

RESOLUTION

Subject: Protecting Access to IVF Treatment

Submitted by: Albert L. Hsu, MD

Referred to: Reference Committee

WHEREAS, on Fri 2/16/24, the Alabama Supreme Court¹ ruled that

- (a) “an embryo created through in vitro fertilization (IVF) is a child protected by Alabama’s wrongful death act and the Alabama Constitution;” and that
- (b) “a human frozen embryo is a ‘child’ which is an unborn or recently born [child];” and that
- (c) “the Constitution ... commands the judge to ... upholding the sanctity of unborn life, including unborn life that exists outside the womb;” and that
- (d) “the Court would not create an exception in the statute for these IVF embryo children just because they were located outside the womb;” and

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

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

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

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

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

WHEREAS, the American Society for Reproductive Medicine (ASRM) Position Statement on Personhood Measures states that

- “The ASRM is strongly opposed to measures granting constitutional rights or protections and “personhood” status to fertilized reproductive tissues.
- In a growing number of states, vaguely worded and often misleading measures are... defining when life begins and granting legal “personhood” status to embryos at varying stages of development.
- ..., these broadly worded measures will have significant effects on a number of medical treatments available to women of reproductive age.
 - o Personhood measures would make illegal some commonly used birth control methods.
 - o Personhood measures would make illegal a physician's ability to provide medically appropriate care to women experiencing life-threatening complications due to a tubal pregnancy.
 - o Personhood measures would consign infertility patients to less effective, less safe treatments for their disease.
 - o Personhood measures would unduly restrict infertile patients' right to make decisions about their own medical treatments, including determining the fate of any embryos created as part of the IVF process.
- ASRM will oppose any personhood measure;” and

WHEREAS, partly to respond to a movement to allow establishment of college savings accounts for undelivered pregnancies; the American Medical Association (AMA) established policy H-140.835 (“Political Interference in the Patient-Physician Relationship”) which states that:

“our AMA opposes any policies that interfere with the patient-physician relationship by giving probate, inheritance, a social security number, or other legal rights to an undelivered pregnancy, or imposing legislative barriers to medical decision-making by changes in tax codes or in definitions of beneficiaries;” and

WHEREAS, the AMA also passed a resolution in June 2024 (Resolutions 217/226 on “Protecting Access to IVF Treatment”), which stated that:

- “RESOLVED, that our American Medical Association oppose any legislation or ballot measures that could criminalize in-vitro fertilization (New HOD Policy); and be it further
- RESOLVED, that our AMA work with other interested organizations to oppose any civil or criminal legislation or ballot measures or court rulings that (a) would equate gametes (oocytes and sperm) or embryos with children and/or (b) would otherwise restrict or interfere with evidence-based care for Assisted Reproductive Technology (ART) (New HOD Policy); and be it further

- RESOLVED, that our AMA, through the AMA Task Force to Preserve the Patient-Physician Relationship, report back at I-24 on the status of, and AMA's activities surrounding, proposed ballot measures or legislation and pending court rulings that (a) would equate gametes or embryos with children and/or (b) would otherwise restrict or interfere with evidence-based care for Assisted Reproductive Technology (ART). (Directive to Take Action)"; now, therefore, be it

RESOLVED, that KMA oppose any legislation or ballot measures that could criminalize in-vitro fertilization; and be it further

RESOLVED, that KMA work with other interested organizations to oppose any civil or criminal legislation or ballot measures or court rulings that (a) would equate gametes (oocytes and sperm) or embryos with children and/or (b) would otherwise restrict or interfere with evidence-based care for Assisted Reproductive Technology (ART).

References:

1. AP news on "Alabama's IVF embryo ruling explained. And what's next?" at <https://apnews.com/article/alabama-frozen-embryos-ivf-storage-questions-1adbc349e0f99851973a609e360c242c>; posted 2/22/24, accessed 3/14/24
2. "Personhood" amendment fails by 3-1 margin. Denver Post 11/3/10 at http://www.denverpost.com/headlines/cj_16506253
3. Mississippi's "Personhood Amendment" fails at the polls. CBS News 11/8/11 at http://www.cbsnews.com/8301-250_162-57321126/mississippis-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](http://www.personhoodinitiative.com/successful-ectopic-pregnancies.html), 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.
12. AMA policy H-140.835 ("Political Interference in the Patient-Physician Relationship") at <https://policysearch.ama-assn.org/policyfinder/detail/H-140.835%20?uri=%2FAMADoc%2FHOD.xml-H-140.835.xml>, accessed 7/18/24
13. A-24 Annotated Reference Committee B Report: <https://www.ama-assn.org/system/files/a24-refcomm-b-annotated.pdf>, <https://www.ama-assn.org/house-delegates/annual-meeting/business-ama-house-delegates-annual-meeting>, accessed 7/18/24

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)

H-140.835 Political Interference in the Patient-Physician Relationship

Our AMA opposes any policies that interfere with the patient-physician relationship by giving probate, inheritance, a social security number, or other legal rights to an undelivered pregnancy, or imposing legislative barriers to medical decision-making by changes in tax codes or in definitions of beneficiaries.

(Alt Res 007, I-17)