

REPORT 13 OF THE BOARD OF TRUSTEES (A-19)
Employed Physician Bill of Rights and Basic Practice Professional Standards
(Reference Committee G)

EXECUTIVE SUMMARY

At the 2018 Annual Meeting, the House of Delegates (HOD) referred Resolution 701, “Employed Physician Bill of Rights.” Resolution 701-A-18 was introduced by the Illinois Delegation and asked our AMA to adopt an extensive Employed Physician’s Bill of Rights. The HOD also referred Resolution 702-A-18, “Basic Practice Professional Standards of Physician Employment,” which was introduced by the Indiana Delegation and asked our AMA to adopt a series of best practices for physician employment contracts.

Testimony on Resolutions 701 and 702-A-18 suggested that much of the content of the resolutions is already addressed by AMA policy, and that in some cases the proposed policy positions might be inconsistent with existing AMA policy. This report compares these resolutions to the existing body of AMA policy on physician employment and related matters and provides recommendations accordingly.

The Board’s analysis found that most of the concepts set forth in Resolutions 701 and 702-A-18 are already addressed in AMA policy, and the Board recommends reaffirmation of these policies. In some cases, the proposed policies are inconsistent with existing policy. Finally, the Board’s analysis identified two themes in Resolutions 701 and 702-A-18 not addressed by existing policy—academic freedom for employed physicians and appropriate levels of administrative and clinical support—and recommends adoption of new policy in these areas.

REPORT OF THE BOARD OF TRUSTEES

B of T Report 13-A-19

Subject: Employed Physician Bill of Rights and Basic Practice Professional Standards
(Resolution 701-A-18 and Resolution 702-A-18)

Presented by: Jack Resneck, Jr., MD, Chair

Referred to: Reference Committee G
(Rodney Trytko, MD, Chair)

1 INTRODUCTION

2
3 At the 2018 Annual Meeting, the House of Delegates (HOD) referred Resolution 701, Employed
4 Physician Bill of Rights. Resolution 701 was introduced by the Illinois Delegation and asked our
5 AMA to adopt an extensive Employed Physician’s Bill of Rights. The HOD also referred
6 Resolution 702, Basic Practice Professional Standards of Physician Employment, which was
7 introduced by the Indiana Delegation and asked our AMA to adopt a series of best practices for
8 physician employment contracts. These resolutions are reproduced in full in the appendix.
9

10 Testimony on Resolutions 701 and 702-A-18 suggested that much of the content of the resolutions
11 is already addressed by AMA policy, and that in some cases the proposed policy positions might be
12 inconsistent with existing AMA policy. This report compares these resolutions to the existing body
13 of AMA policy on physician employment and related matters and provides recommendations
14 accordingly.
15

16 BACKGROUND

17
18 AMA policy on physician employment matters dates back more than two decades and covers an
19 extensive range of issues. In 2012, recognizing the growing number of physicians becoming
20 employed, the AMA consolidated and expanded this guidance in the form of the AMA Principles
21 for Physician Employment (Policy H-225.950), which have since been updated a handful of times.
22 As noted in the original preamble, the Principles “are intended to help physicians, those who
23 employ physicians, and their respective advisors identify and address some of the unique
24 challenges to professionalism and the practice of medicine arising in the face of physician
25 employment.” In addition to this body of policy, the AMA has developed a variety of resources to
26 help physicians navigate physician-employer relations, most notably its model employment
27 agreements.
28

29 RESOLUTION 701-A-18, EMPLOYED PHYSICIAN BILL OF RIGHTS

30
31 The first resolve of Resolution 701-A-18 asks the AMA to adopt an “Employed Physician Bill of
32 Rights,” the provisions of which are delineated in resolves 2-11. We discuss below the asks of each
33 resolve with respect to the AMA Principles for Physician Employment and other AMA policy.
34

35 Resolve 2 asks “That this bill of rights include the principle that compensation should be based on
36 the totality of physician activities for the organization, including but not limited to educational

endeavors and preparation, committee participation, student/resident activities and administrative responsibilities.”

