support litigation challenging the exercise of a physician’s First Amendment right to express opinions regarding relating to medical issues (New HOD Policy)

RECOMMENDATION B:

Madam Speaker, your Reference Committee recommends that Board of Trustees Report 14 be adopted as amended and the remainder of the report be filed.

Board of Trustees Report 14 responds to Resolution 5-I-17, “Protection of Physician Freedom of Speech,” which asks that our AMA strongly oppose litigation challenging the exercise of a physician’s First Amendment right to express opinions regarding medical issues. The report recommends that AMA policy H-460.895, “Free Speech Applies to Scientific Knowledge,” be reaffirmed. The report recommends against the use of the term “good faith” in AMA policy regarding physician opinions on medical issues, as there is no simple test as to whether an opinion has been made in good faith or bad faith. Additionally, the report notes that the AMA Litigation Center is already aware of the possibility that physician members of medical societies may be sued for expressing opinions on medical
issues and is committed to taking appropriate steps to assist these societies and their members in the event of litigation.

Limited testimony supported the premise of the recommendations in Board of Trustees Report 14. Some concern was expressed about the inclusion of the phrase, “regarding medical issues,” in Recommendation 1 as it could be seen as unnecessarily restrictive or confusing. Your Reference Committee agrees that our AMA should support physicians’ right to express opinions relating to medical issues, but believes that the positive framework as amended, as opposed to opposition of litigation, more appropriately expresses the AMA’s role in these matters. Therefore, your Reference Committee recommends that Board of Trustees Report 14 be adopted as amended.

(7) RESOLUTION 001 – SUPPORT OF A NATIONAL REGISTRY FOR ADVANCE DIRECTIVES

RECOMMENDATION A:

Madam Speaker, your Reference Committee recommends that Resolution 001 be amended by addition to read as follows:

RESOLVED, that our American Medical Association advocate for the development of model legislation and the establishment and maintenance of a national, no-charge, confidential and secure method for the storage and retrieval of advance directive documents by authorized agents. (New HOD Policy)

RECOMMENDATION B:

Madam Speaker, your Reference Committee recommends that Resolution 001 be adopted as amended.

Resolution 001 asks that our AMA advocate for the establishment and maintenance of a national, no-charge, confidential and secure method for the storage and retrieval of advance directive documents by authorized agents. The resolution notes that Advanced Care Planning (ACP) improves the respect of end-of-life wishes, improves patient and family satisfaction, and is cost-effective, but also that ACP documentation varies by state and region and is often difficult to locate, as no central database for such documentation is readily available for health care providers.

Your Reference Committee heard testimony that largely supported Resolution 001. Speakers emphasized the importance of honoring patients’ preferences for end of life care, and the difficulty often faced when attempting to access this documentation across state lines or even between systems in the same geographic area. It was noted that while a number of states currently have advance directive registries, electronic health record interoperability would be essential for an effective national directory. Some concerns were raised concerning financial and legal challenges involved in creating such a directory, safeguarding the security and integrity of information within it, and ensuring that patients would be given the opportunity, if at all possible, to confirm or change advance directives.
at the point of care. Your Reference Committee agreed that the development of model legislation would aid in accomplishing the goal of the resolution. Thus, your Reference Committee recommends that Resolution 001 be adopted as amended.

(8) RESOLUTION 003 – MENTAL HEALTH ISSUES AND USE OF PSYCHOTROPIC DRUGS FOR UNDOCUMENTED IMMIGRANT CHILDREN

RECOMMENDATION A:

Madam Speaker, your Reference Committee recommends that the first Resolve in Resolution 003 be amended by addition and deletion to read as follows:

RESOLVED, That our American Medical Association officially object to policies separating undocumented immigrant parents and/or guardians from children, as well as allowing policies that prohibit unaccompanied undocumented minors access to the U.S. (New HOD Policy); and be it further

RECOMMENDATION B:

Madam Speaker, your Reference Committee recommends that the second Resolve in Resolution 003 be amended by addition and deletion to read as follows:

RESOLVED, That our AMA condemn only support the practice of administering psychotropic drugs to immigrant children without when there has been evaluation by appropriate medical personnel, and with parental or guardian consent or court order except in the case of imminent danger to self or others (New HOD Policy); and be it further

RECOMMENDATION C:

Madam Speaker, your Reference Committee recommends that the third Resolve in Resolution 003 be amended by addition and deletion to read as follows:

RESOLVED, That our AMA support a position whereby federal immigration officials would become more aware of the emotional decompensation in this immigrant population, with the establishment of policies designed to decrease stress and emotional trauma. (New HOD Policy)

RESOLVED, That our AMA (1) support education for immigration officials regarding increased risk of sexual assault and sexual trauma amongst unaccompanied minor
immigrant children, as well as the emotional
decomposition in this immigrant population due to these
abuses and other traumas, and (2) encourage policies
designed to decrease incidence of sexual assault, increase
reporting and timely access to treatment services, and
decrease stress and emotional trauma.

RECOMMENDATION D:

Madam Speaker, you Reference Committee recommends
that Resolution 003 be adopted as amended.

