AMERICAN BAR ASSOCIATION

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
HEALTH LAW SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association opposes governmental actions and policies that interfere with patients' abilities to receive from their healthcare providers, including healthcare professionals and entities, in a timely manner: (a) all of the relevant and medically accurate information necessary for fully informed healthcare decisionmaking; and (b) information with respect to their access to medically appropriate care, as defined by the applicable medical standard of care.

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REPORT

Introduction

Every competent individual has the right to make decisions about his/her health care. The physician's duty to advise his/her patient about treatment options and to obtain the patient's informed consent to proposed treatment is at the core of this right.[1] The patient's right to decide and the physician's concomitant obligation to inform are grounded in the common-law right of bodily integrity and self-determination, as well a liberty interest protected by the Fourteenth Amendment. In *Schloendorff v. Society of New York Hospital*, 211 N.Y., 125, 129-30, 105 N.E. 92, 93 (1914), Judge Cardozo eloquently explained: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body."[2] Patients cannot make informed decisions unless their health care providers offer complete, accurate, unbiased and timely information about their treatment options, and about how alternative treatments may be accessed. Patients trust that their health care providers will discharge their obligations to provide adequate information about treatment options[3], and that their providers will either directly provide the treatment option selected or provide information about alternative care providers who will. Another important aspect of providing all of the relevant and medically accurate information necessary for fully informed health care decision making is for providers to inform patients that they will not offer certain treatment options. This trust is at the heart of the patient/provider relationship, and is a critical component of quality patient care.

In addition to the clear legal underpinnings, there are very strong ethical principles underlying the informed consent doctrine in medical care. The American Medical Association's Judicial Council incorporates this principle in its first, second and fifth *Principles of Medical Ethics*.[4] Similarly, according to the *American College of Physicians' Ethics Manual*, the patient should

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1 This policy applies only to medical services or treatments that comport with generally accepted medical standards of care.

2 In *Cruzan v. Director Missouri Department of Health*, 497 U.S. 261, 110 S. Ct. 2841 (1990), the United States Supreme Court noted it may be inferred from its prior decisions that competent persons have a constitutionally protected liberty interest in consenting to or refusing medical treatment.

3 Many states have adopted statutes that specifically direct physicians to inform patients about the availability of all alternate, viable medical modes of treatment and about the benefits and risks of these treatments. *See*, e.g., Wis. Stat. § 488.30; Fla. Stat. Ann. § 766.103; Wash. Rev. Code Ann. § 7.70.050. Other states have recognized this principle in case law. *See*, e.g. *Wenger v. Oregon Urology Clinic*, 796 P.2d 376 (Or. Ct. App 1990); *Sard v. Hardy*, 281 Md. 432, 379 A. 2d 1014 (Md. App 1997); *Keogan v. Holy Family Hospital*, 95 Wash. 2d 306, 622 P.2d 1246 (1980).

4 American Medical Association's Council on Ethical and Judicial Affairs, *Code of Medical Ethics*, 2004-2005 edition.

be informed and educated about his/her condition, should understand and approve of his/her treatment, and should participate responsibly in his/her own care.[5] This cannot be achieved unless the patient is made aware of all accurate information about the medically appropriate treatment options in accordance with the standard of care, not just those filtered through the view of their physician or other health care provider. Indeed, the courts have consistently held that a physician's duty to disclose is more than merely answering a patient's question; it is a duty to volunteer that information needed by the patient to make intelligent decisions.[6]

The proposed resolution recognizes the importance of fully informed consent, which is possible only when patients understand their treatment options and know how to access appropriate health care services. It opposes those governmental actions that would protect or exonerate those who limit such access to information. Existing ABA policies ensure the rights of patients of federally funded family planning clinics to receive counseling and referrals with respect to all medical options relating to pregnancy, and the duty of health care professionals in such facilities to advise their patients in accordance with their best medical judgment and professional ethics.[7] This resolution applies those protections to all patients, and to health professionals practicing in other health care settings.

