

**FLORIDA MEDICAL ASSOCIATION
HOUSE OF DELEGATES 2021**

**CONSENT CALENDAR
REFERENCE COMMITTEE II
FINANCE AND ADMINISTRATION**

**Tra'Chella Johnson Foy, M.D., Chair
Ryan Hall, M.D. Chair**

The Reference Committee recommends that the following Consent Calendar be adopted. The item number listed below corresponds with the item number in the main report.

RECOMMENDED FOR ADOPTION

- (B-1) Report B of the Board of Governors – Recommendation B-1
- (B-2) Report B of the Board of Governors – Recommendation B-2
- (B-3) Report B of the Board of Governors – Recommendation B-3

RECOMMENDED FOR NOT ADOPTION

- (5) Resolution 21-204; NICA Exemption

RECOMMENDED FOR ADOPTION AS AMENDED

- (2) Resolution 21-201; PAC Membership
- (3) Resolution 21-202; Medical Cannabis Committee
- (4) Resolution 21-203; Expanded Resource Base for Neurological Injury Compensation Association (NICA)
- (6) Resolution 21-205; NICA Reform

RECOMMENDED FOR REFERRAL TO THE BOARD OF GOVERNORS FOR DECISION

- (7) Resolution 21-206; Creation of New Florida Medical Association and American Medical Association Employed Physician Section

FLORIDA MEDICAL ASSOCIATION

HOUSE OF DELEGATES 2021

Report of

Reference Committee No. II – Finance and Administration

Presented by: Tra'Chella Johnson Foy, M.D., Chair
Ryan Hall, M.D., Chair

1 Madame Speaker, Reference Committee No. II - Finance and Administration has considered each of the
2 items referred to it and presents the following report. The Committee's recommendation on each item
3 will be submitted separately, and I respectfully suggest that each item be acted upon before going to the
4 next.

5

6 **(1) REPORT B OF THE BOARD OF GOVERNORS**

7

8 This report as presented in the FMA Delegate Handbook contained two recommendations from
9 the Board of Governors for the House to consider. The report also contained a summary of
10 major actions taken by the Board on issues related to finance, administration, bylaws, sections,
11 and the AMA. Also included in the report were activities as reported by the Committee on
12 Bylaws, Committee on Finance & Appropriations, Audit Committee and the Florida AMA
13 Delegation.

14

15

16 **(B-1) Board Recommendation B-1: Educating Members Regarding Legal and Legislative Efforts to**
17 **End MOC Mandates be not adopted.**

18

19 Madame Speaker, your Reference Committee concurs with the Board's recommendation to not
20 adopt B-1.

21

22 The resolution reads as follows:

23

24 *RESOLVED, That the FMA develop an educational campaign in the form of a separate,*
25 *stand alone, comprehensive email, detailing the legal and legislative efforts being made*
26 *in our state and across the nation, specifically highlighting the legal action currently*
27 *being taken against ABIM, including the lawsuit being brought by Practicing Physicians*
28 *of America and The American Association of Physicians and Surgeons; and be it further*

29

30 *RESOLVED, That the FMA is committed to educate their members on these legal and*
31 *legislative matters in order to allow individual members to support these efforts*
32 *nationwide.*

33

34 Your committee received one online testimony that agreed with the Board recommendation of
35 not adopting this resolution. The Committee reviewed the report and concurs with the Board.

36

37 Your committee heard in-person testimony from the author of the resolution against the board's
38 and reference committee's recommendation.

39

40

1 **(B-2) Board Recommendation B-2: Composition of the Body of Medical Staff's Executive Committee**
2 **and/or Board of Trustees that substitute policy be adopted in lieu of Resolution be 19-206.**

3
4 Madame Speaker, your Reference Committee recommends that **Board Recommendation B-2 be**
5 **adopted.**

6
7 The original resolution reads as follows:

8
9 *RESOLVED, That the FMA support legislative or administrative changes to define that*
10 *the medical staff bylaws in hospitals will require that a majority of the Medical*
11 *Executive Committee voting members will not be contracted physicians or employed*
12 *physicians, but rather medical staff members with independent practices without*
13 *conflict of interest; be it further*