Resolution 003 asks that our AMA officially object to policies separating undocumented
immigrant parents/guardians from their children, as well as allowing unaccompanied
minors access to the United States. The resolution also urges our AMA to condemn the
practice of administering psychotropic drugs to immigrant children without parental or
guardian consent or court order, except in cases of imminent danger to self or others. In
addition, the resolution asks our AMA to support a position whereby federal immigration
officials become more aware of emotional decompensation in this immigrant population
with the establishment of policies designed to decrease stress and emotional trauma.

Testimony reflected almost unanimous support of the spirit of Resolution 003, with
speakers emphasizing the trauma experienced by both parents and children when the
family is separated. Amendments were offered to clarify the intent of the first and second
Resolve clauses, particularly regarding the necessity of medical evaluation in cases when
immigrant children are administered psychotropic drugs. Your Reference Committee also
heard significant testimony regarding sexual trauma and felt that combining this into the
third Resolve clause effectively addressed

the intent of the original third Resolve as well as these additional concerns. Your
Reference Committee recommends that Resolution 003 be adopted as amended.

(9) RESOLUTION 004 – OPPOSING THE DETENTION OF
MIGRANT CHILDREN

RECOMMENDATION:

Madam Speaker, your Reference Committee recommends
that the third Resolve in Resolution 004 be amended by
addition and deletion to read as follows:

RESOLVED, That our AMA urge that continuity of care for
all migrant children released from such detention facilities,
be provided with indicated follow-up health care to ensure
their welfare following these experiences. (New HOD
Policy)

Resolution 004 asks that our AMA oppose the separation of migrant children from their
families and any effort to end or weaken the Flores Settlement, which requires the U.S.
government to release undocumented children “without unnecessary delay” when
detention is not required for the protection and safety of that child, and that those children that remain in custody must be placed in the “least restrictive setting” possible. The resolution also asks our AMA to support the humane treatment of all undocumented children by advocating for regular, unannounced auditing of the medical conditions and services at all detention facilities by a non-governmental third party with medical expertise in the care of vulnerable children. Additionally, the resolution requests that our AMA urge that all children released from such detention be provided with indicated follow-up health care to ensure their welfare following these experiences.

Your Reference Committee heard widespread support for Resolution 004, focusing on the goal of ensuring quality health care for all patients in confined settings and the scrutiny of detention centers in general. A suggestion for referral was made in light of the complexity of the treatment of migrant children. However, due to the urgent nature of the Flores Settlement currently being threatened, your Reference Committee developed amended language in lieu of referral. Therefore, your Reference Committee recommends that Resolution 004 be adopted as amended.

(10) RESOLUTION 005 (LATE RESOLUTION 1001) – AFFIRMING THE MEDICAL SPECTRUM OF GENDER

RECOMMENDATION A:

Madam Speaker, your Reference Committee recommends that the second resolve in Resolution 005 be amended by addition and deletion to read as follows:

RESOLVED, That our AMA oppose any effort to prohibit the reassignment of an individual’s sex. (New HOD Policy)

RESOLVED, That our AMA oppose any efforts to deny an individual’s right to determine their stated sex marker or gender identity. (New HOD Policy)

RECOMMENDATION B:

Madam Speaker, your Reference Committee recommends that Resolution 005 be adopted as amended.

Resolution 005 asks that AMA Policy D-295.312, “Medical Spectrum of Gender,” be amended. The resolution asks our AMA to educate state and federal policymakers and legislators on and advocate for policies addressing the medical spectrum of gender identity to ensure access to quality health care. The resolution also asks that our AMA affirm that an individual’s genotypic sex, phenotypic sex, sexual orientation, gender and gender identity are not always aligned or indicative of the other, and that gender for many individuals may differ from the sex assigned at birth.

Testimony for Resolution 005 offered nearly unanimous support, with speakers noting the ongoing difficulties faced by transgender individuals and how an improved social and structural support system might ameliorate some of those difficulties. Testimony suggested that any proposal to limit or narrow the definition of sex would lead to public
health consequences, and that it is essential to acknowledge that gender is fluid and that
gender identity does not always match sex at birth. Some speakers noted that the original
phrasing of the second resolve may have been problematic, and the above amendments
were offered and supported by subsequent speakers. Your Reference Committee
recommends that Resolution 005 be adopted as amended.

(11) COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS
REPORT 2 – STUDY AID-IN-DYING AS END-OF-LIFE
OPTION / THE NEED TO DISTINGUISH “PHYSICIAN-
ASSISTED SUICIDE” AND “AID-IN-DYING”

RECOMMENDATION:

Madam Speaker, your Reference Committee recommends
that Council on Ethical and Judicial Affairs Report 2 be
referred.

