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3 Title: Oppose Criminalization of Physicians and Patients for Evidence Based  
4 Standard of Medical Care  
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6 Introduced by: Nabiha Hashmi for the Medical Student Section  
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11 Referred To: Reference Committee B  
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13 House Action: APPROVED AS AMENDED  
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16 Whereas, there has been an increase in the last few years in the number of legislative bills  
17 which interfere with a physician’s ability to make medical decisions and provide evidence-based  
18 care to their patients, and  
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20 Whereas, there are bills under review in multiple states including Texas, Georgia, Kentucky,  
21 South Dakota, South Carolina, Oklahoma, Missouri, and Colorado that seek to ban physicians from  
22 providing gender affirming care to transgender youth, in some cases designating such medical  
23 procedures a felony, and  
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25 Whereas, a bill introduced in the Ohio legislature received national attention for its efforts  
26 to dictate medical practice contradictory to science by pushing for re-implantation of ectopic  
27 pregnancy under criminal punishment for physicians who do not abide by this, and  
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29 Whereas, House Bill 1890 in the Pennsylvania legislature places additional restrictions on  
30 providers of pregnancy termination, such as an indirect requirement to file death certificates to the  
31 state for pregnancy terminations, miscarriages, and unsuccessful embryos used for IVF;  
32 furthermore, failure to do so will result in a fine or prison sentence even though it is not always  
33 possible for a medical professional to distinguish between a spontaneous and induced loss of  
34 pregnancy, and  
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36 Whereas, a campaign led by Connecticut breast cancer patient Nancy Cappello successfully  
37 lobbied for the passage of dense breast tissue legislation in 35 states, mandating that patients be  
38 notified of their dense breast tissue, as well as suggesting that they may benefit from supplemental  
39 screening; however, ACOG guidelines do not recommend alternative or adjunctive testing in  
40 women with dense breasts who are asymptomatic and have no additional risk, and  
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42 Whereas, multiple states, including Michigan, have seen increased efforts to restrict access  
43 to reproductive care, including a ban on dilation and evacuation (D&E) procedures with threat of  
44 fine and imprisonment, although the American College of Obstetrics and Gynecology (ACOG)  
45 states that these procedures result in the fewest complications compared to other methods, and  
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47 Whereas, interruption of pregnancy is a safe and legal medical procedure; however, illegal  
48 procedures to interrupt a pregnancy were a leading cause of maternal mortality in Pre-Roe  
49 America, and remain so today in countries with restrictive reproductive laws, and

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Whereas, in the U.S., states with more restrictive reproductive laws have higher rates of maternal and infant mortality, and

Whereas, most recent Centers for Disease Control and Prevention collected data from 2016, illustrated that 26,395 medically induced interruption of pregnancy procedures occurred in Michigan, the majority (60.8 percent) at eight weeks gestation or earlier, and an estimated four percent were for non-Michigan residents, and

Whereas, the patient-physician relationship is damaged by legislation that forces physicians to provide misleading or incomplete information to patients about their reproductive health options, and

Whereas, increasing the financial and logistical burden of accessing comprehensive reproductive care disproportionately disadvantages low-income individuals and people of color, and

Whereas, ACOG, American Academy of Pediatrics, American Psychiatric Association, American Osteopathic Association, American Academy of Family Physicians, and the American College of Physicians oppose legislative interference which “unnecessarily regulates the evidence-based practice of medicine and, in some cases, even criminalizes physicians who deliver safe, legal, and necessary medical care,” and

Whereas, MSMS policy states, “Patients have the right to be free from coercion in determining when and if they will submit to medical procedures...,” and

Whereas, MSMS issued a letter to the Senate Judiciary Committee in 2019 to voice concerns about Senate Bills 229 and 230 which would ban the D&E procedure due to “potential criminal penalties that could be imposed, and the concerning precedent the legislation sets with respect to interference into the sanctity and confidentiality of the physician-patient relationship,” and

Whereas, MSMS does not have policy to speak on the D&E procedure, nor to the criminalization of physicians and patients for delivering evidence-based standard of medical care; therefore be it

RESOLVED: That MSMS oppose the criminalization of physicians for delivering evidence-based standard of medical care, as well as for refusing to engage in care that is neither safe nor evidence based.

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WAYS AND MEANS COMMITTEE FISCAL NOTE: \$16,000-\$32,000 for legislative advocacy.

**Relevant MSMS Policy:**

**Physician’s Rights in Treatment Decisions**

Neither physicians, hospitals nor hospital personnel shall be required to perform any act that violates good medical judgment or is contrary to moral principles of the individual. In such circumstances, the physician or other professional may withdraw from the case as long as the withdrawal is consistent with good medical practice.

### **Determination of Medical Necessity of Medical Case Management**

The treating physician shall be the sole determinant of medical case management and medical necessity. MSMS believes that an insurer, a health care corporation or a government agency may not interfere with the patient/physician relationship by determining medical necessity or medical case management without a fair and reasonable appeals process and independent binding arbitration in a timely fashion.