14
15 *RESOLVED, That the FMA will advocate to the AMA to adopt the right to fair market*
16 *and transparent economic competition in our communities between hospitals with or*
17 *without employed physicians and other allied healthcare professionals and*
18 *independent physicians and groups in the delivery of healthcare services and*
19 *compensation based on appropriate community need.*

20
21 The substitute language, including a title change, reads as follows:

22
23 **Principles for Physician Employment (language adopted from AMA Policy H-225.950)**

24
25 Addressing Conflicts of Interest

26 a) A physician's paramount responsibility is to his or her patients. Additionally, given that an
27 employed physician occupies a position of significant trust, he or she owes a duty of loyalty to his or her
28 employer. This divided loyalty can create conflicts of interest, such as financial incentives to over- or
29 under-treat patients, which employed physicians should strive to recognize and address.

30
31 b) Employed physicians should be free to exercise their personal and professional judgement in voting,
32 speaking and advocating on any manner regarding patient care interests, the profession, health care in
33 the community, and the independent exercise of medical judgment. Employed physicians should not be
34 deemed in breach of their employment agreements, nor be retaliated against by their
35 employers, for asserting these interests. Employed physicians also should enjoy academic freedom to
36 pursue clinical research and other academic pursuits within the ethical principles of the medical
37 profession and the guidelines of the organization.

38
39 c) In any situation where the economic or other interests of the employer are in conflict with patient
40 welfare, patient welfare must take priority.

41
42 d) Physicians should always make treatment and referral decisions based on the best interests of their
43 patients. Employers and the physicians they employ must assure that agreements or understandings
44 (explicit or implicit) restricting, discouraging, or encouraging particular treatment or referral options are
45 disclosed to patients.

46
47 (i) No physician should be required or coerced to perform or assist in any non-emergent procedure that
48 would be contrary to his/her religious beliefs or moral convictions; and

49

1 (ii) No physician should be discriminated against in employment, promotion, or the extension of staff or
2 other privileges because he/she either performed or assisted in a lawful, non-emergent procedure, or
3 refused to do so on the grounds that it violates his/her religious beliefs or moral convictions.
4

5 e) Assuming a title or position that may remove a physician from direct patient-physician relationships--
6 such as medical director, vice president for medical affairs, etc.--does not override professional ethical
7 obligations. Physicians whose actions serve to override the individual patient care decisions of other
8 physicians are themselves engaged in the practice of medicine and are subject to professional ethical
9 obligations and may be legally responsible for such decisions. Physicians who hold administrative
10 leadership positions should use whatever administrative and governance mechanisms exist within the
11 organization to foster policies that enhance the quality of patient care and the patient care experience.
12

13 *Refer to the AMA Code of Medical Ethics for further guidance on conflicts of interest.*
14

15 2. Advocacy for Patients and the Profession 16

17 a) Patient advocacy is a fundamental element of the patient-physician relationship that should not be
18 altered by the health care system or setting in which physicians practice, or the methods by which they
19 are compensated.
20

21 b) Employed physicians should be free to engage in volunteer work outside of, and which does not
22 interfere with, their duties as employees.
23

24 3. Contracting 25

26 a) Physicians should be free to enter into mutually satisfactory contractual arrangements,
27 including employment, with hospitals, health care systems, medical groups, insurance plans, and other
28 entities as permitted by law and in accordance with the ethical principles of the medical profession.
29

30 b) Physicians should never be coerced into employment with hospitals, health care systems, medical
31 groups, insurance plans, or any other entities. Employment agreements between physicians and their
32 employers should be negotiated in good faith. Both parties are urged to obtain the advice of legal
33 counsel experienced in physician employment matters when negotiating employment contracts.
34

35 c) When a physician's compensation is related to the revenue he or she generates, or to similar factors,
36 the employer should make clear to the physician the factors upon which compensation is based.
37

38 d) Termination of an employment or contractual relationship between a physician and an entity
39 employing that physician does not necessarily end the patient-physician relationship between the
40 employed physician and persons under his/her care. When a physician's employment status is
41 unilaterally terminated by an employer, the physician and his or her employer should notify
42 the physician's patients that the physician will no longer be working with the employer and should
43 provide them with the physician's new contact information. Patients should be given the choice to
44 continue to be seen by the physician in his or her new practice setting or to be treated by
45 another physician still working with the employer. Records for the physician's patients should be
46 retained for as long as they are necessary for the care of the patients or for addressing legal issues faced
47 by the physician; records should not be destroyed without notice to the former employee.