Resolve 2 is addressed by Policy H-225.997, “Physician-Hospital Relationships,” which is also more nuanced than the proposed policy position:

“(4) Hospital-associated medical specialists, as well as all members of the medical staff, are expected to contribute a reasonable amount of their time, without compensation, to participation in hospital staff committee activities for the purpose of improving patient care; providing continuing education for the benefit of the medical staff; and assisting in the training of physicians and allied health personnel. Physicians who provide teaching or other services in excess of those ordinarily expected of members of the attending staff are entitled to reasonable compensation therefore.”

Resolve 3 asks “That this bill of rights include the principle that physicians have academic freedom, without censorship in clinical research or academic pursuits.”

While existing policy recognizes several areas in which employed physicians should have “freedom,” it does not explicitly address academic freedom. We therefore propose an amendment to Policy H-225.950, “AMA Principles for Physician Employment,” as follows:

“(1)(b) Employed physicians should be free to exercise their personal and professional judgement in voting, speaking and advocating on any manner regarding patient care interests, the profession, health care in the community, and the independent exercise of medical judgment. Employed physicians should not be deemed in breach of their employment agreements, nor be retaliated against by their employers, for asserting these interests. Employed physicians also should enjoy academic freedom to pursue clinical research and other academic pursuits within the ethical principles of the medical profession and the guidelines of the organization.”

Resolve 4 asks “That this bill of rights include the principle that physicians should not be solely responsible for data entry, coding and management of the use of electronic medical record systems.”

Current AMA policy does not explicitly address administrative burden on employed physicians. While physicians must ultimately take responsibility for the care of their patients, which includes documentation and other uses of the electronic medical record, they should not be burdened with such tasks to the detriment of patient care. We therefore recommend adoption of new AMA policy as follows:

Employed physicians should be provided sufficient administrative and clinical support to ensure that they can appropriately care for their patients.

Resolve 5 asks “That this bill of rights include the principle that clinical activity should be evaluated only through the peer review process and judged only by clinicians, not corporate executives.”

Resolve 5 is addressed by Policy H-225.950, “AMA Principles for Physician Employment,” and H-225.942, “Physician and Medical Staff Member Bill of Rights:”

1 H-225.905: “(5)(c) Peer review of employed physicians should be conducted independently of
2 and without interference from any human resources activities of the employer. Physicians—not
3 lay administrators—should be ultimately responsible for all peer review of medical services
4 provided by employed physicians.”

5
6 H-225.942: “(IV)(d) “individual medical staff members have “the right to be evaluated fairly,
7 without the use of economic criteria, by unbiased peers who are actively practicing physicians
8 in the community and in the same specialty.”

9
10 Resolve 6 asks “That this bill of rights include the principle that physician activities performed
11 outside of defined employed-time boundaries are the sole prerogative of the individual physician
12 and not the employer organization unless it directly conflicts with or increases risk to the
13 organization.”

14
15 AMA Policy H-225.950, “AMA Principles for Physician Employment,” recognizes two important
16 points related to Resolve 6: First, that employed physicians do in fact owe a duty of loyalty to their
17 employers, which may reasonably limit their rights to engage in activities that conflict with the
18 financial or other interests of the employer—for example, moonlighting at a competing hospital:

19
20 “(1)(a) A physician’s paramount responsibility is to his or her patients. Additionally, given that
21 an employed physician occupies a position of significant trust, he or she owes a duty of loyalty
22 to his or her employer. This divided loyalty can create conflicts of interest...which employed
23 physicians should strive to recognize and address.”

24
25 At the same time, the policy states that “employed physicians should be free to engage in volunteer
26 work outside of, and which does not interfere with, their duties as employees.”

