AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES

Resolution: 228
(A-24)

Introduced by: Missouri
Subject: Waiver of Due Process Clauses
Referred to: Reference Committee B

Whereas, the right to and access to due process protections is a fundamental right enjoyed by all employed Americans, unless specifically waived by the employee; and

Whereas, approximately half of all physicians are employed by employers that are not local, physician-owned groups; and

Whereas, many employment agreements offered to such employed physicians contain “Waiver of Due Process” clauses, which the non-physician employer has inserted to nullify the physician-employee’s due process rights; and

Whereas, by working at the patient care interface, physicians are uniquely situated to detect threats to patients’ health and well-being that have not been recognized or acknowledged by members of hospitals’ administrations; and

Whereas, hospital administrators have occasionally retaliated against physicians who have reported threats to patient or hospital worker safety in a manner that adversely impacts the physician’s employment security, income stream and access to ongoing opportunities to provide patient care, especially after within-organization reporting has failed to result in the employer addressing or resolving those threats; and

Whereas, due process protections are thus essential for physicians, because they are duty-bound to advocate for the best interest of patients and co-workers, without fear of adverse job actions on the part of their employer; and

Whereas, federal legislation proposing to ban waiver of due process provisions in the employment contracts of some physicians was introduced in the 116th Congress of the United States of America, the “ER Hero and Patient Safety Act”, also known as HR 69102, a proposed law that was not enacted; and

Whereas, the AMA House of Delegates adopted Resolution I-205-2022, advocating that our AMA work for the abolition of waiver of due process clauses in physicians’ employment agreements; and

Whereas, the AMA has since developed model state legislation on this topic, yet has not developed model federal legislation regarding this matter as had been envisioned within the “ER Hero and Patient Safety Act”; therefore be it

RESOLVED, that our American Medical Association advocate that waiver of due process clauses be eliminated from all employment agreements between employed physicians and their non-physician employers, and be declared unenforceable in physicians’ previously-executed
employment agreements between physicians and their non-physician employers that currently exist (Directive to Take Action); and be it further

RESOLVED, that our AMA will engage in advocacy for adoption of such legislation at the federal level. (Directive to Take Action)

Fiscal Note: Modest - between $1,000 - $5,000

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