

AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES

Resolution: 217
(A-24)

Introduced by: American Society for Reproductive Medicine, American College of
Obstetricians and Gynecologists

Subject: Protecting Access to IVF Treatment

Referred to: Reference Committee B

1 Whereas, on Friday 2/16/24, the Alabama Supreme Court¹ ruled that

2 (a) “an embryo created through in vitro fertilization (IVF) is a child protected by
3 Alabama’s wrongful death act and the Alabama Constitution;” and that

4 (b) “a human frozen embryo is a ‘child’ which is an unborn or recently born [child];” and
5 that

6 (c) “the Constitution ... commands the judge to ... upholding the sanctity of unborn life,
7 including unborn life that exists outside the womb;” and that

8 (d) “the Court would not create an exception in the statute for these IVF embryo children
9 just because they were located outside the womb;” and

10
11 Whereas, in current IVF practice in the United States, over half of embryo transfers will *not*
12 result in live birth, as many embryos after transfer will either (a) not result in a pregnancy, or (b)
13 result in a miscarriage, or (c) result in a non-viable ectopic or molar pregnancy; and

14
15 Whereas, cryopreserved embryos also do *not* have a 100% thaw-survival rate, and a small
16 percentage of embryos will not survive freeze-thaw; such that if embryos in the IVF lab have the
17 same legal status as children, then an embryology laboratory that fails to have a 100% thaw-
18 survival rate may also have some potential liability; and

19
20 Whereas, not all IVF patients (a) can afford the long-term storage fees to cryopreserve embryos
21 for future use or (b) wish to donate those embryos; and

22
23 Whereas, defining all embryos as “children” promotes the dangerous notion that all embryos
24 should somehow be transferred in an IVF cycle (instead of cryopreserving extra embryos of
25 adequate quality), which could potentially increase the rate of dangerous higher-order multiple
26 gestation pregnancies (triplets, quadruplets, etc); and

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28 Whereas, defining all embryos as “children” may promote the dangerous and misguided notion
29 that an ectopic pregnancy could somehow be safely implanted into the uterus (as is erroneously
30 reported on various “Personhood” websites⁹); and

31
32 Whereas, the American Society for Reproductive Medicine (ASRM) Position Statement on
33 Personhood Measures states that

- 34 - “The ASRM is strongly opposed to measures granting constitutional rights or protections
35 and “personhood” status to fertilized reproductive tissues.
36 - In a growing number of states, vaguely worded and often misleading measures are...
37 defining when life begins and granting legal “personhood” status to embryos at varying
38 stages of development.

- 39 - ..., these broadly worded measures will have significant effects on a number of medical
40 treatments available to women of reproductive age.
41 o Personhood measures would make illegal some commonly used birth control
42 methods.
43 o Personhood measures would make illegal a physician's ability to provide
44 medically appropriate care to women experiencing life-threatening complications
45 due to a tubal pregnancy.
46 o Personhood measures would consign infertility patients to less effective, less
47 safe treatments for their disease.
48 o Personhood measures would unduly restrict infertile patients' right to make
49 decisions about their own medical treatments, including determining the fate of
50 any embryos created as part of the IVF process.
51 - ASRM will oppose any personhood measure;" and
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53 Whereas, partly in response to a movement to allow the establishment of college savings
54 accounts for undelivered pregnancies; our AMA established policy H-140.835 which states that:
55 "our AMA opposes any policies that interfere with the patient-physician relationship by
56 giving probate, inheritance, a social security number, or other legal rights to
57 an undelivered pregnancy, or imposing legislative barriers to medical decision-making by
58 changes in tax codes or in definitions of beneficiaries." therefore, be it
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60 RESOLVED, that our American Medical Association oppose any legislation or ballot measures
61 that could criminalize in-vitro fertilization (New HOD Policy); and be it further
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63 RESOLVED, that our AMA work with other interested organizations to oppose any legislation or
64 ballot measures or court rulings that equate gametes (oocytes and sperm) or embryos with
65 children (New HOD Policy); and be it further
66