The resolution also builds on existing ABA policy that opposes suppression of speech activities of government grantees,[8] and that protects women's rights to make informed decisions about reproductive health and to access reproductive health services.[9,10]

This resolution does not require health care providers to offer any particular medical service, nor does it require providers to endorse or agree with all of the treatment options that they discuss with their patients. The resolution does seek to ensure that patients can obtain the information they need to make their own medical decisions and to access the services they need, in a timely manner.

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5 Ad Hoc Committee on Medical Ethics, *American College of Physicians' Ethics Manual.* Annuals of Internal Medicine, 100: 121-137 (1984).

6 *Canterbury v. Spence*, 464 F.2d 772 (D.C. Cir. 1972).

7 ABA Report with recommendations #10H adopted August 1991.

8 Adopted February 1993.

9 See ABA Report with recommendation #107A, supporting federal financing of abortion services for indigent women, adopted August 1978; see also ABA Report with recommendation #106C, opposing pre-viability restrictions on a woman's right to an abortion, adopted August 1992.

10 This policy is consistent with policies of the American Public Health Association, such as the recommendation that hospitals with emergency rooms be required to "provide sexual assault survivors with accurate, unbiased information on emergency contraception" [EC] and to provide EC to women who request it. American Public Health Association Policy Statement 2003-16 Providing Access to Emergency Contraception for Survivors of Sexual Assault; www.apha.org/legislative. The American Medical Association also "vigorously opposes the interference by third parties with privileged patient-physician communications, including those concerning reproductive health care". American Medical Association, Policy H-420.959 Access to Comprehensive Reproductive Health Care (2000).

A number of statutory enactments, as well as changes in our health care delivery system, pose a serious threat to the rights of patients to be fully informed of their health care options and to receive in a timely fashion, information about how to access, either directly or through referral, medically-indicated care that they desire.

Changes in the Health Care Delivery System That Impede Informed Consent and Access to Care

In the past decade, the health care delivery arena has been altered by the rapid expansion of religiously-controlled hospital systems and managed care plans.[11] In some areas of the country, religiously-controlled health care providers are the only available option. Frequently, such providers restrict not only the availability of certain health care services,[12] but also the disclosure of information about and/or referrals for treatment options. For example, in Catholic hospitals, which are governed by the Ethical and Religious Directives for Health Care Services (Ethical Directives), promulgated by the United States Conference of Catholic Bishops, informed consent disclosure requirements are limited to discussions of treatment alternatives that the Ethical Directives recognize as "morally legitimate" in accordance with Catholic doctrine.[13]

The implications of a limited informed consent process imposed at a religiously-controlled hospital were addressed in a California Court of Appeals case, *Brownfield v. Daniel Freeman Marina Hospital*.[14] In that case, Kathleen Brownfield, a young woman taken to the emergency room of a religiously-controlled hospital after being raped, was not informed about or offered emergency contraception. Ms. Brownfield sought declaratory and injunctive relief requiring the hospital either to provide rape victims with information and access to this service or to discontinue treatment of rape victims.[15] The Court found that,

> "The duty to disclose such information arises from the fact that an adult of sound mind has 'the right, in the exercise of control over [her] own body, to determine whether or not to submit to lawful medical treatment.' [citation omitted]

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[11] Five of the ten largest health care systems in the US are Catholic. Nearly 18% of all hospitals and 20% of all hospital beds in the U.S. are controlled by Catholic systems.

[12] For example, Catholic Hospitals generally do not provide contraceptive methods other than natural family planning, counseling and condoms to prevent the spread of HIV/AIDS, sterilization (for men or women), abortion (with no exceptions for rape, incest or to protect the life or health of the woman), or most infertility treatments. Some Seventh Day Adventist and Baptist hospitals do not provide abortion services; and some orthodox Jewish nursing homes restrict the ability of residents to refuse end-of-life care.

[13] United States Conference of Catholic Bishops, Ethical and Religious Directives for Catholic Health Care Services, Fourth Edition, Revised June 2001, Directive 27.

