

AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES

Resolution: 923  
(I-23)

Introduced by: American Society for Reproductive Medicine

Subject: Eliminating Eligibility Criteria for Sperm Donors Based on Sexual Orientation

Referred to: Reference Committee K

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1 Whereas, current FDA regulations prohibit anonymous sperm donors from among men who  
2 have had sex with men (MSM) in the past five years;<sup>1</sup> and  
3  
4 Whereas, the FDA ban on men who have sex with men has been in place since 2005, and is  
5 based on data during the HIV epidemic in the 1980s and 1990s;<sup>1</sup> and  
6  
7 Whereas, donor sperm is quarantined for six months and the sperm donors are subsequently  
8 re-tested for HIV prior to releasing donor sperm for use in fertility procedures, making this ban  
9 archaic, outdated, and obsolete; and  
10  
11 Whereas, the FDA has recently eliminated its eligibility criteria for blood donation based on  
12 sexual orientation;<sup>2,3,4</sup> and  
13  
14 Whereas, there is a significant shortage of diverse sperm donors among certain racial/ethnic  
15 groups;<sup>5</sup> and  
16  
17 Whereas, in an Ethics Committee Opinion,<sup>6</sup> the American Society for Reproductive Medicine  
18 (ASRM) states that “ethical arguments supporting denial of access to fertility services on the  
19 basis of marital or sexual orientation cannot be justified;” and  
20  
21 Whereas, there is no restriction on oocyte donors based on sexual orientation; and  
22  
23 Whereas, there is no clinical reason to ban prospective sperm donors from among men who  
24 have had sex with men in the past five years; therefore be it  
25  
26 RESOLVED, that our American Medical Association work with other interested organizations to  
27 ask the US Food and Drug Administration (FDA) to eliminate its eligibility criteria for sperm  
28 donation based on sexual orientation, with a report back at I-24. (Directive to Take Action)

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

Received: 10/17/23

## REFERENCES

1. Why gay men and other groups are banned from donating sperm - The Washington Post at <https://www.washingtonpost.com/business/2022/10/20/sperm-donor-criteria/>
2. Red Cross Statement on FDA's Final Guidance Regarding Individual Donor Assessment for Blood Donation, at [https://www.redcross.org/about-us/news-and-events/press-release/2020/statement-on-updated-fda-donor-eligibility-criteria.html?adobe\\_mc=MC MID%3D57531929431274495871558106654427509693%7CMCORGID%3D723A22C757518E2C7F000101%2540AdobeOrg%7CTS%3D1696685365](https://www.redcross.org/about-us/news-and-events/press-release/2020/statement-on-updated-fda-donor-eligibility-criteria.html?adobe_mc=MC MID%3D57531929431274495871558106654427509693%7CMCORGID%3D723A22C757518E2C7F000101%2540AdobeOrg%7CTS%3D1696685365)
3. Blood Donation Eligibility for LGBTQ | Red Cross Blood Services at <https://www.redcrossblood.org/donate-blood/how-to-donate/eligibility-requirements/lgbtq-donors.html>
4. Red Cross implements end to blood donor restrictions on gay, bisexual men (axios.com), at <https://www.axios.com/2023/08/07/new-rules-blood-donation-gay-men>
5. "Diverse sperm shortage causes dilemma for some Black women: Have a baby who doesn't share your background or remain childless, at <https://www.cbsnews.com/amp/news/nationwide-shortage-diverse-sperm-donors-cryobank/>; 4/12/23, accessed 10/10/23
6. "Access to fertility treatment by gays, lesbians, and unmarried persons: a committee opinion. Ethics Committee of the American Society for Reproductive Medicine. Fertil Steril 2013; 100: 1524-7.

## RELEVANT AMA POLICY

### **Blood and Tissue Donor Deferral Criteria H-50.973**

Our AMA: (1) supports the use of rational, scientifically-based deferral periods for donation of blood, corneas, and other tissues that are fairly and consistently applied to donors according to their individual risk; (2) opposes all policies on deferral of blood and tissue donations that are not based on evidence; (3) supports a blood and tissue donation deferral period for those determined to be at risk for transmission of HIV that is representative of current HIV testing technology; (4) supports research into individual risk assessment criteria for blood and tissue donation; and (5) will continue to lobby the United States Food and Drug Administration to use modern medical knowledge to revise its decades-old deferral criteria for MSM (men who have sex with men) donors of corneas and other tissues.

### **Blood Shortage and Collection H-50.990**

In response to a continuing need for blood for transfusion and decreasing supplies of allogeneic blood, our AMA supports programs that encourage donation of blood to the allogeneic supply by health volunteer donors; and the AMA encourages physicians to participate in promotional efforts to encourage blood donation, and urges the American Blood Commission to actively participate in these programs.

### **Blood Donor Recruitment D-50.998**

1. Our AMA shall encourage the Food and Drug Administration to continue evaluating and monitoring regulations on blood donation and to consider modifications to the current exclusion policies if sufficient scientific evidence supports such changes.
2. Our AMA encourages the U.S. Food and Drug Administration to engage in dialogue with the American Association of Blood Banks and relevant stakeholders to reanalyze their therapeutic phlebotomy policies on variances, including but not limited to hereditary hemochromatosis.

### **Voluntary Donations of Blood and Blood Banking H-50.995**

Our AMA reaffirms its policy on voluntary blood donations (C-63); and directs attention to the need for adequate donor selection and post-transfusion follow-up procedures. Our AMA (1) endorses the FDA's existing blood policy as the best approach to assure the safety and adequacy of the nation's blood supply; (2) supports current federal regulations and legislation governing the safety of all blood and blood products provided they are based on sound science; (3) encourages the FDA to continue aggressive surveillance and inspection of foreign establishments seeking or possessing United States licensure for the importation of blood and blood products into the United States; and (4) urges regulatory agencies and collection agencies to balance the implementation of new safety efforts with the need to maintain adequate quantities of blood to meet transfusion needs in this country.

