

MEDICAL SOCIETY OF THE STATE OF NEW YORK 2017 HOUSE OF DELEGATES

Report of the Reference Committee on Governmental Affairs and Legal Matters (B)

Presented by: Rose Berkun, MD, Chair

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**Madam Speaker and Members of the House of Delegates:**

Your Reference Committee recommends the following consent calendar for acceptance:

**RECOMMENDED FOR ADOPTION**

1. Resolution 100 - Faxes
2. Resolution 112 - Call for Mandatory Rear Safety Belt Usage
3. Resolution 119 - Right for Gamete Preservation Therapies

**RECOMMENDED FOR ADOPTION AS AMENDED OR SUBSTITUTED**

4. Resolution 101 - Online Review
5. Resolution 104 - Mental Health Services for Medical Students
6. Resolution 106 - Home Care Discharge Summary Standardization
7. Resolution 108 - Increased Accessibility of Emergency Epinephrine for Anaphylactic Response
8. Resolution 113 - Limiting Hospitals to Being Hospitals  
And  
Resolution 121 - Getting Financial Support for Independent Physicians
9. Resolution 114 - Physician Access to their Medical and Billing Records
10. Resolution 115 - Physician Credentialing Improvement
11. Resolution 116 - Archaic Requirement that Primary Care Physicians Maintain Hospital Privileges
12. Resolution 120 - Adverse Impacts of Single Specialty IPA's
13. Resolution 118 - Fertility Preservation Therapy Insurance Coverage for Cancer Patients

**REFERRED TO COUNCIL**

14. Resolution 111 - MSSNY Support for Impairment Research
15. Resolution 117 - Parental Alienation Syndrome in Custody Cases
16. Resolution 122 - Physician Owned Distributorships

**RECOMMENDED NOT FOR ADOPTION**

17. Resolution 109 - Electric "Stand Up" Scooters: A Potential Public Health Problem
18. Resolution 110 - Grocery Bags - Single Use Resolution
19. Resolution 123 - Physicians Convicted of a Nonviolent Crime
20. Resolution 124 - Patient and Physician Protection from Telemedicine

1 1. RESOLUTION 100 - FAXES

2

3 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 100 BE ADOPTED.**

4

5 Resolution 100 asks that the Medical Society of the State of New York advocate for the state of  
6 New York to set up a registry for physicians' office fax lines and prohibit advertisers to send  
7 unsolicited faxes to these numbers, in an attempt to keep the fax lines clear.

8

9 Your Reference Committee heard testimony stating that this would help cut down on the  
10 number of unwanted faxes that physicians receive. Your reference committee agrees that  
11 unwanted solicitations can disrupt the office's workflow and productivity. Your reference  
12 committee was advised that the Federal Communications Commission established the  
13 Telephone Consumer Protection Act (TCPA) U.S.C. § 227 that restricts the use of the facsimile  
14 machine to deliver unsolicited advertisements. Specifically, the TCPA prohibits the use of any  
15 telephone facsimile machine, computer, or other device to send an unsolicited advertisement to  
16 a telephone facsimile machine. The TCPA was amended to include the Junk Fax Prevention Act  
17 that permits the sending of unsolicited facsimile advertisements to individuals and businesses  
18 with which the sender has an established business relationship and to provide a process by  
19 which any sender must cease sending such advertisements upon the request of the recipient.

20

21 2. RESOLUTION 112 - CALL FOR MANDATORY REAR SEAT SAFETY BELT USAGE

22

23 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 112 BE ADOPTED.**

24

25 Resolution 112 asks (1) that the Medical Society of the State of New York policy 10.997 be  
26 modified to read:

27

28 MSSNY called calls upon the legislature to enact laws mandating both front and rear  
29 safety belt usage for people of all ages;

30

31 And (2) that the Medical Society of the State of New York pursue legislative action or regulation  
32 that would mandate all passengers, including rear seat passengers, regardless of age be  
33 required to use safety belts.

34

35 Your Reference Committee heard testimony in overwhelming support of this resolution.  
36 According to testimony, half of motor vehicle related fatalities are related to unbelted  
37 passengers. Furthermore, 38 states have already passed similar legislation. Your committee  
38 agrees that all passengers should be required to wear seat belts in order to reduce the  
39 incidence of serious injury to or death of rear-seat passengers. Your committee was advised  
40 that MSSNY has adopted policy calling upon the legislature to enact laws mandating safety belt  
41 usage.

42

43 **MSSNY 10.997 Call for Mandatory Safety Belt Usage:**

44

45 MSSNY called upon the legislature to enact laws mandating safety belt usage. The New York  
46 Coalition for Safety Belt Use was organized with the Medical Society of the State of New York in  
47 a leading position. (HOD 1982-19; Reaffirmed HOD 2013)

1 3. RESOLUTION 119- RIGHT FOR GAMETE PRESERVATION THERAPIES

2  
3 THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 119 BE ADOPTED.