[14] 256 Cal. Rptr. 240 (Ca. Ct. App., 1989) at 245. *See also*, Kathleen Boozang, *Deciding the Fate of Religious Hospitals in the Emerging Health Care Market*, 31 Hous. L. Rev. 1429 (1995) at 1451-1453 (analysis of the Brownfield case).

[15] Id.

> Meaningful exercise of this right is possible only to the extent that patients are provided with adequate information upon which to base an intelligent decision with regard to the options available."[16]

Limitations on disclosure of information concerning contraceptive options and/or accessing such options have been imposed not only by hospitals, but also by other care providers. For example, individual pharmacists have refused to counsel patients or fill prescriptions for birth control and emergency contraception.[17]

In addition to emergency contraception, there are a number of other medically indicated health care services that some providers and institutions will not even discuss on religious grounds. For example, some religiously-controlled hospitals not only prohibit sterilization, but also fail to inform patients about their policy and/or about other providers that would provide this service. In some cases, this forces their patients who wish to undergo sterilization following labor and delivery to undergo a second operation at another facility, which entails an increased risk of infection and adverse side effects of anesthesia, additional costs, and the risk of another pregnancy. For many women, these additional risks could be avoided if they receive complete information about their sterilization options prior to labor and delivery, and, if they so choose, information about alternative facilities where they might access these services together.

Some providers also withhold information relating to family planning services. While such services are a covered benefit for low-income women under Medicaid, they are among the services that some providers, such as Fidelis Care New York, a Medicaid-only Catholic Health Plan, will not provide to or even discuss with its subscribers. Notably, Fidelis also refuses to provide referrals for family planning services.[18]

Another example of the need for complete disclosure of treatment alternatives and, if needed, information about health professionals who will provide medically indicated treatment, involves women and men who are undergoing chemotherapy or radiation. Frequently, in order to preserve their fertility, these patients choose to harvest their eggs or preserve their sperm prior to treatment, a practice prohibited in some religiously-controlled hospitals. These patients should have the assurance that this option will be discussed with them prior to their chemotherapy or radiation, and that they will receive information about how to access providers who will offer it, if their own providers will not.

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[16] Id. In addition, the Court held a failure to offer emergency contraception to a rape victim who then gets pregnant would be grounds for a medical malpractice action.

[17] Stephanie Simon, *Morning After Pill Faces Drugstore Hurdle*, Seattle Times, Mar. 22, 2004. See also, Susan Cohen, *Objections, Confusion Among Pharmacists Threaten Access to Emergency Contraception*, The Guttmacher Report on Public Policy, Alan Guttmacher Institute, Vol. 2, No. 3, June 1999.

[18] Miriam Hess and Robert Jaffe, *When Religion Compromises Women's Health: A Case Study of a Catholic Managed Care Organization*, NARAL NY Foundation, New York, 2001; http://www.prochoiceny.org/s09issues/fidelis.shtml.

Refusal Clauses

In addition to religiously-controlled health care providers' practices that limit patients' receipt of information about health care alternatives and/or how to access such alternatives, statutory provisions and proposals at the state and federal levels allow certain persons or entities to "opt out" of discussing, providing, or making referrals for certain health care services, based on religious or moral objections. Health care refusal statutes proliferated immediately after *Roe v. Wade* and generally provided that neither institutions nor individuals could be forced to perform abortions or sterilizations.[19] These early refusal clauses, while posing barriers to care, were often targeted and limited in scope. More recent refusal clauses (enacted and proposed) are far broader, in that they apply to a broader range of providers and a broader range of services, and they accommodate not only providers' refusal to provide such services but also their refusal to discuss or make referrals for the services. These laws would abrogate long-standing legal precedent on the standard of care for informed consent.