Aid-in-Dying as End-of-Life Option,” and Resolution 14- A-17, “The Need to Distinguish
between ‘Physician-Assisted Suicide’ and ‘Aid in Dying’.” Resolution 15-A-15 asks that the
Council on Ethical and Judicial Affairs study medical aid-in-dying and make a
recommendation regarding the AMA taking a neutral stance; Resolution 14-A-17 asks that
AMA define and clearly distinguish “physician assisted suicide” and “aid in dying” for use
in all AMA policy and position statements. This report holds that the terms ‘aid in dying’
and ‘physician-assisted suicide’ reflect different ethical perspectives. The Council finds
“physician assisted suicide” to be the most precise term and urges that it be used by the
AMA. Importantly, the report explains that there are irreducible differences in moral
perspectives regarding the issue of physician-assisted suicide, such that both sides share
common commitment to “compassion and respect for human dignity and rights” (see
Principle I of the AMA Principles of Medical Ethics), but draw different moral conclusions
from these shared commitments. The report considers the risks of unintended
consequences of physician-assisted suicide, noting that there is debate about the
available data. The report argues that where physician-assisted suicide is legal,
safeguards can and should be improved to mitigate risk. The report further notes that too
often physicians and patients do not have the conversations they should about death and
dying and that physicians should be skillful in engaging in these difficult conversations and
knowledgeable about the options available to terminally ill patients. The report concludes
that in existing opinions on physician-assisted suicide and the exercise of conscience, the
Code of Medical Ethics offers sufficient guidance to support physicians and the patients
they serve in making well-considered, mutually respectful decisions about legally available
options for care at the end of life while respecting the intimacy of a patient-physician
relationship. Thus, the report recommends that the Code not be amended, and that

Your Reference Committee heard extensive mixed testimony regarding Council on Ethical
and Judicial Affairs Report 2. There was broad agreement that the Council had written a
strong report that thoroughly examines the issues under consideration, including focusing
on the shared values of care, compassion, respect, and dignity. Testimony offered a great
deal of support for keeping the current Code unchanged. However, your Reference
Committee also heard a significant amount of testimony questioning whether the
conclusions of the report were supported by its body, specifically urging reexamination of
opinion E-5.7, which states that, “physician-assisted suicide is fundamentally incompatible
with the physician’s role as healer” in order to acknowledge that physicians have other
roles beyond healer that may be incongruent with each other. Your Reference Committee
therefore recommends that Council on Ethical and Judicial Affairs Report 2 be referred.

(12) COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS
REPORT 4 – CEJA ROLE IN IMPLEMENTING H-140.837,
“ANTI-HARASSMENT POLICY”

RECOMMENDATION:

Madam Speaker, your Reference Committee recommends
that the recommendations in Council on Ethical and Judicial
Affairs Report 4 not be adopted.

Council on Ethical and Judicial Affairs Report 4 recommends that provision (3) of AMA
Policy H-140.837, “Anti-Harassment Policy,” be rescinded and that the process for
implementing the AMA’s anti-harassment policy be referred to the Board of Trustees for
further study. At the 2018 Annual Meeting, the House of Delegates adopted with
amendment Board of Trustees Report 20-A-18, “Anti-Harassment Policy,” giving the
Council on Ethical and Judicial Affairs the authority and responsibility to take disciplinary
action regarding allegations of harassment during meetings associated with the AMA. The
report notes that the Council on Ethical and Judicial Affairs believes promoting safe
engagement among all attendees during professional meetings affiliated with the AMA is
an urgent organizational responsibility. However, the responsibility to adjudicate
allegations of harassment is qualitatively different from the Council on Ethical and Judicial
Affairs’ normal judicial function and demands a different set of skills. The Council also
expressed doubt that it possessed the resources or flexibility necessary to carry out this
new role effectively, and is concerned that such a role could undermine confidence in the
Council, to the detriment of both its judicial and policy work.

Your Reference Committee heard generally negative testimony on Council on Ethical and
Judicial Affairs Report 3. Speakers suggested that the judicial function assigned to the
Council on Ethical and Judicial Affairs in AMA Policy H-140.837 is not unreasonable given
the Council’s role as outlined in AMA Bylaws. Testimony also questioned the Council’s
concern about a potential investigatory role, noting that such activities would be conducted
by the Human Resources of the AMA, with adjudication appropriately being handled by
the Council. Your Reference Committee acknowledges the Council on Ethical and Judicial
Affairs’ significant concerns about their ability and resources to effectively carry out the
role outlined in AMA policy as written, and strongly urges our Board of Trustees to further
examine the process. However, since adoption of this report would eliminate the only
current AMA process regarding adjudication of harassment claims at AMA meetings, your
Reference Committee recommends that Council on Ethical and Judicial Affairs Report 4
not be adopted.
Madam Speaker, this concludes the report of Reference Committee on Amendments to Constitution and Bylaws. I would like to thank Mark Ard, MD, Jayne Courts, MD, Keith E. Davis, MD, Sean Figy, MD, Dionne Hart, MD, Spiro Spanakis, DO, and all those who testified before the Committee.

Mark Ard, MD  
California

Sean Figy, MD  
Resident & Fellow Section

Jayne E. Courts, MD (Alternate)  
Michigan

Dionne Hart, MD  
Minority Affairs Section

Keith E. Davis, MD (Alternate)  
Idaho

Spiro Spanakis, DO (Alternate)  
Massachusetts

Todd M. Hertzberg, MD  
Pennsylvania
Chair