4  
5 Resolution 119 asks (1) that fertility preservation services be officially recognized by MSSNY as  
6 an option for the members of the New York transgender and non-binary community who wish to  
7 preserve future fertility through gamete preservation prior to undergoing gender affirming  
8 medical or surgical therapies; and (2) that MSSNY officially support the right of transgender or  
9 non-binary individuals to seek gamete preservation therapies.

10  
11 Your Reference Committee heard testimony in support of this resolution. Your reference  
12 committee understands that gender-affirming procedures adversely affect the reproductive  
13 potential of transgender people. However, prior to medical and surgical transition, options are  
14 available to preserve gametes to assist with future reproduction. Further, in transwomen, semen  
15 cryopreservation is typically straightforward and widely available at fertility centers  
16 (<http://tiny.cc/TransFertility>). According to the University of California, San Francisco's Center of  
17 Excellence for Transgender Health, "it is recommended that prior to transition all transgender  
18 persons be counseled on the effects of transition on their fertility as well as regarding options for  
19 fertility preservation and reproduction" (<http://tiny.cc/TransGuidelines>).

20  
21 A 2017 New York Department of Financial Services Insurance Circular Letter affirmed that "The  
22 current ASRM description of infertility provides that "[i]nfertility is a disease, defined by the  
23 failure to achieve a successful pregnancy after 12 months or more of appropriate, timed  
24 unprotected intercourse or therapeutic donor insemination. Earlier evaluation and treatment  
25 may be justified based on medical history and physical findings and is warranted after 6 months  
26 for women over age 35 years."<sup>1</sup> This definition of infertility does not distinguish between  
27 heterosexual individuals in a relationship or who are married, individuals in a same-sex  
28 relationship or who are married, single individuals, or based on gender identity. If an individual  
29 meets the definition of infertility and otherwise qualifies for coverage, then an issuer must  
30 provide coverage regardless of sexual orientation, marital status or gender identity. Moreover,  
31 since the definition of infertility expressly permits a provider to provide for treatment earlier than  
32 12 months, issuers should be mindful that, with respect to individuals in a same-sex relationship  
33 or single individuals, earlier treatment may be justified." (<http://tiny.cc/DFSTrans>).

34  
35 Your reference committee understands that current MSSNY policy exists that supports the  
36 requirement for insurance coverage for infertility treatment. However, your reference committee  
37 believes that MSSNY should officially recognize fertility preservation services as an option for  
38 transgender and non-binary individuals.

1 4. RESOLUTION 101 - ONLINE REVIEW

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3 RECOMMENDATION A:

4

5 **THE REFERENCE COMMITTEE RECOMMENDS THE FOLLOWING SUBSTITUTE**  
6 **AMENDMENT BE ACCEPTED INSTEAD OF THE ORIGINAL RESOLUTION.**

7

8 ***RESOLVED, that MSSNY will work with outside council to develop methods by which to***  
9 ***effectively and legally ensure the accuracy of online posts and reviews, allowing***  
10 ***physicians to respond and review veracity while working within the constraints of the 1<sup>st</sup>***  
11 ***Amendment of the United States Constitution.***

12

13 RECOMMENDATION B:

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15 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 101 BE ADOPTED**  
16 **AS AMENDED.**

17

18 Resolution 101 asks that MSSNY advocate for a legislative solution that establishes an  
19 oversight body to ensure data and ratings are not false or misleading.

20

21 Your Reference Committee heard testimony speaking to the fact that physicians must often  
22 have difficult and honest conversations with patients. On occasion, physicians may need to take  
23 action or make recommendations that the patient finds offensive or unjust, even when the  
24 physician is acting in the best interest of their patient. Individuals often post negative reviews  
25 that are unjustified and physicians have no recourse to have these verified or removed if they  
26 are inaccurate or inappropriate. Your reference committee agrees with the intent of this  
27 resolution and believes that it is a problem in need of a solution. Per discussion with MSSNY  
28 council, legal precedent exists (American Libraries Association vs. Pataki, No. 97 Civ. 0222)  
29 that makes it difficult to regulate online content in the manner being discussed within. Therefore,  
30 your committee believes that the best solution is to work with outside council to research and  
31 develop methods to enforce current MSSNY policy 270.978 which is related to ensuring  
32 accurate online reviews and preventing misleading slanderous or libelous posts.