For example, Mississippi has enacted the "Health Care Rights of Conscience Act,[20] one of the broadest refusal clauses in the country. Under this new statute which went into effect July 1, 2004, virtually any health care institution including a hospital, managed care plan, pharmacy, or medical training facility, can refuse to provide any service to which it has an objection. A "health care provider" [21], is defined so broadly so as to apply to virtually anyone who works in a health facility. A "health care provider" can refuse to "participate"[22] in any service to which he or she objects. As a result, a physician or any other treating health care provider can refuse to "counsel or advise" a patient at all, let alone about all relevant and medically accurate information for the patient to make an informed decision about his/her care and treatment. In this situation, the health care provider apparently would not be subject to discipline by the hospital or subject to liability under traditional informed consent principles.

Wisconsin also considered a statutory proposal, 2003 AB 67, that would have amended current Wisconsin law by preventing the Medical Examining Board from taking disciplinary action against a physician who refuses to withhold or withdraw artificial nutrition and hydration from a non-terminal patient who has requested or authorized such withholding or withdrawal in an advance directive—even if the physician fails to transfer the patient to a physician who will comply with the patient's wishes. By facilitating health care providers' refusal to provide or

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[19] See the Church Amendment (named after Senator Frank Church) to the Health Programs Extension Act of 1973, Pub. L. No. 93-45 (enacted June 18, 1973); Rachel Benson Gold, *Special Analysis Provider Conscience Questions Reemerge in Wake of Managed Care Explosion*, State Reproductive Health Monitor, The Alan Guttmacher Institute, June 1997.

[20] Miss. Code Ann. §41-107-1 through 13 (2004)

[21] Id §41-107-3(b) "Health Care Provider" means any individual who may be asked to participate in any way in a health service including but not limited to [specific examples omitted].

[22] Id §41-107-3(f) " 'Participate' in a health care service means to counsel, advise, provide, perform, assist in, refer for, admit for purposes of providing, or participate in providing, any health care service or any form of such service."

even refer for legal treatment alternatives that are desired by the patient and that may optimize the patient's medical interests, 2003 AB 67 significantly curtails patients' rights.[23]

A similar package of bills, named the "Conscientious Objectors Policy Act", passed the Michigan House of Representatives in May 2004. Under this proposed legislation, health care providers, facilities and managed care organizations would be permitted to refuse to participate in any health care service to which they had a moral, religious or ethical objection. The term "participate" includes not only providing the health care services, but also counseling (providing information about treatment options) and making referrals.[24]

At the federal level, the Balanced Budget Act of 1997 (BBA) contains a broad refusal clause that allows managed care organizations to opt out of "provid[ing], reimburs[ing] for, or provid[ing] coverage of, a counseling or referral service if the organization objects to the provision of such service on moral or religious grounds."[25] As a result, many women of childbearing age are mandatorily enrolled in Medicaid plans that not only refuse to provide Medicaid covered services that are essential to their care, but also refuse to provide information or referrals on how to obtain these services. The American Public Health Association recently adopted a policy to pursue repeal of these BBA restrictions.[26]

An extremely broad refusal clause, the Abortion Non-Discrimination Act (ANDA), was introduced in the last session of Congress.[27] ANDA would permit not only individual providers, but also hospitals, provider sponsored organizations, health maintenance organizations, health insurance plans, or any other kind of health care facility, organization or plan to opt out of performing, providing coverage of, or paying or *making referrals for* induced abortions, without exception to save the life or health of the mother or for cases of rape or incest.

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[23] 203 AB 67 also would have required health care employers to accommodate an employee's or prospective employee's refusal to participate in (a) sterilization procedures; (b) abortions; (c) research procedures that involve a human embryo; (d) procedures (including research procedures) involving fetal tissue or organs; (e) withholding or withdrawal of nutrition or hydration under certain circumstances; and (f) acts that intentionally cause or assist in the death of an individual. It would also provide legal protection for hospitals that refuse to admit a patient or allow use of their facilities for any of the activities described in (a)-(f) above, and for pharmacists, physicians and nurses who refuse to participate in any of these activities. In addition, it would protect from discipline hospital employees, physicians, nurses or pharmacists who refuse to participate in these activities.