48 Where physician possession of all medical records of his or her patients is not already required by state
49 law, the employment agreement should specify that the physician is entitled to copies of patient charts
50 and records upon a specific request in writing from any patient, or when such records are

1 necessary for the physician's defense in malpractice actions, administrative investigations, or other
2 proceedings against the physician.

3
4 (e) Physician employment agreements should contain provisions to protect a physician's right to due
5 process before termination for cause. When such cause relates to quality, patient safety, or any other
6 matter that could trigger the initiation of disciplinary action by the medical staff, the physician should be
7 afforded full due process under the medical staff bylaws, and the agreement should not be terminated
8 before the governing body has acted on the recommendation of the medical
9 staff. Physician employment agreements should specify whether or not termination of employment is
10 grounds for automatic termination of hospital medical staff membership or clinical privileges. When
11 such cause is non-clinical or not otherwise a concern of the medical staff, the physician should be
12 afforded whatever due process is outlined in the employer's human resources policies and procedures.

13
14 (f) Physicians are encouraged to carefully consider the potential benefits and harms of entering
15 into employment agreements containing without cause termination provisions. Employers should never
16 terminate agreements without cause when the underlying reason for the termination relates to quality,
17 patient safety, or any other matter that could trigger the initiation of disciplinary action by the medical
18 staff.

19
20 (g) Physicians are discouraged from entering into agreements that restrict the physician's right to
21 practice medicine for a specified period of time or in a specified area upon termination of employment.

22
23 (h) Physician employment agreements should contain dispute resolution provisions. If the parties desire
24 an alternative to going to court, such as arbitration, the contract should specify the manner in which
25 disputes will be resolved.

26
27 *Refer to the AMA Annotated Model Physician-Hospital Employment Agreement and the AMA Annotated*
28 *Model Physician-Group Practice Employment Agreement for further guidance*
29 *on physician employment contracts.*

30
31 4. Hospital Medical Staff Relations

32
33 a) Employed physicians should be members of the organized medical staffs of the hospitals or health
34 systems with which they have contractual or financial arrangements, should be subject to the bylaws of
35 those medical staffs, and should conduct their professional activities according to the bylaws, standards,
36 rules, and regulations and policies adopted by those medical staffs.

37
38 b) Regardless of the employment status of its individual members, the organized medical staff remains
39 responsible for the provision of quality care and must work collectively to improve patient care and
40 outcomes.

41
42 c) Employed physicians who are members of the organized medical staff should be free to exercise their
43 personal and professional judgment in voting, speaking, and advocating on any matter regarding
44 medical staff matters and should not be deemed in breach of their employment agreements, nor be
45 retaliated against by their employers, for asserting these interests.

46
47 d) Employers should seek the input of the medical staff prior to the initiation, renewal, or termination of
48 exclusive employment contracts.

49
50 *Refer to the AMA Conflict of Interest Guidelines for the Organized Medical Staff for further guidance on*
51 *the relationship between employed physicians and the medical staff organization.*

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5. Peer Review and Performance Evaluations

- a) All physicians should promote and be subject to an effective program of peer review to monitor and evaluate the quality, appropriateness, medical necessity, and efficiency of the patient care services provided within their practice settings.
- b) Peer review should follow established procedures that are identical for all physicians practicing within a given health care organization, regardless of their employment status.
- c) Peer review of employed physicians should be conducted independently of and without interference from any human resources activities of the employer. Physicians--not lay administrators--should be ultimately responsible for all peer review of medical services provided by employed physicians.
- d) Employed physicians should be accorded due process protections, including a fair and objective hearing, in all peer review proceedings. The fundamental aspects of a fair hearing are a listing of specific charges, adequate notice of the right to a hearing, the opportunity to be present and to rebut evidence, and the opportunity to present a defense. Due process protections should extend to any disciplinary action sought by the employer that relates to the employed physician's independent exercise of medical judgment.
- e) Employers should provide employed physicians with regular performance evaluations, which should be presented in writing and accompanied by an oral discussion with the employed physician. Physicians should be informed before the beginning of the evaluation period of the general criteria to be considered in their performance evaluations, for example: quality of medical services provided, nature and frequency of patient complaints, employee productivity, employee contribution to the administrative/operational activities of the employer, etc.
- (f) Upon termination of employment with or without cause, an employed physician generally should not be required to resign his or her hospital medical staff membership or any of the clinical privileges held during the term of employment, unless an independent action of the medical staff calls for such action, and the physician has been afforded full due process under the medical staff bylaws. Automatic rescission of medical staff membership and/or clinical privileges following termination of an employment agreement is tolerable only if each of the following conditions is met:
- i. The agreement is for the provision of services on an exclusive basis; and
 - ii. Prior to the termination of the exclusive contract, the medical staff holds a hearing, as defined by the medical staff and hospital, to permit interested parties to express their views on the matter, with the medical staff subsequently making a recommendation to the governing body as to whether the contract should be terminated, as outlined in AMA Policy H-225.985; and
 - iii. The agreement explicitly states that medical staff membership and/or clinical privileges must be resigned upon termination of the agreement.