33

34 5. RESOLUTION 104 - MENTAL HEALTH SERVICES FOR MEDICAL STUDENTS

35

36 RECOMMENDATION A:

37

38 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FIRST RESOLVED OF**  
39 **RESOLUTION 104 BE AMENDED BY ADDITION.**

40

41 ***RESOLVED, that MSSNY encourage Medical Schools in New York State to provide***  
42 ***confidential in-house mental health services at no cost to students, without billing health***  
43 ***insurance, and set up programs to educate both students and staff about burnout,***  
44 ***depression, and suicide; and be it further***

45

46

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1 **RECOMMENDATION B:**

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3 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE SECOND RESOLVED BE**  
4 **ADOPTED.**

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6 **RECOMMENDATION C:**

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8 **THE REFERENCE COMMITTEE RECOMMENDS THE ADDITION OF A THIRD RESOLVED:**

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10 ***RESOLVED, that MSSNY encourage Medical Schools in New York State to offer***  
11 ***affordable, confidential off-site counseling***

12

13 **RECOMMENDATION D:**

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15 **THE REFERENCE COMMITTEE RECOMMENDS RESOLUTION 104 BE ADOPTED AS**  
16 **AMENDED.**

17

18 Resolution 104 asks that (1) MSSNY encourage Medical Schools in New York State to provide  
19 in-house mental health services at no cost to students, without billing health insurance, and set  
20 up programs to educate both students and staff about burnout, depression, and suicide; and be  
21 it further (2) bring this resolution to the AMA so that the AMA can recommend that the AAMC  
22 strengthen their recommendations to all the medical schools to mandate these services for our  
23 medical students.

24

25 Your Reference Committee heard testimony in overwhelming support of this resolution,  
26 including from the medical student delegation that spoke to disparities in the availability of  
27 mental health services. They mentioned that many are concerned about their future  
28 employment and licensure and it's important to have mental health services and counseling be  
29 confidential. They also mentioned that many medical students are on their parents' health  
30 insurance and are afraid of their parents being notified when they seek mental health services  
31 through their insurance.

32

33 Your reference committee agrees with the concerns that led to the introduction of this resolution.  
34 According to Darrell Kirch, MD, president and CEO of the Association of American Medical  
35 Colleges, "the nation's medical schools and teaching hospitals are extremely concerned about  
36 the growing problem of student and physician burnout, depression, and suicide,"  
37 (<http://tiny.cc/MoreMHNeeded>). The workload, long shifts and patient responsibility are an  
38 immense burden on students just entering the medical field. This burden can lead to mental  
39 health issues, substance abuse and in some unfortunate cases, suicide. According to a 2016  
40 meta-analysis published in JAMA (<http://tiny.cc/StudentMHJAMA>), one in four medical students  
41 will suffer from depression and one in ten students will attempt suicide (twice the prevalence of  
42 depression in the general population of that age group). Further, due to the stigma of mental  
43 illness and the pressure of medical school, only 16% of students who showed signs of mild to  
44 moderate depression actually sought help for their condition (<http://tiny.cc/MedStudentsMH>).

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1 Your reference committee was advised that AAMC states that “schools should provide access  
2 to confidential counseling by mental health professionals for all students.” This resolution  
3 recommends that these services be offered free-of-charge to students. Your reference  
4 committee was informed that the AMA has existing policy supporting this area that states “Our  
5 AMA promotes the availability of timely, confidential, accessible, and affordable medical and  
6 mental health services for medical students and residents, and fellow physicians, to include  
7 needed diagnostic, preventive, and therapeutic services. Information on where and how to  
8 access these services should be readily available at all education/training sites, and these  
9 services should be provided at sites in reasonable proximity to the sites where the  
10 education/training take place.”

11

## 12 6. RESOLUTION 106 - HOME CARE DISCHARGE SUMMARY STANDARDIZATION

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### 14 **RECOMMENDATION A:**

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16 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 106 BE AMENDED**  
17 **BY ADDITION.**

18

19 ***RESOLVED, that MSSNY work to introduce legislation to require standardization of the***  
20 ***HHCA electronic discharge summary as guided by MSSNY member physicians who will***  
21 ***be receiving this information.***

22

### 23 **RECOMMENDATION B:**

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25 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 106 BE ADOPTED**  
26 **AS AMENDED.**

27

28 Resolution 106 asks that MSSNY works to introduce legislation to require standardization of the  
29 HHCA discharge summary as guided by MSSNY member physicians who will be receiving this  
30 information.

31

32 Your Reference Committee heard testimony in support of this resolution. When a patient is  
33 discharged to private care, their narrative about their stay is often indecipherable, difficult to  
34 understand or undocumented. Your reference committee agrees that existence of disparate  
35 formats and requirements for discharge summaries are problematic for physicians and that  
36 standardization would provide clarity and uniformity. AMA currently has Policy that encourages  
37 the development of standardized discharge summaries, stating the following: “Our AMA  
38 encourages the development of discharge summaries that are presented to physicians in a  
39 meaningful format that prominently highlight salient patient information, such as the discharging  
40 physician's narrative and recommendations for ongoing care.”