[24] H. 5006, 5276-5278 (MI. 2004) The bill, if it became law, could be interpreted to allow providers to refuse to provide services to certain groups of people (e.g. on the basis of sexual orientation), and would allow health care providers to assert their objection to providing care within 24 hours of when they receive notice of a patient or procedure with which they do not agree.

[25] 42 U.S.C. § 1396u-2(b)(3)(B)(ii)(2000). *See also* 42 C.F.R. § 438.102(a)(2)(2002). In order for health plans to implement this provision, they must provide the state, potential enrollees and enrollees with certain notice of the exclusion; however, the health plans are not required to provide enrollees with information on how to access excluded services. The state must provide that information to Medicaid beneficiaries.

[26] American Public Health Association, Policy Statement 2003-13 Preserving Access to Reproductive Health Care in Medicaid Managed Care, 2003; www.apha.org/legislative

[27] H.R. 4691, S. 2008, 107th Cong. 2002.

Similar language, called the Weldon Amendment, was included in the federal Labor-Health and Human Services-Education appropriations statute that was passed by Congress for fiscal year 2005.[28] The language prohibits federal agencies and any state or local governments from "discriminating" against any health care entities for refusing to provide, pay for, provide coverage of, *or make referrals for* abortions under the penalty of losing federal funds under this appropriation. Senator Barbara Boxer has called for and should receive the right to bring a repeal of the provision to the Senate floor as early as April 2005.

On its face, the Act does not appear to affect the focus of this resolution, which opposes governmental actions and policies that limit a patient's ability to receive "all of the relevant and medically accurate information necessary for fully informed healthcare decision making" and "information with respect to their access to medically appropriate care".[29] Moreover, as stated on page 4 of this report, the resolution affects information about a range of healthcare services that go beyond the scope of the federal legislation, which impacts only provision, payment for and referral to abortion services.

Conclusion

The proliferation of broad-based statutory refusal clauses, along with changes in our health care delivery system, have significantly restricted patients' access to information regarding medical treatment alternatives and information about how to access these alternatives. This resolution seeks to ensure that patients receive all medically appropriate, accurate and unbiased information they require to make informed decisions and to enable them to access medically appropriate care.

Respectfully Submitted,

Stephen F. Hanlon
Chair, Section of Individual Rights and Responsibilities
February 2005

[28] H.R. 4818 ENR, Div. F. Depts. Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 2005, 108th Cong., Title. V, § 508(d).

[29] The Weldon Amendment does conflict with existing ABA policies. *See, supra, notes 7-9 and accompanying text.*

EXECUTIVE SUMMARY

a) Summary of the recommendation:

The Recommendation opposes governmental actions and policies that interfere with patients' abilities to receive from their healthcare providers, including healthcare professionals and entities, in a timely manner: (a) all of the relevant and medically accurate information necessary for fully informed healthcare decisionmaking; and (b) information with respect to their access to medically appropriate care, as defined by the applicable medical standard of care.

b) Summary of the issue which the recommendation addresses:

Every competent individual has the right to make decisions about his/her health care. The physician's duty to advise his/her patient about treatment options and to obtain the patient's informed consent to proposed treatment is at the core of this right. The patient's right to decide and the physician's concomitant obligation to inform are grounded in the common-law right of bodily integrity and self-determination, as well a liberty interests protected by the Fourteenth Amendment. However, patients cannot make informed decisions unless their health care providers offer complete, accurate, unbiased and timely information about their treatment options, and about how alternative treatments may be accessed.

In addition to the clear legal underpinnings, there are very strong ethical principles underlying the informed consent doctrine in medical care. The American Medical Association's Judicial Council incorporates this principle in its first, second, and fifth *Principles of Medical Ethics.* Similarly, according to the *American College of Physicians' Ethics Manual*, the patient should be informed and educated about his/her condition, should understand and approve of his/her treatment, and should participate responsibly in his/her own care. This cannot be achieved unless the patient is made aware of all accurate information about the medically appropriate treatment options in accordance with the standard of care, not just those filtered through the view of their physician or other health care provider. Indeed, the courts have consistently held that a physician's duty to disclose is more than merely answering a patient's question; it is a duty to volunteer that information needed by the patient to make intelligent decisions.