Refer to the AMA Principles for Incident-Based Peer Review and Disciplining at Health Care Organizations (AMA Policy H-375.965) for further guidance on peer review.

6. Payment Agreements

- a) Although they typically assign their billing privileges to their employers, employed physicians or their chosen representatives should be prospectively involved if the employer negotiates agreements for them for professional fees, capitation or global billing, or shared savings. Additionally,

1 employed physicians should be informed about the actual payment amount allocated to the
2 professional fee component of the total payment received by the contractual arrangement.

3
4 b) Employed physicians have a responsibility to assure that bills issued for services they provide are
5 accurate and should therefore retain the right to review billing claims as may be necessary to verify that
6 such bills are correct. Employers should indemnify and defend, and save harmless, employed physicians
7 with respect to any violation of law or regulation or breach of contract in connection with the
8 employer's billing for physician services, which violation is not the fault of the employee.

9
10 Your Committee received no online testimony and agrees with the Board of Governors'
11 recommendations.

12
13 Your Committee heard in-person testimony from one member requesting this resolution be
14 referred back to the Board of Governors in light of recent action by the American Medical
15 Association (AMA). The Committee agreed with the original Board recommendation.

16
17
18 **(B-3) Board Recommendation B-3:**

19
20 Madame Speaker, your Reference Committee recommends that **the remainder of Board Report**
21 **B of the Board of Governors be filed for information.**

22
23
24 **(2) RESOLUTION 21-201; PAC Membership, Polk County Medical Association**

25
26 **Recommendation:**

27
28 Madame Speaker, your Reference Committee recommends that **Resolution 21-201 be**
29 **adopted as amended.**

30
31 The original resolution reads as follows:

32
33 *RESOLVED, That the members of Florida Medical Association House of Delegates and the*
34 *members Florida Medical Association Board of Governors are required to become*
35 *members of the Florida Medical Association PAC and the required membership in the*
36 *FMA PAC shall be the minimum monetary amount necessary to become a FMA PAC*
37 *member.*

38
39 The resolution as amended reads as follows:

40
41 *RESOLVED, That the members of the Florida Medical Association House of Delegates and*
42 *the members of the Florida Medical Association Board of Governors are ~~required~~*
43 *encouraged to become members of the Florida Medical Association PAC and the*
44 *~~required~~ encouraged membership in the FMA PAC shall be the minimum monetary*
45 *amount necessary to become a FMA PAC member.*

46
47 Your committee received online testimony against this resolution primarily stating that
48 mandatory membership in the FMA PAC might be a deterrent. The testimony in favor of the
49 resolution was to encourage FMA PAC membership for all FMA Delegates.

50
51 Your committee heard no in-person testimony.

1
2 **(3) RESOLUTION 21-202; Medical Cannabis Committee, Dade County Medical Association,**
3 **Broward County Association**

4
5 **Recommendation:**

6
7 Madame Speaker, your Reference Committee recommends that **Resolution 21-202 be**
8 **adopted as amended by substitution.**

9
10 The resolution reads as follows:

11
12 *RESOLVED, That the FMA establish an ad hoc committee to advise the Board of*
13 *Governors on evidence-based medical cannabis policies that emphasize physician*
14 *education and public health awareness.*

15
16 The substitute language reads as follows:

17
18 *RESOLVED, That the FMA Board of Governors request that the Council on Medical*
19 *Education, Science, and Public Health evaluate the status of evidence-based medical*
20 *cannabis policies and their impact on physician education and public health awareness.*

21
22
23 Your committee received online testimony all in support of this resolution citing the need to
24 provide physicians with current legal and scientific standards on medical cannabis. The ad hoc
25 committee will help develop standards that do not currently exist to favorably affect patient
26 outcome. Organized medicine has a practical obligation to promote high quality education and
27 public health awareness.