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1 7. RESOLUTION 108 - INCREASED ACCESSIBILITY OF EMERGENCY EPINEPHRINE FOR  
2 ANAPHYLACTIC RESPONSE

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4 **RECOMMENDATION A:**

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6 **THE REFERENCE COMMITTEE RECOMMENDS RESOLUTION 108 BE AMENDED BY**  
7 **ADDITION.**

8  
9 ***RESOLVED, that the Medical Society of the State of New York support legislative action***  
10 ***to bring about training on and accessibility to emergency epinephrine in areas deemed to***  
11 ***be high risk, including but not limited to those focused on children and food service,***  
12 ***such as childcare facilities, schools, school buses, food-service areas and restaurants.***

13  
14 **RECOMMENDATION B:**

15  
16 **THE REFERENCE COMMITTEE RECOMMENDS RESOLUTION 108 BE ADOPTED AS**  
17 **AMENDED.**

18 Resolution 108 asks that the Medical Society of the State of New York support legislative action  
19 to bring about training on and accessibility to emergency epinephrine in areas deemed to be  
20 high risk.

21  
22 Your Reference Committee heard testimony in support of this resolution. Per testimony,  
23 California and Florida have mandated the presence of epinephrine in restaurants. Children are  
24 the most susceptible to adverse incidents that necessitate administration of epinephrine. To this  
25 cause, the legislature already has a variety of New York State bills under consideration that  
26 would require training on usage of and presence of emergency epinephrine in a variety of  
27 locations related to childcare. Other countries such as Ireland require restaurants to have  
28 emergency epinephrine available and there is a trend toward listing allergy information in  
29 restaurants.

30  
31 Your reference committee agrees with the concerns that led to the introduction of this resolution.  
32 Anaphylactic reactions to food have increased 377 percent from 2007 to 2016, according to a  
33 new report from Food Allergy Research & Education (FARE). The striking increase in the  
34 number of anaphylactic reactions is a major concern, signaling the need to strengthen efforts to  
35 educate patients and the community. A variety of current bills exist that would work toward the  
36 intended goal of this resolution, including requiring epinephrine injectors in schools and  
37 requiring training (A.645), requiring epinephrine at camps (A.1050/S.1480), requiring new  
38 teachers to be certified (A.768), requiring that members of all emergency service providers be  
39 trained in the administration of emergency anaphylaxis treatment and to carry emergency  
40 anaphylaxis treatment in their vehicles (A.3426).

41  
42 Your reference committee was advised that MSSNY has also adopted similar policy positions in  
43 this area, but we should add current and relevant policy that covers high-risk areas in addition to  
44 just schools.

1 **MSSNY 30.989 Availability of Self-Injectable Epinephrine Devices in New York State**  
2 **Schools**  
3

4 The Medical Society of the State of New York will support legislation that requires all schools  
5 (public and private) to stock auto-injectable epinephrine devices in standardized dosage  
6 formulations and train personnel for the administration of this medication. MSSNY will urge the  
7 State Education Department (SED) to provide information to public and private schools about  
8 the ability for nurses and other trained individuals to administer auto-injectable epinephrine  
9 devices to children or adults who have had a severe allergic reaction and that these trained  
10 individuals are covered by the New York State “Good Samaritan” statute.

11 The Medical Society of the State of New York will educate its members about physicians being  
12 authorized to issue a non-patient specific regimen to a registered professional nurse under the  
13 provisions of Article 6527 (6) of the NYS Education Law. (HOD 2014-150)  
14

15 **8. RESOLUTION 113- LIMITING HOSPITALS TO BEING HOSPITALS**

16 **AND**

17 **RESOLUTION 121 – GETTING FINANCIAL SUPPORT TO INDEPENDENT PHYSICIANS**  
18

19 **RECOMMENDATION A:**  
20

21 **THE REFERENCE COMMITTEE RECOMMENDS SUBSTITUTION RESOLUTION 113 BE**  
22 **ADOPTED IN LIEU OF RESOLUTION 113 AND RESOLUTION 121.**  
23

24 ***RESOLVED, that the Medical Society of the State of New York urge, advocate and seek***  
25 ***legislation that helps to seek parity of government funding and payment methodologies***  
26 ***among sites of care.***  
27

28 **RECOMMENDATION B:**  
29

30 **YOUR REFERENCE COMMITTEE RECOMMENDS THE TITLE BE AMENDED BY**  
31 **SUBSTITUTION.**  
32

33 ***Site Neutral Physician Payment Equality***  
34

35 Resolution 113 asks (1) that the Medical Society the State of New York advocate for limiting  
36 hospitals to hospital work and requiring payers to pay physicians for out of hospital services, the  
37 same as they would pay a hospital; and (2) that the Medical Society the State of New York  
38 propose and advocate that the AMA support limiting hospitals to hospital work and requiring  
39 payers to pay physicians for out of hospital services, the same as they would pay a hospital.  
40