c) Explanation of how the proposed policy position will address the issue:

The proposed resolution recognizes the importance of fully informed consent, which is possible only when patients understand their treatment options and know how to access appropriate health care services. It opposes those governmental actions that would protect or exonerate those who limit such access to information. Existing ABA policies ensure the rights of patients of federally funded family planning clinics to receive counseling and referrals with respect to all medical options relating to pregnancy, and the duty of health care professionals in such facilities to advise their patients in accordance

with their best medical judgment and professional ethics. This resolution applies those protections to all patients, and to health professionals practicing in other health care settings.

This resolution does *not* require health care providers to offer any particular medical service, nor does it require providers to endorse or agree with all of the treatment options that they discuss with their patients. The resolution does seek to ensure that patients can obtain the information they need to make their own medical decisions and to access the services they need, in a timely manner.

d) Summary of any minority views or opposition which have been identified:

There is no known opposition by ABA entities to this proposal.

GENERAL INFORMATION FORM

Submitting Entity: Section of Individual Rights and Responsibilities

Submitted by: Stephen F. Hanlon, Chair
Section of Individual Rights and Responsibilities

1. Summary of Recommendation

The Recommendation opposes governmental actions and policies that interfere with patients' abilities to receive from their healthcare providers, including healthcare professionals and entities, in a timely manner: (a) all of the relevant and medically accurate information necessary for fully informed healthcare decisionmaking; and (b) information with respect to their access to medically appropriate care, as defined by the applicable medical standard of care.

2. Approval by Submitting Entity

The Council of the Section of Individual Rights and Responsibilities approved the filing of this Report with Recommendation on October 16, 2004, during its fall meeting in Washington, D. C.

The Health Law Section approved the co-sponsorship of this Report with Recommendation following its fall meeting in October 2004.

3. Has This or a Similar Recommendation Been Submitted to the House of Delegates Board of Governors Previously?

Yes, a similar recommendation was submitted to the House of Delegates at the ABA Annual Meeting in August 2004, but was withdrawn because of questions raised by some ABA entities that the Section of Individual Rights and Responsibilities felt needed to be addressed before bringing the matter to a vote.

This proposed Report with Recommendation attempts to address those concerns and to make clear that the resolution does ***not*** require health care providers to offer any particular medical service, nor does it require providers to endorse or agree with all of the treatment options they may discuss with their patients in order to allow the patient to make informed medical decisions.

4. What Existing Association Policies Are Relevant to This Recommendation and Would They Be Affected by Its Adoption?

The proposed resolution reiterates the importance of fully informed consent and the reasonable accessibility of treatment options in health care delivery. Existing ABA

policies ensure the rights of patients of federally funded family planning clinics to receive counseling and referrals with respect to all medical options relating to pregnancy, and the duty of health care professionals in such facilities to advise their patients in accordance with their best medical judgment and professional ethics.[1] This resolution applies those protections to all patients, and to health professionals practicing in other health care settings.

The resolution also builds on existing ABA policy that opposes suppression of speech activities of government grantees,[2] and that protects women's rights to make informed decisions about reproductive health, and to access reproductive health services.[3]

5. What Urgency Exists That Requires Action at This Meeting of the House?

A number of statutory enactments, as well as changes in our health care delivery system, pose a serious threat to the rights of patients to be fully informed of their health care options and to receive in a timely fashion, information about how to access, either directly or through referral, medically-indicated care.

6. Status of Legislation

Related legislation is pending at both the state and federal levels. For example, a recent Wisconsin statutory proposal, 2003 AB 67, would amend current Wisconsin law by preventing the Medical Examining Board from taking disciplinary action against a physician who refuses to withhold or withdraw artificial nutrition and hydration from a non-terminal patient who has requested or authorized such withholding or withdrawal in an advance directive—even if the physician fails to transfer the patient to a physician who will comply with the patient's wishes.