28
29 Your committee heard in-person testimony all in favor of addressing the medical cannabis
30 impact with the need for education and public health awareness. Dr. Stephen Vernon,
31 member of the Council on Medical Education, Science, and Public Health and Chair of the CME
32 committee, provided substitute language to help address the issue with a standing FMA
33 Council and Committee. The committee agreed that using an existing committee with
34 appropriate expertise would be preferable to appointing an ad hoc committee.

35
36
37 **(4) RESOLUTION 21-203; Expanded Resource Base for Neurological Injury Compensation**
38 **Association (NICA), Northeast Florida Delegation**

39
40 **Recommendation:**

41
42 Madame Speaker, your Reference Committee recommends that **Resolution 21-203 be**
43 **adopted as amended.**

44
45 The original resolution reads as follows:

46
47 *RESOLVED, That the FMA seek legislation to amend Florida Statute 766.314 to require*
48 *all medical professionals in Florida to pay the annual NICA Assessment; and be it*
49 *further,*

50

1 *RESOLVED, That the FMA seek legislation to require the State of Florida to review the*
 2 *licensed medical professional assessment established in Florida Statute 766.314 taking*
 3 *into consideration the additional revenue generated by expanding the fee to all licensed*
 4 *medical professionals to ensure the fee is reasonable yet actuarially sound to ensure the*
 5 *sustainability of the program.*

6
 7 The amended resolution reads as follows:

8
 9 *RESOLVED, That the FMA seek **support** legislation to amend Florida Statute 766.314 to*
 10 *require all licensed medical professionals **healthcare practitioners not requiring***
 11 ***physician supervision** in Florida to pay the annual NICA Assessment; and be it further,*

12
 13 *RESOLVED, That the FMA seek **support** legislation to require the State of Florida to*
 14 *review the licensed medical professional assessment established in Florida Statute*
 15 *766.314 taking into consideration the additional revenue generated by expanding the*
 16 *fee to all licensed medical professionals **healthcare practitioners not requiring physician***
 17 ***supervision** to ensure the fee is reasonable yet actuarially sound to ensure the*
 18 *sustainability of the program **while decreasing the amount of the individual fees yet***
 19 ***remaining actuarially sound.***

20
 21 Your committee received online testimony with mixed support for and against the resolution.
 22 Testimony in support agrees that other medical professions should share the financial
 23 responsibility for funding. There was testimony that only medical professionals that engaged
 24 in obstetric care should contribute to the fund. Other testimony was that the NICA fund was
 25 massive and expanded collections were not needed. The committee chose to amend the
 26 second resolved with specific language on physician supervision to be consistent with the
 27 terminology used in the Florida Statutes.

28
 29 Your committee heard in-person testimony with majority in favor of the recommendation and
 30 emphasized the amended language from support to seek legislation. Testimony against the
 31 resolution wanted the original resolve to be considered.

32
 33
 34 **(5) RESOLUTION 21-204; NICA Exemption, Physicians Society of Central Florida**

35
 36 **Recommendation:**

37
 38 Madame Speaker, your Reference Committee recommends that **Resolution 21-204 be not**
 39 **adopted.**

40
 41 The resolution reads as follows:

42
 43 *RESOLVED, That the FMA seek legislation to exempt non-participating physicians from*
 44 *the annual \$250 payment into NICA.*

45
 46 Your committee received online testimony with mixed support for and against the resolution.
 47 Testimony for the resolution recommended more oversight and transparency with the NICA
 48 fund. Testimony stated the fund has massive amounts of money that is being misappropriated
 49 and used for expenses not in line with the spirit of NICA. Testimony against the resolution
 50 noted the funds helps benefit all physicians by lowering medical malpractice premiums and
 51 reduces litigation in the State. Testimony stated that prior to NICA, Florida lost a majority of