### **Support of Human Rights and Freedom H-65.965**

Our AMA: (1) continues to support the dignity of the individual, human rights and the sanctity of human life, (2) reaffirms its long-standing policy that there is no basis for the denial to any human being of equal rights, privileges and responsibilities commensurate with his or her individual capabilities and ethical character because of an individual's sex, sexual orientation, gender, gender identity or transgender status, race, religion, disability, ethnic origin, national origin or age; (3) opposes any discrimination based on an individual's sex, sexual orientation, gender identity, race, appearance, religion, disability, ethnic origin, national origin or age and any other such reprehensible policies; (4) recognizes that hate crimes pose a significant threat to the public health and social welfare of the citizens of the United States, urges expedient passage for appropriate hate crimes prevention legislation in accordance with our AMA's policy through letters to members of Congress; and registers support for hate crimes prevention legislation, via letter, to the President of the United States.

### **Sexual Orientation and/or Gender Identity as an Exclusionary Criterion for Youth Organization H-65.979**

Our AMA asks youth oriented organizations to reconsider exclusionary policies that are based on sexual orientation or gender identity.

#### **1.1.2 Prospective Patients**

As professionals dedicated to protecting the well-being of patients, physicians have an ethical obligation to provide care in cases of medical emergency. Physicians must also uphold ethical responsibilities not to discriminate against a prospective patient on the basis of race, gender, sexual orientation or gender identity, or other personal or social characteristics that are not clinically relevant to the individual's care. Nor may physicians decline a patient based solely on the individual's infectious disease status. Physicians should not decline patients for whom they have accepted a contractual obligation to provide care.

However, physicians are not ethically required to accept all prospective patients. Physicians should be thoughtful in exercising their right to choose whom to serve.

A physician may decline to establish a patient-physician relationship with a prospective patient, or provide specific care to an existing patient, in certain limited circumstances:

- (a) The patient requests care that is beyond the physician's competence or scope of practice; is known to be scientifically invalid, has no medical indication, or cannot reasonably be expected to achieve the intended clinical benefit; or is incompatible with the physician's deeply held personal, religious, or moral beliefs in keeping with ethics guidance on exercise of conscience.
- (b) The physician lacks the resources needed to provide safe, competent, respectful care for the individual. Physicians may not decline to accept a patient for reasons that would constitute discrimination against a class or category of patients
- (c) Meeting the medical needs of the prospective patient could seriously compromise the physician's ability to provide the care needed by his or her other patients. The greater the prospective patient's medical need, however, the stronger is the physician's obligation to provide care, in keeping with the professional obligation to promote access to care.
- (d) The individual is abusive or threatens the physician, staff, or other patients, unless the physician is legally required to provide emergency medical care. Physicians should be aware of the possibility that an underlying medical condition may contribute to this behavior.

AMA Principles of Medical Ethics: I,VI,VIII,X

The Opinions in this chapter are offered as ethics guidance for physicians and are not intended to establish standards of clinical practice or rules of law.

### **Nondiscrimination Policy H-65.983**

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.

### **Nondiscriminatory Policy for the Health Care Needs of LGBTQ Populations H-65.976**

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 gender identity" in any nondiscrimination statement.

## **8.5 Disparities in Health Care**

Stereotypes, prejudice, or bias based on gender expectations and other arbitrary evaluations of any individual can manifest in a variety of subtle ways. Differences in treatment that are not directly related to differences in individual patients' clinical needs or preferences constitute inappropriate variations in health care. Such variations may contribute to health outcomes that are considerably worse in members of some populations than those of members of majority populations.

This represents a significant challenge for physicians, who ethically are called on to provide the same quality of care to all patients without regard to medically irrelevant personal characteristics.

To fulfill this professional obligation in their individual practices physicians should:

- (a) Provide care that meets patient needs and respects patient preferences.
  - (b) Avoid stereotyping patients.
  - (c) Examine their own practices to ensure that inappropriate considerations about race, gender identity, sexual orientation, sociodemographic factors, or other nonclinical factors, do not affect clinical judgment.
  - (d) Work to eliminate biased behavior toward patients by other health care professionals and staff who come into contact with patients.
  - (e) Encourage shared decision making.
  - (f) Cultivate effective communication and trust by seeking to better understand factors that can influence patients' health care decisions, such as cultural traditions, health beliefs and health literacy, language or other barriers to communication and fears or misperceptions about the health care system.
- The medical profession has an ethical responsibility to:
- (g) Help increase awareness of health care disparities.
  - (h) Strive to increase the diversity of the physician workforce as a step toward reducing health care disparities.
  - (i) Support research that examines health care disparities, including research on the unique health needs of all genders, ethnic groups, and medically disadvantaged populations, and the development of quality measures and resources to help reduce disparities.

AMA Principles of Medical Ethics: I,IV,VII,VIII,IX

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### **Safety of Blood Donations and Transfusions H-50.975**

Our AMA:

- (1) Supports working with blood banking organizations to educate prospective donors about the safety of blood donation and blood transfusion;
- (2) Supports the use of its publications to help physicians inform patients that donating blood does not expose the donor to the risk of HIV/AIDS;
- (3) Encourages physicians to inform high-risk patients of the value of self-deferral from blood and blood product donations; and
- (4) Supports providing educational information to physicians on alternatives to transfusion