

## Memorandum

**To:** Council Steering Committee  
2023 Council

**From:** Kelly Gray-Eurom, MD, MMM, FACEP  
Council Speaker

Melissa W. Costello, MD, FACEP  
Council Vice Speaker

**Date:** September 1, 2023

**Subj:** Board Position and Vote on Amended Resolution 74(21) Regulation by State Medical Boards of All Who Engage in Practice of Medicine (*second resolved*)

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### EXECUTIVE DIRECTOR

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The 2021 Council and the Board of Directors adopted Amended Resolution 74(21) Regulation by State Medical Boards of All Who Engage in Practice of Medicine:

RESOLVED, That ACEP support that anyone, physicians or non-physician practitioners, who engage in the practice of medicine be regulated by the respective state medical board of their respective states; and be it further

RESOLVED, That ACEP work with the AMA and submit a resolution to their house of delegates to create a universal definition of the practice of medicine to include the ordering of diagnostic tests, diagnosing clinical condition/disease, prescribing of medications, and/or ordering of treatments on human beings.

The first resolved was assigned to the State Legislative/Regulatory Committee (SLRC) to develop a policy statement. The Board adopted the policy statement “State Board of Medicine Regulation of Non-Physician Practitioners Practicing Medicine” on April 30, 2023.

The second resolved was assigned to the AMA Section Council on Emergency Medicine. The AMA Section Council on Emergency Medicine discussed the second resolved extensively and was concerned that, contrary to the seeming intent of the resolution, a universal definition of the practice of medicine could leave emergency medicine more vulnerable on scope of practice issues rather than less vulnerable. If defined too narrowly, it leaves an opening for nurse practitioners to further expand their scope of practice and if defined too broadly it could remove needed functions provided by nurse practitioners and potentially nurses as well. An overly broad definition could also introduce new complications wherein anyone offering friendly advice to someone could be construed as providing medical advice and therefore subject them to liability concerns.

Another challenge is if a universal definition is offered by emergency medicine to the AMA House of Delegates (HoD), primary care and other specialties in attendance would then propose alterations or alternative definitions more suited to their own members. This could pit emergency medicine against other specialties within the house of medicine with no guarantee that our definition would prevail, and thereby introduce risk that whatever consensus definition ultimately emerged from the HoD could be much more problematic for emergency medicine (especially given its unique nature) than any perceived issues posed by the current lack of a definition.

The Board of Directors approved the following recommendations on April 30, 2023:

1. Rescind the motion approved at the October 28, 2021, meeting to adopt the second resolved of Amended Resolution 74(21) “Regulation by State Medical Boards of All Who Engage in Practice of Medicine.
2. Overrule the second resolved of Amended Resolution 74(21) Regulation by State Medical Boards of All Who Engage in Practice of Medicine.

The Board also adopted a motion “that ACEP work with the American Medical Association and other stakeholders to support that anyone, physicians or non-physician practitioners, who engage in the practice of medicine be regulated by the respective state medical board of their respective states.”

The Steering Committee was informed of the recommendations to the Board at their April 30, 2023, meeting. A message regarding the Board’s decision was posted on the Council engaged on May 30, 2023.

The ACEP Bylaws, Article VIII – Council, Section 8 – Board of Directors Action on Resolutions, paragraphs one and two, state:

The Board of Directors shall act on all resolutions adopted by the Council, unless otherwise specified in these Bylaws, no later than the second Board meeting following the annual meeting and shall address all other matters referred to the Board within such time and manner as the Council may determine.

The Board of Directors shall take one of the following actions regarding a non-Bylaws resolution adopted by the Council:

1. Implement the resolution as adopted by the Council.
2. Overrule the resolution by a three-fourths vote. The vote and position of each Board member shall be reported at the next meetings of the Steering Committee and the Council.
3. Amend the resolution in a way that does not change the basic intent of the Council. At its next meeting, the Steering Committee must either accept or reject the amendment. If accepted, the amended resolution shall be implemented without further action by the Council. If the Steering Committee rejects the amendment, the Board at its next meeting shall implement the resolution as adopted by the Council, propose a mutually acceptable amendment, or overrule the resolution.