27
28 We believe that these two statements taken together appropriately addresses the matter of
29 “physician activities performed outside of defined employed-time boundaries” and recommend no
30 amendments to existing policy. Physicians are encouraged to carefully negotiate their contract to
31 ensure their desired level of independence outside the context of employed time is protected.

32
33 Resolve 7 asks “That this bill of rights include the principle that conflict-of-interest disclosures
34 should be limited to physician activities that directly affect the organization and should only be
35 disclosed to entities that directly reimburse the physician during their employed time period.”

36
37 Resolve 7 is addressed by two provisions of Policy H-225.955, “Protection of Medical Staff
38 Members' Personal Proprietary Financial Information,” to which we recommend a clarifying edit:

39
40 “(1)(a) Physicians should be required to disclose personal financial information to the
41 hospital/health system only if they are serving or being considered to serve as a member of the
42 governing body, as a corporate officer, or as an employee/contractor of the hospital/health
43 system; and such information should be used only so that other individuals understand what
44 conflicts may exist when issues are discussed and when recusal from voting or discussion on
45 an issue may be appropriate.”

46
47 “(2) Medical staff members' personal financial information shall remain confidential except for
48 disclosure to those with a bona fide need for access to such information. The security and
49 storage of such information, including electronic and paper-based, should be at the same level
50 as that afforded to other data and files in the hospital, such as patient and peer review

1 information that enjoy confidentiality and privacy protections, including restricted access,
2 password protection and other protective mechanisms.”
3

4 Resolve 8 asks “That this bill of rights include the principle that restrictive covenants should be
5 limited only to physicians with partnership stakes in the organization and should not apply to
6 salary-based physicians.”
7

8 Resolve 8 is addressed by Ethical Opinion 11.2.3.1, “Restrictive Covenants,” and Policy H-
9 225.950, “AMA Principles for Physician Employment,” both of which discourage physicians from
10 entering into employment contracts that contain restrictive covenants, regardless of status as a
11 partner or salaried employee:
12

13 Code of Medical Ethics 11.2.3.1: “Competition among physicians is ethically justifiable when
14 it is based on such factors as quality of services, skill, experience, conveniences offered to
15 patients, fees, or credit terms. Covenants-not-to-compete restrict competition, can disrupt
16 continuity of care, and may limit access to care. Physicians should not enter into covenants
17 that: (a) Unreasonably restrict the right of a physician to practice medicine for a specified
18 period of time or in a specified geographic area on termination of a contractual relationship;
19 and (b) Do not make reasonable accommodation for patients’ choice of physician.”
20

21 H-225.950: “(g) Physicians are discouraged from entering into agreements that restrict the
22 physician’s right to practice medicine for a specified period of time or in a specified area upon
23 termination of employment.”
24

25 Resolve 9 asks “That this bill of rights include the principle that resources should be appropriately
26 allocated by the organization for continuing medical education as defined by state licensure
27 guidelines.”
28

29 Resolve 9 is inconsistent with Policy H-300.982, “Maintaining Competence of Health
30 Professionals,” which places on the physician the burden of the cost of completing continuing
31 medical education:
32

33 “(1) Health professionals are individually responsible for maintaining their competence and for
34 participating in continuing education; all health professionals should be engaged in self-
35 selected programs of continuing education. In the absence of other financial support, individual
36 health professionals should be responsible for the cost of their own continuing education.”
37

38 We note also that compensation or reimbursement for CME is a fairly common benefit of
39 employment which physicians should consider carefully as they negotiate employment contracts.
40 Refer to the AMA annotated model physician employment agreements for guidance.¹
41

42 Resolve 10 asks “That this bill of rights include the principle that employed physicians have the
43 right to the collective bargaining process as outlined in the National Labor Relations Act of 1935
44 (The Wagner Act).”
45

46 Given that collective bargaining is largely toothless without the specter of a strike, resolve 10 is
47 arguably inconsistent with Ethical Opinion 1.2.10, “Political Action by Physicians,” and Policy
48 H-383.998, “Resident Physicians, Unions and Organized Labor,” which discourage physicians

¹ These and other resources on employment contracts are available at ama-assn.org/residents-students/career-planning-resource/understanding-employment-contracts.