67 RESOLVED, that our AMA report back at A-25, on the status of, and AMA's activities
68 surrounding, ballot measures, court rulings, and legislation that equate embryos with children.
69 (Directive to Take Action)

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

Received: 4/23/2024

REFERENCES

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2. "Personhood" amendment fails by 3-1 margin. Denver Post 11/3/10 at http://www.denverpost.com/headlines/ci_16506253
3. Mississippi's "Personhood Amendment" fails at the polls. CBS News 11/8/11 at http://www.cbsnews.com/8301-250_162-57321126/mississippi-personhood-amendment-fails-at-polls/
4. Virginia House of Delegates, House Bill No 1 at <http://lis.virginia.gov/cgi-bin/legp604.exe?121+ful+HB1+pdf>
5. 'Personhood' bill killed for this year by Virginia Senate. Washington Post 2/23/12 at http://www.washingtonpost.com/blogs/virginia-politics/post/personhood-bill-killed-for-this-year-by-virginiasenate/2012/02/23/gIQAyXvBWR_blog.html
6. Anti-abortion "personhood" bill clears Oklahoma senate. Reuters 12/1/12 at <http://www.reuters.com/article/2012/02/16/us-oklahoma-personhood-idUSTRE81F0ES20120216>
7. "Mississippi 'Personhood' law could cause legal mayhem, experts warn. Huffington post 11/7/11 at http://www.huffingtonpost.com/2011/11/07/mississippi-personhood-la_n_1079710.html
8. "Successful Ectopic Pregnancies" by Bill Fortenberry on www.personhoodinitiative.com, at <<http://www.personhoodinitiative.com/successful-ectopic-pregnancies.html>>, accessed 3/14/24
9. American Society for Reproductive Medicine (ASRM) Position Statement on Personhood Measures, at <<https://www.asrm.org/advocacy-and-policy/media-and-public-affairs/asrm-position-statement-on-personhood-measures/>>, accessed 3/14/24
10. Letterie G, Fox D. Legal personhood and frozen embryos: implications for fertility patients and providers in post-Roe America. J Law Biosci. 2023 May 19;10(1):lsad006. doi: 10.1093/jlb/lsad006. PMID: 37220567; PMCID: PMC10200124.

11. Jones HW. The ethics of in vitro fertilization--1982. *Fertil Steril.* 1982 Feb;37(2):146-9. doi: 10.1016/s0015-0282(16)46030-9. PMID: 11643718.

RELEVANT AMA POLICY

D-5.999 “Preserving Access to Reproductive Health Services”

Our AMA: (1) recognizes that healthcare, including reproductive health services like contraception and abortion, is a human right; (2) opposes limitations on access to evidence-based reproductive health services, including fertility treatments, contraception, and abortion; (3) will work with interested state medical societies and medical specialty societies to vigorously advocate for broad, equitable access to reproductive health services, including fertility treatments, fertility preservation, contraception, and abortion; (4) supports shared decision-making between patients and their physicians regarding reproductive healthcare; (5) opposes any effort to undermine the basic medical principle that clinical assessments, such as viability of the pregnancy and safety of the pregnant person, are determinations to be made only by healthcare professionals with their patients; (6) opposes the imposition of criminal and civil penalties or other retaliatory efforts, including adverse medical licensing actions and the termination of medical liability coverage or clinical privileges against patients, patient advocates, physicians, other healthcare workers, and health systems for receiving, assisting in, referring patients to, or providing reproductive health services; (7) will advocate for legal protections for patients who cross state lines to receive reproductive health services, including contraception and abortion, or who receive medications for contraception and abortion from across state lines, and legal protections for those that provide, support, or refer patients to these services; and (8) will advocate for legal protections for medical students and physicians who cross state lines to receive education in or deliver reproductive health services, including contraception and abortion.