### **Board of Directors Vote and Position**

#### **L. Anthony Cirillo, MD, FACEP**

I voted to overrule the second resolved based on the recommendation of the AMA Section Council on Emergency Medicine with their report of conversations that did occur with other leaders within the AMA. In addition, there were specific concerns that a universal definition of the practice of medicine could leave emergency medicine more vulnerable on scope of practice issues rather than less vulnerable.

#### **J.T. Finnell, MD, FACEP**

I voted to overrule the second resolved based on the recommendation of the AMA Section Council on Emergency Medicine and the concerns that a universal definition of the practice of medicine could leave emergency medicine more vulnerable on scope of practice issues rather than less vulnerable.

Jeff Goodloe, MD, FACEP

I voted to overrule the second resolved based on the recommendation of ACEP's AMA Section Council on Emergency Medicine (represented by Dr. Stephen Epstein) with specified concerns that a universal definition of the practice of medicine could leave emergency medicine more vulnerable on scope of practice issues rather than less vulnerable.

Alison Haddock, MD, FACEP

Abstention – Dr. Haddock was temporarily out of the room when the vote was taken.

Christopher Kang, MD, FACEP

I voted to overrule the second resolved of Council Resolution 74(21) Regulation by State Medical Boards of All Who Engage in Practice of Medicine based on the recommendation of the AMA Section Council on Emergency Medicine and concerns regarding the feasibility, accuracy, and acceptance of a universal definition of the practice of medicine and its applicability to the current and evolving scope of practice of non-physician healthcare professions, including roles, education, licensure, credentialing, certification, and regulation at the hospital, state, and federal levels.

Gabe Kelen, MD, FACEP

I voted to overrule the second resolved based on the recommendation of the AMA Section Council on Emergency Medicine and the concerns that a universal definition of the practice of medicine could leave emergency medicine more vulnerable on scope of practice issues rather than less vulnerable.

Rami Khoury, MD, FACEP

I voted to overrule the second resolved based on the recommendation of the AMA Section Council on Emergency Medicine after a very lengthy discussion. Concerns that a universal definition of the practice of medicine could leave emergency medicine more vulnerable on scope of practice issues rather than less vulnerable which I believe to be true.

Heidi Knowles, MD, FACEP

I voted to overrule the second resolved based on the wisdom and recommendation of the AMA Section Council on Emergency Medicine and the concerns for unintended consequences that a universal definition of the practice of medicine could result in, including negatively affecting the scope of practice of APPs as well as nurses, increased liability, the potential to pit emergency medicine against other specialties, and the possibility that future definitions could be harmful to EM.

Kristin McCabe-Kline, MD, FACEP

I voted to overrule based on the recommendation from the ACEP representative to the AMA regarding the position of the AMA but in full support of further action to preserve the intent of the Council while aligning with the AMA.

Gillian Schmitz, MD, FACEP

I voted to overrule the second resolved based on the recommendation of the AMA Section Council on Emergency Medicine and the concerns that a universal definition of the practice of medicine could leave emergency medicine more vulnerable on scope of practice issues rather than less vulnerable.

James Shoemaker, Jr., MD, FACEP

I voted to overrule the 2nd resolved based on the analysis from the AMA Section Council on EM that felt a universal definition of the practice of medicine could inadvertently result in more scope creep vulnerabilities and could negatively impact nurses and nurse

practitioners. The potential liability concerns identified were also enough to overrule not to mention other specialties in the House of Medicine wanting to make changes to best fit their needs. One size does not fit all.

Ryan Stanton, MD, FACEP

I voted to overrule based on the recommendation and guidance of our colleagues representing the College with the AMA in order to promote a solution that maintains our relationships with the AMA while still providing a pathway for best achieving the intent of the resolution.

Aisha Terry, MD, FACEP

I voted to overrule the second resolved based on the recommendation of the AMA Section Council on Emergency Medicine and the concerns that a universal definition of the practice of medicine could leave emergency medicine more vulnerable on scope of practice issues rather than less vulnerable.