

## SEEKING SUPPORT

BY ROBERT BITONTE, M.D., J.D. & GRACE HADDAD,  
MPH, J.D. CANDIDATE

Resolutions have been used as a method for advocacy since the creation of the United States in order to establish organizational policy. In fact, the Declaration of Independence started out as Virginia's Richard Henry Lee's resolution calling for independence in the Second Continental Congress. The Continental Congress then had to seek support from other state delegations to carry the promotion that independence was the best path forward to progress. Advocacy that is done by a lone wolf or a small pack of wolves; however, is largely futile and ineffective. The best way to advocate is to seek widespread support from groups, parties, and organizations with expertise that are attuned to the field in question. As members of the Cleveland Metropolitan Bar Association, we want to be active contributors. In that vein, we are filing resolutions to gather the CMBA's opinion, support and possible advocacy.

The genesis and inspiration of this work started with Case Western Reserve University's Professor of Law, Maxwell Mehlman's article, "Can Law Save Medicine?" In his article, Professor Mehlman raises concerns that commercialization in medicine has overcome physicians' fidelity towards patients, which belongs solely and unequivocally to patients. This concern has been repeated in many articles and treatises since 1975. In 1975, the original article by Herbert J. Freudenberger titled "The Staff Burnout Syndrome in Alternative Institutions," was written about physician burnout. It concluded a belief that administrative intrusions into physician behavior contributed to physician burnout. In 1980, a psychiatrist by the name of Dr. Martin Lipp, wrote a treatise titled "The Bitter Pill" that further elaborated on the belief that conflicts of interest served as unwelcome intrusions into the physician-patient relationship. In his treatise, Dr. Lipp

felt that this led to some physician suicide. In 1984, another treatise was put forward by Dr. Stanley Wohl that described the evolving and growing "Medical Industrial Complex." In 1993, a treatise was written by Professor of Law, Marc Rodwin, titled "Medicine, Money, and Morals: Physicians Conflicts of Interest," where he elaborated on the influence of the medical industrial complex. In 1999, the treatise "The Corporate Practice of Medicine," written by Dr. James C. Robinson, became a very real criticism of American medicine, which described its re-commercialization and intrusion into physician autonomy and the doctor-patient relationship.

The concern regarding the patient-physician relationship and the complete fidelity between physicians and patients has been a source of interest to physicians, the medical community, and the public since 400 BC when Hippocrates penned the Hippocratic Oath. In that oath, Hippocrates described the complete loyalty a physician should have to patients, as well as the incredible dignity and respect that a physician could expect when he was completely loyal to patients. Also, in the Hippocratic oath, was a warning that any disloyalty to patients would cause the exact opposite attitude toward physicians.

In our attempt to answer both Professor Mehlman's question "Can Law Save Medicine?" and in our own interest to give physicians the ability to have complete fidelity to their patients and their community, we offer some resolutions for policy adoption and consideration. These resolutions have been forwarded to the Cleveland Metropolitan Bar Association, the Los Angeles County Bar Association, the Los Angeles County Medical Association, and the Union of American Physicians and Dentists. We feel it is important to get widespread support so that these concepts can hopefully be adopted into law.

The resolutions we put forward for consideration by the CMBA are twofold:

### 1. Defining Healthcare Access

Whereas, healthcare "access" is frequently used for the justification of many policies in healthcare,

Whereas, without a precise definition, the word "access" in healthcare gives little insight into possible effectiveness of any policy,

Whereas, it would be useful to have a definitive definition of healthcare "access"

Therefore, be it

Resolved: That the Cleveland Metro Bar Association adopt and/or support a definition of healthcare "access," and be it: "the ability to receive prescribed medically necessary care, on time, every time, by the appropriate provider, with the provider being adequately reimbursed to ensure further availability to the next person in need."

### 2. Differential Pay For Medically Underserved Areas

Whereas, medically underserved areas are generally poor, dangerous, largely undesirable living areas, and can be identified by zip codes,

Whereas, incremental changes, economic or otherwise, have not changed medically underserved zip code areas in all instances,

Whereas, pay for performance programs have been very effective in reaching almost any goal,

Therefore, be it

Resolved: All payors must pay a 25% differential for physician services provided in underserved zip codes every year until physician services are not deemed underserved by zip code. Every year thereafter that a zip code is deemed medically underserved, an additional 25% differential will be paid by all payors until the area is deemed not medically underserved.

