Whereas, The killing of Mr. George Floyd, while he was being restrained in police custody after being arrested for alleged theft, has resulted in widespread social activism, including but not limited to protest marches and demonstrations in many areas of the United States; and

Whereas, The recent Supreme Court decision rendered in “Dobbs v. Jackson Women’s Health Organization” (“Dobbs”), which removed the constitutional protections regarding access to certain health care services (elective abortion of a pregnancy), has also been met with numerous public protests; and

Whereas, The New England Journal of Medicine published a perspective on August 24, 2022, reminding physicians, in the wake of Dobbs, of the appropriate role of professional “civil disobedience” in light of this decision; and

Whereas, Participation in such “civil disobedience” carries with it a significant risk for arrest by members of the police; and

Whereas, During the summer of 2020, police responses to protests in locales such as Portland, Oregon included arrests of protesters by officers affiliated with the Department of Homeland Security, whose uniforms did not designate the agency for which they were working (a tactic traditionally utilized only by authoritarian dictatorships); and

Whereas, After those arrests in Portland, Oregon, many of the arrested protesters were subsequently removed from the scene of the arrests in unmarked police vans that also did not reveal the agency detaining these protesters, as they were removed from the protest scene to be “booked” for criminal charges stemming from those arrests; and

Whereas, A sizable portion of Americans have demonstrated an ongoing willingness to support candidates likely to enact authoritarian measures if elected, such that occasions for civic-minded individuals to protest such measures may become more frequent; and

Whereas, The right to speak freely and to petition the government for redress of grievances is enshrined in the Constitution as part of the Bill of Rights; and

Whereas, There exists in the United States a long history of peaceful protest marches, regarding issues such as the right to join a union, civil rights, and other causes; and
Whereas, Many of these marches have been met by forceful police responses, including the use of force disproportionate to any potential threat to public safety; and

Whereas, The police have utilized techniques such as “kettling,” in which police surround peaceful protesters in a manner that precludes their dispersal and results in an arrest of them all—a technique that has subsequently resulted in arrests of citizens who have been non-violently expressing their right to free speech; and

Whereas, It is reasonable to expect that socially active physicians, while exercising their right to free speech by petitioning their governments for redress of grievances, may be arrested by police forces utilizing any number of aggressive measures of crowd control, such as but not limited to kettling; and

Whereas, Other circumstances may also ensue in which physicians are arrested during peaceful expressions of protest, in which they cannot credibly be accused of having committed any crime of violence, and

Whereas, Physicians are typically required to acknowledge any arrests, other than those for minor traffic violations, when applying for medical licensure or re-licensure, when applying for credentialing by insurance companies or federal or state agencies that provide reimbursement for the delivery of health care goods and services, or when applying for hospital medical staff privileges; and

Whereas, Such arrests can delay actions upon such physicians reasonable and proper applications for licensure, ability to be paid for services rendered, or hospital privileges; therefore be it

RESOLVED, That our American Medical Association advocate to the Federation of State Medical Boards and the various state and territorial licensure boards of the United States that state and territorial medical licensure boards must not request or require physicians who are seeking initial or continued medical licensure to reveal arrests incurred while exercising their First Amendment rights, so long as the physician did not perpetrate any act of violence (Directive to Take Action); and be it further

RESOLVED, That our AMA advocate to hospital accreditation bodies such as The Joint Commission that a new accreditation standard be developed and enforced that would expressly prohibit hospitals and hospital organizations from requesting or requiring physicians, when completing credentialing requirements by these organizations, to reveal such arrests that occurred during a physician’s non-violent exercise of the Constitutional right to free speech (Directive to Take Action); and be it further

RESOLVED, That our AMA advocate to private and public providers of health care insurance or coverage that a new accreditation standard be developed and enforced that would expressly prohibit any of these organizations involved in reimbursing physicians’ for provision of medical services from requesting or requiring, during physician credentialing or re-credentialing, that physicians reveal such arrests that occurred during a physician’s non-violent exercise of the Constitutional right to free speech (Directive to Take Action); and be it further
RESOLVED, That our AMA advocate that pleas of “nolo contendere” entered to resolve such arrests as described above also need not be revealed to any agency or organization involved in medical licensing or credentialing, so long as the physician cannot credibly be accused to have initiated a violent act against another person (Directive to Take Action); and be it further

RESOLVED, That our AMA advocate to licensure boards, hospital credentialing agencies, and the public that this exception for the disclosure of arrests does not apply to cases in which the physician has initiated a violent action without prior physical provocation, or otherwise can credibly be accused to have initiated or implicitly sanctioned an action of “battery” (unauthorized touching) against members of police and other public safety organizations (Directive to Take Action).

Fiscal Note: Not yet determined

Received: TBD

RELEVANT AMA POLICY