1 OB/GYNs due to the high risk and liability to practice and caused strain on the healthcare
 2 system. The recommendation to not adopt was due to the recommendation to adopt
 3 resolution 21-203 as amended which could reduce the annual fee for physicians.
 4

5 Your committee heard in-person testimony with majority in support of the reference
 6 committee's recommendation and was consistent with online testimony. Testimony against
 7 the recommendation argued that NICA is well funded and there are questions about how their
 8 fund is being managed.
 9

10
 11 **(6) RESOLUTION 21-205; NICA Reform, South Florida Caucus**
 12

13 **Recommendation:**
 14

15 Madame Speaker, your Reference Committee recommends that **Resolution 21-205 be**
 16 **adopted as amended.**
 17

18 The original resolution reads as follows:
 19

20 *RESOLVED, That the FMA review the support of the present NICA program to ensure that*
 21 *injured infants are being treated appropriately and that there is equitable support from*
 22 *hospitals and physicians.*
 23

24 The resolution as amended reads as follows:
 25

26 *RESOLVED, That the FMA review the support of the present continue to consult on an*
 27 *ongoing basis with the NICA program to ensure that there is transparency in the*
 28 *program, that injured infants are being treated appropriately and that there is equitable*
 29 *support from hospitals and physicians.*
 30

31 Your committee received online testimony with mixed support for and against the resolution.
 32 Testimony for the resolution stressed the need for proper management and use of NICA funds.
 33 Testimony claims the fund cost should be reduced by partnerships with related societies such as
 34 ACOG/SMFM. Testimony against the resolution points out misinformation and inaccurate data
 35 in the resolution. Testimony claims financial support for families with infants with birth injuries
 36 are needed but the current fund has too much money. Recommendations were made to use
 37 the terms fair compensation and equal support. The Committee recognized that NICA has
 38 previously provided similar information as requested by the FMA House of Delegates and
 39 believes this should remain a priority of the FMA.
 40

41 Your committee heard in-person testimony with majority in favor of the recommendation. The
 42 need for transparency was an overall theme of testimony and was added to the amended
 43 resolution. Your committee also heard a report from FMA General Counsel, Jeff Scott, during
 44 executive session outlining the ongoing work by the FMA with the NICA program
 45 representatives. It was noted that the state of Florida Chief Financial Officer Jimmy Patronis is
 46 conducting a thorough audit of the program and that there is information on the NICA website,
 47 www.nica.com. FMA members are also encouraged to contact the FMA General Counsel for
 48 specific questions and concerns.
 49

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 51 **(7) RESOLUTION 21-206; Employed Physician, Broward County Medical Association**

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Recommendation:

Madame Speaker, your Reference Committee recommends that **Resolution 21-206 be referred to the Board of Governors for decision.**

The original resolution reads as follows:

RESOLVED, That the Florida Medical Association establish and create a Section for Employed Physicians to ascertain problems associated with employment; recommend solutions; and employ the strength of the Florida Medical Association as a resource when resolving conflicts and challenges between employed physicians and their employers; be it further

RESOLVED, That the Florida Delegation to the American Medical Association submit the following resolution for consideration at their November, 2021 Interim meeting; be it further

RESOLVED, That the American Medical Association establish and create a Section for Employed Physicians to ascertain problems associated with employment; recommend solutions; and employ the strength of the American Medical Association as a resource when resolving conflicts and challenges between employed physicians and their employers.

Your committee heard in-person testimony from the author and others in support of the FMA and AMA providing services specifically dedicated to the challenges faced by employed physicians. Other testimony supported appointing an ad hoc committee to study the issue. The reference committee recommended referral to the Board of Governors to review options that could involve the Bylaws Committee.

Madame Speaker, your Chairs wishes to thank each member of the reference committee:

- Dr. John Bailey
- Dr. Shahnaz Fatteh
- Dr. Radhakrishna Rao
- Dr. Brence Sell
- Dr. Nam Tran

I would also like to thank Kristy Jones, Jeff Scott and Adam Baust, FMA Staff, for their support of the Committee and the members of the Association who attended our meeting and presented testimony.

Recommendation:

Madame Speaker, I move that the Report of **Reference Committee II be adopted.**