A similar package of bills, named the "Conscientious Objectors Policy Act", passed the Michigan House of Representatives in May 2004. Under this proposed legislation, health care providers, facilities and managed care organizations would be permitted to refuse to participate in any health care service to which they had a moral, religious or ethical objection. The term "participate" includes not only providing the health care services, but also counseling (providing information about treatment options) and making referrals.

At the federal level, the Balanced Budget Act of 1997 (BBA) contains a broad refusal clause that allows managed care organizations to opt out of "provid[ing], reimburs[ing] for, or provid[ing] coverage of, a counseling or referral service if the organization objects to the provision of such service on moral or religious grounds." As a result, many

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1 ABA Report with recommendations #10H adopted August 1991.

2 Adopted February 1993.

3 See ABA Report with recommendation #107A, supporting federal financing of abortion services for indigent women, adopted August 1978; see also ABA Report with recommendation #106C, opposing pre-viability restrictions on a woman's right to an abortion, adopted August 1992.

women of childbearing age are mandatorily enrolled in Medicaid plans that refuse to provide Medicaid covered services that are essential to their care, and most importantly, they are not given information or referrals on how to obtain these services. The American Public Health Association recently adopted policy to pursue repeal of these BBA restrictions.

Further, the Abortion Non-Discrimination Act (ANDA), was introduced in the last session of Congress. ANDA would permit not only individual providers, but also hospitals, provider sponsored organizations, health maintenance organizations, health insurance plans, or any other kind of health care facility, organization or plan to opt out of performing, providing coverage of, or paying or making referrals for induced abortions, without exception to save the life or health of the mother or for cases of rape or incest.

Similar language, called the Weldon Amendment, was included in the federal Labor-Health and Human Services-Education appropriations statute that was passed by Congress for fiscal year 2005. The language prohibits federal agencies and any state or local governments from "discriminating" against any health care entities for refusing to provide, pay for, provide coverage of, *or make referrals for* abortions under the penalty of losing federal funds under this appropriation. Senator Barbara Boxer has called for and should receive the right to bring a repeal of the provision to the Senate floor as early as April 2005.

On its face, the Act does not appear to affect the focus of this resolution, which opposes governmental actions and policies that limit a patient's ability to receive "all of the relevant and medically accurate information necessary for fully informed healthcare decision making" and "information with respect to their access to medically appropriate care".

7. Cost to the Association (both direct and indirect costs)

Adoption of this recommendation would result only in minor indirect costs associated with Governmental Affairs and Section staff time devoted to the policy subject matter as part of the staff members' overall substantive responsibilities.

8. Disclosure of Interest

There are no known conflicts of interest.

9. Referrals

Prior to submission, this Report with Recommendation was referred to the Health Law Section, which subsequently agreed to co-sponsor the resolution.

By copy of this form, the Report with Recommendation will be referred to the following additional entities, including all Sections and Divisions:

Section of Administrative Law and Regulatory Practice
Section of Antitrust Law
Section of Business Law
Criminal Justice Section
Section of Dispute Resolution
Section of Environment, Energy, and Resources
Section of Family Law
General Practice, Solo and Small Firm Section
Government and Public Sector Lawyers Division
Section of Intellectual Property Law
Section of International Law and Practice
Section of Labor and Employment Law
Law Practice Management Section
Section of Legal Education and Admissions to the Bar
Section of Litigation
Section of Public Contract Law
Section of Public Utility , Communications and Transportation Law
Section of Real Property, Probate and Trust Law
Section of Science and Technology Law
Section of State and Local Government Law
Section of Taxation
Tort and Insurance Practice Section
Judicial Division
Law Student Division
Senior Lawyers Division
Young Lawyers Division

Commission on Domestic Violence
Commission on Homelessness and Poverty
Commission on Law and Aging
Commission on Mental and Physical Disability Law
Commission on Women in the Profession

10. Contact Persons (prior to meeting)

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11. Contact Person (who will present the report to the House)

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12. Contact Person Regarding Amendments to this Recommendation

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