1 from withholding essential medical services from patients or otherwise disrupting patient care as a
2 bargaining tactic:
3

4 Code of Medical Ethics 1.2.10: “Physicians who participate in advocacy activities should: (a)
5 Ensure that the health of patients is not jeopardized and that patient care is not compromised;
6 (b) Avoid using disruptive means to press for reform. Strikes and other collection actions may
7 reduce access to care, eliminate or delay needed care, and interfere with continuity of care and
8 should not be used as a bargaining tactic. In rare circumstances, briefly limiting personal
9 availability may be appropriate as a means of calling attention to the need for changes in
10 patient care. Physicians should be aware that some actions may put them or their organizations
11 at risk of violating antitrust laws or laws pertaining to medical licensure or malpractice; (c)
12 Avoid forming workplace alliances, such as unions, with workers who do not share physicians’
13 primary and overriding commitment to patients; (d) Refrain from using undue influence or
14 pressure colleagues to participate in advocacy activities and should not punish colleagues,
15 overtly or covertly, for deciding not to participate.”
16

17 H-383.998: “Our AMA strongly advocates for the separation of academic issues from terms of
18 employment in determining negotiable items for labor organizations representing resident
19 physicians and that those organizations should adhere to the AMA's Principles of Medical
20 Ethics which prohibits such organizations or any of its members from engaging in any strike by
21 the withholding of essential medical services from patients.”
22

23 Resolve 11 asks “That this bill of rights include the principle that all physicians be empowered to
24 first be the patient’s advocate and be allowed to adhere to the spirit of the Hippocratic Oath
25 allowing patient privacy, confidentiality and continuity of a patient’s health care and dignity.”
26

27 Resolve 11 is addressed by Policy H-225.950, “AMA Principles for Physician Employment:”
28

29 H-225.950: “(2)(a) Patient advocacy is a fundamental element of the patient-physician
30 relationship that should not be altered by the health care system or setting in which physicians
31 practice, or the methods by which they are compensated.”
32

33 H-225.950: “(1)(b) Employed physicians should be free to exercise their personal and
34 professional judgment in voting, speaking, and advocating on any matter regarding patient care
35 interests, the profession, health care in the community, and the independent exercise of medical
36 judgment. Employed physicians should not be deemed in breach of their employment
37 agreements, nor be retaliated against by their employers, for asserting these interests.”
38

39 Additionally, as noted in the AMA’s history of its Code of Medical Ethics, the Code “is rooted in
40 an understanding of the goals of medicine as a profession, which dates back to the 5th century BCE
41 and the Greek physician Hippocrates, to relieve suffering and promote well-being in a relationship
42 of fidelity with the patient.”
43

44 RESOLUTION 702-A-18, BASIC PRACTICE PROFESSIONAL STANDARDS OF PHYSICIAN 45 EMPLOYMENT 46

47 Resolution 702-A-18 identifies a set of “best practices” related broadly to physician employment
48 and asks our AMA to support specific contract provisions that might improve the physician
49 experience in the employed settings:

That our American Medical Association support best practice for physician employment that will promote improved work-life balance and maximum employment adaptability and professional treatment to maintain physicians in productive medical practice and minimize physician burnout. To achieve these goals, best practice efforts in physician employment contracts would include, among other options:

1. Establishing the degree of physician medical staff support as well as specifying how different medical staff costs will be covered.
2. Establishing a specific degree of clerical and administrative support. This would include access to an EMR (electronic health record) scribe, as well as specifying how different clerical or administrative support costs will be shared/covered.
3. Providing information regarding current EMR systems and their national ranking, including user ratings and plans to improve these systems.
4. Providing work flexibility with pay and benefit implications for reduced work hours, reduced call coverage, job sharing, child care support, use of locum tenens coverage, leave of absence for personal reasons or extended duty in the military, medical service organizations or other “greater societal good” organizations.
5. Establishing an expected workload that does not exceed the mean RVU production of the specialty in that state/county/region.