41 Resolution 121 asks (1) that the Medical Society the State of New York urge, advocate and  
42 seek legislation that helps balance the unequal government funding and incentives provided to  
43 hospitals versus independent practices; and (2) that the Medical Society the State of New York  
44 propose and advocate that government funding and incentives be fairly balanced for hospitals  
45 and independent practices at the 2019 AMA meeting.  
46



1 Your reference committee appreciates the intent of both resolutions and believes it is becoming  
2 increasingly difficult for physicians to maintain independent practice. As such, it is imperative to  
3 advocate for payment parity to ensure the long-term viability of independent practices. Your  
4 reference committee understands the concerns associated with these resolutions and believes  
5 that they should be combined in order to bring about comprehensive and cohesive policy to this  
6 end. Additionally, the AMA has issued a statement related to this issue; according to AMA  
7 President Andrew W. Gurman, MD, "Providing similar payments for similar professional services  
8 located outside of a hospital campus, regardless of facility ownership, could lead to a more level  
9 economic playing field and help preserve independent practice,"

10

11 Congress has recently taken some steps to reduce the disparity between payments for  
12 outpatient services and those in a physician's office via site-neutral payments which should  
13 work to level the playing field between hospitals and physician practices. Further, your reference  
14 committee understands that many rural patients have benefited from enhanced access to care  
15 provided by hospitals. Additionally, MSSNY is actively advocating to allow physicians to  
16 negotiate collectively, which would surely help to bring about a greater level of pay parity;  
17 current MSSNY policy exists regarding collective negotiations (MSSNY 120.970). MSSNY also  
18 has policy regarding site of service parity (MSSNY 265.858) that seeks the elimination of  
19 payment differentials for routine and non-emergency physician services based upon site of  
20 service.

21

## 22 9. RESOLUTION 114 - PHYSICIAN ACCESS TO THEIR MEDICAL & BILLING RECORDS

23

### 24 **RECOMMENDATION A:**

25

26 **THE REFERENCE COMMITTEE RECOMMENDS THE FIRST RESOLVED BE AMENDED BY**  
27 **ADDITION.**

28

29 **RESOLVED, that licensed physicians must always have access to all medical and billing**  
30 **records for their patients from and after date of service including after physician**  
31 **termination.**

32

### 33 **RECOMMENDATION B:**

34

35 **THE REFERENCE COMMITTEE RECOMMENDS THE SECOND RESOLVED BE**  
36 **ACCEPTED.**

37

### 38 **RECOMMENDATION C:**

39

40 **THE REFERENCE COMMITTEE RECOMMENDS THE THIRD RESOLVED BE ACCEPTED.**

41

### 42 **RECOMMENDATION D:**

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44 **THE REFERENCE COMMITTEE RECOMMENDS RESOLUTION 114 BE ADOPTED AS**  
45 **AMENDED.**

46

1 Resolution 114 asks (1) that Physicians must always have access to all medical & billing  
2 records for their patients from and after date of service; (2) that MSSNY press for legislation to  
3 eliminate contractual language that bars or limits the treating physician's access to the medical  
4 and billing records such as treating these records as trade secrets or proprietary; and (3) that  
5 this resolution be brought to AMA for consideration.  
6

7 Your Reference Committee heard testimony in support of this resolution, recommending that  
8 termination language be added. Our reference committee agrees that physicians should and  
9 must have access to their medical and billing records. Your committee agrees that contractual  
10 language barring or limiting a physician's access to their records is inappropriate. Your  
11 reference committee was advised that MSSNY has adopted policy advocating that physicians  
12 not enter into contractual agreements that include clauses that afford "ownership" ownership  
13 and control of records, limiting physician ownership of their records. Therefore, your reference  
14 committee was advised that MSSNY has adopted policy relevant to this concern.  
15

16 **MSSNY 95.980 Use of Percentage-of-Fee Based Compensation Arrangements:**

17 The Medical Society reaffirms its support for the underlying principle that a physician's  
18 dedication to providing competent medical service for his or her patient is paramount.  
19 Moreover, we also support the opinion that the physician's control over clinical decision-making  
20 must remain unencumbered and independent from non-clinical influence. The Medical Society  
21 recognizes that the continuation of the corporate practice of medicine doctrine's prohibition  
22 against an unlicensed person or entity's influence in the practice of medicine is necessary to  
23 uphold these principles and to protect against potential abuses and fraudulent activity.  
24 Physicians must remain knowledgeable of and in control of the business aspects of their  
25 practice and should not relinquish such authority to non-physician business entities. In our  
26 opinion, the following "business" decisions and activities involving control over the physician's  
27 individual practice of medicine should be made by a physician and not by a non-physician or  
28 entity:

- 29 ● ownership and control of a patient's medical records, including determining the contents  
30 thereof;
- 31 ● selection (hiring/firing as it relates to clinical competency or proficiency) of professional,  
32 physician extender and allied health staff;
- 33 ● set the parameters under which the physician will enter into contractual relationships  
34 with third party payors
- 35 ● decisions regarding coding and billing procedures for patient care services; and  
36 ● approval of the selection of medical equipment.  
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1 10. RESOLUTION 115 - PHYSICIAN CREDENTIALING IMPROVEMENT