(Res 028, A-22; Reaffirmed: Res 224, I-22; Modified: BOT Rep. 4, I-22; Appended: Res 317, I-22; Reaffirmation: A-23, Appended: Res 711, A-23)

G-605.009 “Establishing a Task Force to Preserve the Patient-Physician Relationship when Evidence-Based Appropriate Care is Banned or Restricted”

1. Our AMA will convene a task force of appropriate AMA councils and interested state and medical specialty societies, in conjunction with the AMA Center for Health Equity, and in consultation with relevant organizations, practices, government bodies, and impacted communities for the purpose of preserving the patient-physician relationship.

2. This task force, which will serve at the direction of our AMA Board of Trustees, will inform the Board to help guide organized medicine’s response to bans and restrictions on abortion, prepare for widespread criminalization of other evidence-based care, implement relevant AMA policies, and identify and create implementation-focused practice and advocacy resources on issues including but not limited to:

- a. Health equity impact, including monitoring and evaluating the consequences of abortion bans and restrictions for public health and the physician workforce and including making actionable recommendations to mitigate harm, with a focus on the disproportionate impact on under-resourced, marginalized, and minoritized communities;
- b. Practice management, including developing recommendations and educational materials for addressing reimbursement, uncompensated care, interstate licensure, and provision of care, including telehealth and care provided across state lines;
- c. Training, including collaborating with interested medical schools, residency and fellowship programs, academic centers, and clinicians to mitigate radically diminished training opportunities;
- d. Privacy protections, including best practice support for maintaining medical records privacy and confidentiality, including under HIPAA, for strengthening physician, patient, and clinic security measures, and countering law enforcement reporting requirements;
- e. Patient triage and care coordination, including identifying and publicizing resources for physicians and patients to connect with referrals, practical support, and legal assistance;
- f. Coordinating implementation of pertinent AMA policies, including any actions to protect against civil, criminal, and professional liability and retaliation, including criminalizing and penalizing physicians for referring patients to the care they need; and
- g. Anticipation and preparation, including assessing information and resource gaps and creating a blueprint for preventing or mitigating bans on other appropriate health care, such as gender

affirming care, contraceptive care, sterilization, infertility care, and management of ectopic pregnancy and spontaneous pregnancy loss and pregnancy complications.

3. Our American Medical Association will appoint an ad hoc committee or task force, composed of physicians from specialties who routinely provide gender-affirming care, payers, community advocates, and state Medicaid directors and/or insurance commissioners, to identify issues with physician payment and reimbursement for gender-affirming care and recommend solutions to address these barriers to care.

(Res 621, A-22; Appended: Res 816, I-23)

H-160.954 Criminalization of Medical Judgment

(1) Our AMA continues to take all reasonable and necessary steps to insure that medical decision-making exercised in good faith, does not become a violation of criminal law. (2) Henceforth our AMA opposes any future legislation which gives the federal government the responsibility to define appropriate medical practice and regulate such practice through the use of criminal penalties.

(Sub. Res. 223, I-93; Reaffirmed: Res. 227, I-98; Reaffirmed: Res. 237, A-99; Reaffirmed and Appended: Sub. Res. 215, I-99; Reaffirmation A-09; Reaffirmed: CEJA Rep. 8, A-09)

H-160.946 The Criminalization of Health Care Decision-making

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.

(Sub. Res. 202, A-95; Reaffirmed: Res. 227, I-98; Reaffirmed: BOT Rep. 2, A-07; Reaffirmation A-09)

D-160.999 Opposition to Criminalizing Health Care Decisions

Our AMA will educate physicians regarding the continuing threat posed by the criminalization of healthcare decision-making and the existence of our model legislation "An Act to Prohibit the Criminalization of Healthcare Decision-Making."

(Res. 228, I-98; Reaffirmed: BOT Rep. 5, A-08)