While none of these aims is objectionable on its face, the creation of such a list would seem to be inconsistent with an overarching theme of AMA employment-related policy: that physicians must be free to and should exercise self-determination in employment contracting. Specifically, Policy H-225.950, “AMA Principles for Physician Employment,” avers that “Physicians should be free to enter into *mutually satisfactory* contractual arrangements, including employment, with hospitals, health care systems, medical groups, insurance plans, and other entities as permitted by law and in accordance with the ethical principles of the medical profession” (emphasis added). Furthermore, “physicians should never be coerced into employment” and “employment agreements between physicians and their employers should be negotiated in good faith,” with “both parties [being] urged to obtain the advice of legal counsel experienced in physician employment matters....”

Individual physicians must determine for themselves what they seek in employment arrangements and how they weigh these various desires. For example, some physicians may choose to forego work flexibility or smaller workload in exchange for greater compensation; others may choose to forego additional compensation to work for an organization that provides a higher level of administrative support. So long as they balance these desires in a manner that does not compromise the ethical principles of the medical profession, physicians should be free to negotiate their contracts as they see fit. Physicians are encouraged to use AMA resources in this regard, such as the AMA’s model physician employment agreements. These valuable resources include a thorough description of basic contract terms typically found in an employment agreement, an in-depth explanation of the significance of such provisions and language that benefits the physician employee, and important examples of language that may be problematic to the physician employee.

Finally, we note that some sections of Resolution 702-A-18—in particular, items 1-3—raise an issue discussed earlier in this report: appropriate levels of support for employed physicians. While physicians should be free to negotiate for their desired level of staffing, AMA should ensure that physicians are provided at least the level of staffing needed to ensure that they can deliver safe,

high-quality care to their patients. We therefore recommend adoption of new AMA policy as follows (and as presented in the discussion on Resolve 4 of Resolution 701-A-18):

Employed physicians should be provided sufficient administrative and clinical support to ensure that they can appropriately care for their patients.

CONCLUSION

The concepts set forth in Resolution 701-A-18, “Employed Physician Bill of Rights,” and Resolution 702-A-18, “Basic Professional Standards of Physician Employment,” are for the most part addressed by a variety of existing AMA policies. We recommend reaffirmation of these policies. In a few instances, the concepts set forth in Resolutions 701 and 702-A-18 are inconsistent with current policy, in which case we recommend no change in policy. Finally, we have identified two themes not addressed by existing policy—academic freedom for employed physicians and appropriate levels of administrative and clinical support—and we recommend adoption of new policy in these areas.

RECOMMENDATIONS

The Board of Trustees recommends the following be adopted in lieu of Resolution 701-A-18 and Resolution 702-A-18, and the remainder of the report be filed:

1. That our AMA reaffirm the following policies:

- H-225.950, AMA Principles for Physician Employment,
- H-225.997, Physician-Hospital Relationships,
- H-225.942, Physician and Medical Staff Member Bill of Rights,
- H-225.955, Protection of Medical Staff Members' Personal Proprietary Financial Information,
- H-300.982, Maintaining Competence of Health Professionals, and
- H-383.998, Resident Physicians, Unions and Organized Labor. (Reaffirm HOD Policy)

2. That our AMA amend policy H-225.955, Protection of Medical Staff Members' Personal Proprietary Financial Information:

“(1)(a) Physicians should be required to disclose personal financial information to the hospital/health system only if they are serving or being considered to serve as a member of the governing body, as a corporate officer, or as an employee/contractor of the hospital/health system; and such information should be used only so that other individuals understand what conflicts may exist when issues are discussed and when recusal from voting or discussion on an issue may be appropriate.” (Modify Current HOD Policy)