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3 **RECCOMENDATION A:**

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5 **THE REFERENCE COMMITTEE RECOMMENDS THE FOLLOWING SUBSTITUTE**  
6 **AMENDMENT:**

7

8 ***RESOLVED, MSSNY advocate for regulation or legislation asserting that a physician who***  
9 ***has submitted a completed application for credentialing, until which time that application***  
10 ***is accepted or rejected, may bill for services under the general supervision of a physician***  
11 ***who is already credentialed by that plan. This shall be applied to all insurance plans,***  
12 ***including state sponsored plans such as worker's compensation.***

13

14 **RECOMMENDATION B:**

15

16 **THE REFERENCE COMMITTEE RECOMMENDS RESOLUTOIN 115 BE ADOPTED AS**  
17 **AMENDED.**

18

19 Resolution 115 asks that MSSNY advocate with the New York State Health Plan Association  
20 that a physician who has applied for credentialing by a Health Plan is allowed to bill for services  
21 rendered when billed if under general supervision of a physician who is already credentialed by  
22 that Plan.

23

24 Your Reference Committee heard testimony in overwhelming support of this resolution.  
25 Testimony spoke to the unreasonable time that insurers may take and the difficulties that this  
26 places on providing care for patients. Your reference committee agrees that physicians should  
27 be able to treat and bill while waiting for an insurance company to complete the credentialing  
28 process. Legislation was passed in 2009 that granted provisional credentialing status by  
29 insurers to physicians new to practice in New York but did not apply to physicians seeking  
30 credentialing with a new health plan. The intent of this resolution would be to enhance the law  
31 passed in 2009 by extending it to physicians applying for participation with new insurance  
32 companies.

33

34 Further, your reference committee was advised that the AMA also currently has policy that aims  
35 to accomplish the goal of this resolution, which states "(3) Medicare, Medicaid, and managed  
36 care organizations should (a) make final physician credentialing determinations within 45  
37 calendar days of receipt of a completed application; (b) grant provisional credentialing pending a  
38 final credentialing decision if the credentialing process exceeds 45 calendar days; and (c)  
39 retroactively compensate physicians for services rendered from the date of their credentialing."

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1 11. RESOLUTION 116 - ARCHAIC REQUIREMENT THAT PRIMARY CARE PHYSICIANS  
2 MAINTAIN HOSPITAL PRIVILEGES

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4 **RECOMMENDATION A:**

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6 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FIRST RESOLVED BE**  
7 **AMENDED BY DELETION:**

8

9 RESOLVED, that MSSNY call for an end to the insurance company requirement that ~~Primary~~  
10 ~~Care~~ Physicians secure hospital admitting privileges as a condition to become participating  
11 (network) providers; and be it further

12

13 **RECOMMENDATION B:**

14

15 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE SECOND RESOLVED BE**  
16 **AMENDED BY DELETION:**

17

18 RESOLVED, that MSSNY seek legislation or regulation that would prevent insurance  
19 companies from denying participating status to ~~Primary Care~~ Physicians who lack hospital  
20 admitting privileges.

21

22 **RECOMMENDATION C:**

23

24 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 116 BE ADOPTED**  
25 **AS AMENDED.**

26

27 Resolution 116 asks (1) that MSSNY call for an end to the insurance company requirement that  
28 Primary Care Physicians secure hospital admitting privileges as a condition to become  
29 participating (network) providers; and (2) that MSSNY seek legislation or regulation that would  
30 prevent insurance companies from denying participating status to Primary Care Physicians who  
31 lack hospital admitting privileges.

32

33 Your Reference Committee heard testimony in support of this testimony. In testimony it was  
34 discussed that this policy shouldn't solely apply to primary care physicians, but instead should  
35 apply to all physicians that are not practicing in a hospital. Your reference committee agrees  
36 that primary care physicians and other physicians who do not regularly practice in or admit  
37 patients to a hospital should not be required to maintain hospital privileges in order to participate  
38 in a insurance company's network. The time and resources spent on applying and maintaining  
39 current privileges is unnecessary when these privileges are not utilized.