In our resolutions, we make recommendations for what we see as contemporary problems in healthcare. We propose these two resolutions as possible solutions in the name of healthcare advocacy, and feel they will help healthcare delivery in Ohio.

First, the word “access” in healthcare has been used to ask for support in every kind of healthcare intervention. Whenever an organization wants to ask for some kind of action, they usually begin with the narrative that it will increase “access.” The preamble that “access” is the concern under consideration is powerful; however, “access” undefined leads to a myriad of possible definitions of what “access” could mean: Does “access” mean a pocket certificate of insurance coverage? Does “access” mean that at some point in time, a sick or concerned patient will see a physician? Does “access” mean that at some point in time, that same sick or concerned patient will receive timely treatment? Does “access” mean that a sick or concerned patient will be referred in a timely manner to a higher level of service if it is indicated? Does “access” mean that the service provided by a competent provider will be reimbursed so that the provider is inclined to see the next sick patient in need? Our first resolution seeks to define “access” and therefore asks that a definition be adopted by the Cleveland Metropolitan Bar Association — a definition that clarifies, in our opinion, what has been the loose and ineffective expectation of the word healthcare “access.”

In our second resolution, we ask for differential pay to encourage the provision of healthcare services in underserved communities. These underserved communities are readily identifiable. When we look back to the beginning of American economic thought, Adam Smith recognized that people acting out of self-interest make communities more economically viable. He also recognized that dangerous, dirty, and unglamorous jobs usually require a higher level of remuneration to attract the appropriate manpower. It is in this vein of thought, that we recommend economic incentives for healthcare providers to deliver needed healthcare services in underserved areas. This recognizes that pay-for-performance incentives are successful, and that all other non-economic incentives to date have been unsuccessful in ameliorating medically underserved communities.

We drafted these resolutions with the beliefs in mind that everyone becomes a patient if they live long enough. In addition, everyone has loved ones that need medical care, uncompromised by any outside interest, other than that which is best for the patient. With all this in mind, we are seeking your support.



*Dr. Robert Bitonte is a Physical Medicine and Rehabilitation Specialist, with a sub-specialty in Brain Injury Medicine. Dr. Bitonte is also a healthcare attorney who works at the forefront of healthcare policy development and patients-rights enforcement. Although he is from Youngstown, Ohio, Dr. Bitonte works and primarily practices in the greater Los Angeles and San Diego areas. Dr. Bitonte’s interest is the physician-patient relationship, fidelity to patients, and the enforcement of patients receiving medically necessary care. He joined the CMBA this year. He can be reached at (310) 308-6606 or rbitonte@aol.com.*



*Grace Haddad is a second year law student at Case Western Reserve University School of Law. She received her Bachelor’s degree in Natural Sciences from the University of Akron, and her Master’s in Public Health from the University of Pittsburgh. Ms. Haddad is from Youngstown, Ohio, and her interests are health law, community health, and healthcare policy development. She joined the CMBA this year. She can be reached at (330) 779-7102 or gah68@case.edu.*





**CLEVELAND METROPOLITAN  
BAR ASSOCIATION**

# Retirement Advantage Plan

The CMBA is proud to announce a 401(k) & Retirement Services for members via Equitable Advisors, TransAmerica and Rea & Associates. We are dedicated to your success both personally and professionally and are pleased to offer a comprehensive 401(k) & Retirement Services program that encompasses all the essential plan benefits of a large company retirement plan including streamlined administration, fiduciary risk management and institutional pricing but customizable for a solo, small/mid/large size law firm.

**Who is Eligible?**  
Qualified firms with 1–150 employees (including solo practitioners) that are members of the CMBA.

**We handle the heavy lifting:**

- Streamlined Administrative responsibilities
- Employee eligibility tracking
- Independent Fiduciary
- Plan compliance
- Nondiscrimination testing
- On-site Participant enrollment/education
- Annual reporting & Notices

For more details and to request a personal consultation, contact Jason Harris at Equitable Advisors via email at [jason.harris@equitable.com](mailto:jason.harris@equitable.com) or call (419) 705-6580.