### **Quality of Patient Care**

Medical services to the patient should be allocated based upon the physician's best medical judgment with regard to the patient's health and welfare. Financial consideration shall not alter the physician's best medical judgment and treatment of that patient.

### **No Constitutional Prohibition**

There should be no amendment to the Constitution of the United States that would prohibit abortion.

### **Anti-abortion Coercion**

Patients have the right to be free from coercion in determining when and if they will submit to medical procedures such as sterilization and abortion.

### **Good Samaritan Protection**

MSMS supports legal protection for doctors, nurses, and paramedical personnel who assist travelers experiencing medical problems.

### **Gender Selection**

MSMS opposes prohibiting physicians from performing abortions for women who want to terminate their pregnancy based on the gender of the fetus because MSMS opposes infringement upon the physician/patient relationship.

### **Relevant AMA Policy:**

#### **Government Interference in Patient Counseling H-373.995**

1. Our AMA vigorously and actively defends the physician-patient-family relationship and actively opposes state and/or federal efforts to interfere in the content of communication in clinical care delivery between clinicians and patients.
2. Our AMA strongly condemns any interference by government or other third parties that compromise a physician's ability to use his or her medical judgment as to the information or treatment that is in the best interest of their patients.
3. Our AMA supports litigation that may be necessary to block the implementation of newly enacted state and/or federal laws that restrict the privacy of physician-patient-family relationships and/or that violate the First Amendment rights of physicians in their practice of the art and science of medicine.
4. Our AMA opposes any government regulation or legislative action on the content of the individual clinical encounter between a patient and physician without a compelling and evidence-based benefit to the patient, a substantial public health justification, or both.
5. Our AMA will educate lawmakers and industry experts on the following principles endorsed by the American College of Physicians which should be considered when creating new health care policy that may impact the patient-physician relationship or what occurs during the patient-physician encounter: 1. Is the content and information or care consistent with the best available medical evidence on clinical effectiveness and appropriateness and professional standards of care? 2. Is the proposed law or regulation necessary to achieve public health objectives that directly affect the health of the individual patient, as well as population health, as supported by scientific evidence, and if so, are there no other reasonable ways to achieve the same objectives? 3. Could the presumed basis for a governmental role be better addressed through advisory clinical guidelines developed by professional societies? 4. Does the content and information or care allow for flexibility based on individual patient circumstances and on the most appropriate time, setting and means of delivering such information or care? 5. Is the proposed law

or regulation required to achieve a public policy goal - such as protecting public health or encouraging access to needed medical care - without preventing physicians from addressing the healthcare needs of individual patients during specific clinical encounters based on the patient's own circumstances, and with minimal interference to patient-physician relationships? 6. Does the content and information to be provided facilitate shared decision-making between patients and their physicians, based on the best medical evidence, the physician's knowledge and clinical judgment, and patient values (beliefs and preferences), or would it undermine shared decision-making by specifying content that is forced upon patients and physicians without regard to the best medical evidence, the physician's clinical judgment and the patient's wishes? 7. Is there a process for appeal to accommodate individual patients' circumstances?

6. Our AMA strongly opposes any attempt by local, state, or federal government to interfere with a physician's right to free speech as a means to improve the health and wellness of patients across the United States.

### **The Criminalization of Health Care Decision Making H-160.946**

The AMA opposes the attempted criminalization of health care decision-making especially as represented by the current trend toward criminalization of malpractice; it interferes with appropriate decision making and is a disservice to the American public; and will develop model state legislation properly defining criminal conduct and prohibiting the criminalization of health care decision-making, including cases involving allegations of medical malpractice, and implement an appropriate action plan for all components of the Federation to educate opinion leaders, elected officials and the media regarding the detrimental effects on health care resulting from the criminalization of health care decision-making.

### **Oppose the Criminalization of Self-Induced Abortion H-5.980**

Our AMA: (1) opposes the criminalization of self-induced abortion as it increases patients' medical risks and deters patients from seeking medically necessary services; and (2) will advocate against any legislative efforts to criminalize self-induced abortion.

### **Right to Privacy in Termination of Pregnancy H-5.993**

The AMA reaffirms existing policy that (1) abortion is a medical procedure and should be performed only by a duly licensed physician in conformance with standards of good medical practice and the laws of the state; and (2) no physician or other professional personnel shall be required to perform an act violative of good medical judgment or personally held moral principles. In these circumstances good medical practice requires only that the physician or other professional withdraw from the case so long as the withdrawal is consistent with good medical practice. The AMA further supports the position that the early termination of pregnancy is a medical matter between the patient and the physician, subject to the physician's clinical judgment, the patient's informed consent, and the availability of appropriate facilities.

#### **4.2.7 Abortion**

The Principles of Medical Ethics of the AMA do not prohibit a physician from performing an abortion in accordance with good medical practice and under circumstances that do not violate the law.

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