40

41 12. RESOLUTION 120- ADVERSE IMPACTS OF SINGLE SPECIALTY IPA'S

42

43 **RECOMMENDATION A:**

44

45 **THE REFERENCE COMMITTEE RECOMMENDS THE FIRST RESOLVED BE AMENDED BY**  
46 **SUBSTITUTION:**

47

1 ***RESOLVED, that MSSNY seek legislation and/or regulation preventing managed care***  
2 ***plans from replacing their physician panels with those of a non-primary care physician***  
3 ***single-specialty IPA; and be it further***

4  
5 **RECOMMENDATION B:**

6  
7 **THE REFERENCE COMMITTEE RECOMMENDS THE SECOND RESOLVED BE AMENDED**  
8 **BY ADDITION:**

9  
10 ***RESOLVED, that MSSNY seek a study from the AMA relating to the impact of managed***  
11 ***care plans replacing their physician panels with those of a non-primary care physician***  
12 ***single specialty IPA.***

13  
14 **RECOMMENDATION C:**

15  
16 **YOUR REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 120 BE ADOPTED**  
17 **AS AMENDED.**

18  
19 Resolution 120 asks that (1) that MSSNY seek a response from the NYS regulators and  
20 legislators relating to the impact of managed care plans replacing their physician panels with  
21 those of a single specialty IPA; and (2) that MSSNY seek a study from the AMA relating to the  
22 impact of managed care plans replacing their physician panels with those of a single specialty  
23 IPA.

24  
25 Your Reference Committee heard split testimony, mostly in support of this resolution. Your  
26 reference committee has been informed that increasingly certain specialty physicians are being  
27 required to join a health plan's preferred single-specialty IPA if they choose to participate in  
28 network. This could have the negative effect of reducing integration of care due to the exclusive  
29 nature of these IPAs. Further, it places undue restrictions on the ability for physicians to practice  
30 independently and negotiate on fair terms.

31  
32 **13. RESOLUTION 118- FERTILITY PRESERVATION THERAPY INSURANCE COVERAGE**  
33 **FOR CANCER PATIENTS**

34  
35 **RECOMMENDATION A:**

36  
37 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FIRST RESOLVED NOT BE**  
38 **ACCEPTED.**

39  
40 **RECOMMENDATION B:**

41  
42 **THE REFERENCE COMMITTEE RECOMMENDS THE SECOND RESOLVED BE AMENDED**  
43 **BY SUBSTITUTION.**

44  
45 ***RESOLVED, that MSSNY advocate for payment for fertility preservation therapy services***  
46 ***by all payers when iatrogenic infertility may be caused directly or indirectly by necessary***  
47 ***medical treatments as determined by a licensed physician, and will advocate for***

1 *appropriate state regulation requiring payment for fertility preservation therapy services*  
2 *by all payers when iatrogenic infertility may be caused directly or indirectly by necessary*  
3 *medical treatments as determined by a licensed physician.*

4  
5 **RECOMMENDATION C:**

6  
7 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE THIRD RESOLVED NOT BE**  
8 **ACCEPTED.**

9  
10 **RECOMMENDATION D:**

11  
12 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 118 BE ADOPTED**  
13 **AS AMENDED.**

14  
15 **RECOMMENDATION E:**

16  
17 **YOUR REFERENCE COMMITTEE RECOMMENDS THAT THE TITLE BE AMENDED BY**  
18 **DELETION.**

19  
20 ***Fertility Preservation Therapy Insurance Coverage for ~~Cancer~~ Patients***

21  
22 Resolution 118 asks (1) That MSSNY seek legislation or regulation that Fertility Preservation  
23 Therapy be covered by commercial and public insurance plans for cancer patients; (2) That  
24 MSSNY supports legislation or regulation that diminish barriers for patients access to gamete  
25 preservation through: Mandated insurance coverage and a streamlined prior authorization  
26 processes; and (3) That MSSNY forward this resolution to the AMA to seek similar changes at  
27 the national level.

28  
29 Your Reference Committee heard testimony in support of enhanced insurance coverage of  
30 infertility treatment. There was disagreement as to whether or not this policy should apply solely  
31 to cancer patients or more broadly to all patients with iatrogenic infertility. Your reference  
32 committee understands that cancer treatment can lead to infertility and that patients should  
33 have the right to infertility treatment. However, your reference committee believes that  
34 specifically calling out cancer would have the effect of narrowing established MSSNY policy.  
35 Therefore, your reference committee recommends the adoption of the second resolved, crafted  
36 based upon AMA policy which speaks to advocating for diminishing barriers to gamete  
37 preservation, but not specifically calling out cancer.

38  
39 **MSSNY 5.994 Infertility**

40 MSSNY recognizes that infertility is a disease of the reproductive system that impairs one of the  
41 body's most basic functions, the conception of children, and supports the requirement for  
42 insurance coverage for infertility treatments. (HOD 2000-91; Reaffirmed HOD 2002-152;  
43 Modified and reaffirmed HOD 2013)

1 14. RESOLUTION 111 - MSSNY SUPPORT FOR IMPAIRMENT RESEARCH

2

3 **THE REFERENCE COMMITTEE RECOMMENDS RESOLUTION 111 BE REFERRED TO**  
4 **COUNCIL.**

5

6 Resolution 111 asks that the Medical Society of the State of New York submit to the American  
7 House of Delegates a resolution to commit all necessary resources and efforts needed to  
8 researching and developing a robust body of evidence for reliable and reproducible methods of  
9 assessing impairment of drivers and other appropriate and applicable operators of mechanized  
10 vehicles.