3. That our AMA amend policy H-225.950, AMA Principles for Physician Employment:

“(1)(b) Employed physicians should be free to exercise their personal and professional judgement in voting, speaking and advocating on any manner regarding patient care interests, the profession, health care in the community, and the independent exercise of medical judgment. Employed physicians should not be deemed in breach of their employment agreements, nor be retaliated against by their employers, for asserting these interests. Employed physicians also should enjoy academic freedom to pursue clinical

1 research and other academic pursuits within the ethical principles of the medical profession
2 and the guidelines of the organization.” (Modify Current HOD Policy)
3

- 4 4. That our AMA advocate that employed physicians should be provided sufficient administrative
5 and clinical support to ensure that they can appropriately care for their patients. (New HOD
6 Policy)

Fiscal Note: Less than \$500.

Appendix

Resolution 701-A-18, “Employed Physician’s Bill of Rights”

RESOLVED, That our American Medical Association adopt an “Employed Physician’s Bill of Rights”; and be it further

RESOLVED, That this bill of rights include the principle that compensation should be based on the totality of physician activities for the organization, including but not limited to educational endeavors and preparation, committee participation, student/resident activities and administrative responsibilities; and be it further

RESOLVED, That this bill of rights include the principle that physicians have academic freedom, without censorship in clinical research or academic pursuits; and be it further

RESOLVED, That this bill of rights include the principle that physicians should not be solely responsible for data entry, coding and management of the use of electronic medical record systems; and be it further

RESOLVED, That this bill of rights include the principle that clinical activity should be evaluated only through the peer review process and judged only by clinicians, not corporate executives; and be it further

RESOLVED, That this bill of rights include the principle that physician activities performed outside of defined employed-time boundaries are the sole prerogative of the individual physician and not the employer organization unless it directly conflicts with or increases risk to the organization; and be it further

RESOLVED, That this bill of rights include the principle that conflict-of-interest disclosures should be limited to physician activities that directly affect the organization and should only be disclosed to entities that directly reimburse the physician during their employed time period; and be it further

RESOLVED, That this bill of rights include the principle that restrictive covenants should be limited only to physicians with partnership stakes in the organization and should not apply to salary-based physicians; and be it further

RESOLVED, That this bill of rights include the principle that resources should be appropriately allocated by the organization for continuing medical education as defined by state licensure guidelines; and be it further

RESOLVED, That this bill of rights include the principle that employed physicians have the right to the collective bargaining process as outlined in the National Labor Relations Act of 1935 (The Wagner Act); and be it further

RESOLVED, That this bill of rights include the principle that all physicians be empowered to first be the patient’s advocate and be allowed to adhere to the spirit of the Hippocratic Oath allowing patient privacy, confidentiality and continuity of a patient’s health care and dignity.

Resolution 702-A-18, “Basic Practice Professional Standards of Physician Employment”

RESOLVED, That our American Medical Association support best practice for physician employment that will promote improved work-life balance and maximal employment adaptability and professional treatment to maintain physicians in productive medical practice and minimize physician burnout. To achieve these goals, best practice efforts in physician employment contracts would include, among other options:

1. Establishing the degree of physician medical staff support as well as specifying how different medical staff costs will be covered.
2. Establishing a specific degree of clerical and administrative support. This would include access to an EMR (electronic medical record) scribe, as well as specifying how different clerical or administrative support costs will be shared/covered.
3. Providing information regarding current EMR systems and their national ranking, including user ratings and plans to improve these systems.
4. Providing work flexibility with pay and benefit implications for reduced work hours, reduced call coverage, job sharing, child care support, use of locum tenens coverage, leave of absence for personal reasons or extended duty in the military, medical service organizations or other “greater societal good” organizations.
5. Establishing an expected workload that does not exceed the mean RVU production of the specialty in that state/county/region.