11

12 Your Reference Committee heard both in support and opposition of this resolution. Your  
13 committee agrees that impairment due to fatigue is a concern, leading to significant danger for  
14 those driving impaired and other drivers, passengers and pedestrians.

15

16 Fatigue is not the #1 cause of vehicular accidents. According to the CDC, drunk driving is 12  
17 times more likely to cause a fatal accident than fatigue impaired driving. Your reference  
18 committee believes that the AMA should work with the CDC to further research impaired driving.  
19 Your committee understands that fatigue is difficult to assess and law enforcement officers don't  
20 have the tools necessary to assess fatigue's role in accidents. AMA currently has policy  
21 regarding testing and research related to fatigue-related impaired driving. The AMA policy  
22 recommends researching its prevalence and impact and developing methods to reduce  
23 prevalence.

24

25 15. RESOLUTION 117- PARENTAL ALIENATION SYNDROME IN CUSTODY CASES

26

27 **THE REFERENCE COMMITTEE RECOMMENDS RESOLUTION 117 BE REFERRED TO**  
28 **COUNCIL**

29

30 Resolution 117 asks that MSSNY support legislation and/or regulation to prohibit the use of  
31 Parental Alienation Syndrome in determining custody.

32

33 Your Reference Committee heard testimony both in support and opposition to this resolution.  
34 Concerns were raised about the validity of this syndrome, while some advocated that Parental  
35 Alienation Syndrome is a valid medical issue, others within the medical community disagree.

36

37 According to a study published in Children and Youth Services Review, about approximately  
38 20% of children and adolescents live in separated or divorced households, and about one-  
39 quarter of their parental separations involved high-conflict situations. About 25% of children and  
40 adolescents in high-conflict break-ups become alienated, representing about 1% of all children  
41 and adolescents. According to this research, approximately 740,000 children and adolescents in  
42 the U.S. are victims of parental alienation (<http://tiny.cc/PASPrevalence>).

43 However, this topic is very complex and contentious and your Reference Committee could not in  
44 good faith come to a valid conclusion either way. Therefore, your reference committee believes  
45 that it must be referred to council for further discussion and review.

46

47

1 16. RESOLUTION 122- PHYSICIAN OWNED DISTRIBUTORSHIPS

2  
3 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 122 BE REFERRED**  
4 **TO COUNCIL.**

5  
6 Resolution 122 asks (1) that the Medical Society the State of New York develop policy that  
7 supports Physician Owned Distributorships (POD's), when the following criteria are met: (1) the  
8 POD is disclosed to the hospital and patient; (2) the overall cost to the hospital and patient is no  
9 higher with the POD than it would be through a traditional vendor; (3) standards of care are  
10 strictly met; and (2) that the Medical Society the State of New York advocate that the AMA also  
11 support Physician Owned Distributorships (POD's), when the following criteria are met: (1) the  
12 POD is disclosed to the hospital and patient; (2) the overall cost to the hospital and patient is no  
13 higher with the POD than it would be through a traditional vendor; (3) standards of care are  
14 strictly met.

15  
16 Your Reference Committee heard split testimony on this resolution. Many physicians are  
17 concerned about the possibility of misuse and overuse and a perception of conflict of interest.  
18 However, there is concern about constricting the ability for a physician to seek economic gain  
19 where appropriate. Furthermore, some believe that POD's can function to bring about better  
20 value of care.

21  
22 POD's have been under increasing scrutiny by federal regulators because of the inherent  
23 possibility for conflicts of interest. Some studies have determined that certain surgeries for  
24 hospitals purchasing medical devices from PODs increased significantly faster than for hospitals  
25 overall. The HHS OIG has also reported that PODs may be driving up healthcare costs due to  
26 overutilization and that surgeries that use POD devices were more expensive than non-POD  
27 surgeries. It is quite possible that PODs will be further targeted by lawmakers and regulators as  
28 Chairman Grassley and Ranking Member Wyden on the US Senate Judiciary Committee  
29 recently sent a letter to the HHS OIG asking them to look into PODs and their reporting related  
30 to the Physician Payment Sunshine Act.

31  
32 Further, the AMA has policy (9.6.4 - Sale of Health-Related Products) that states *The sale of*  
33 *health-related products by physicians can offer convenience for patients, but can also pose*  
34 *ethical challenges. "Health-related products" are any products other than prescription items that,*  
35 *according to the manufacturer or distributor, benefit health. "Selling" refers to dispensing items*  
36 *from the physician's office or website in exchange for money or endorsing a product that the*  
37 *patient may order or purchase elsewhere that results in remuneration for the physician.*

38  
39 *Physician sale of health-related products raises ethical concerns about financial conflict of*  
40 *interest, risks placing undue pressure on the patient, threatens to erode patient trust, undermine*  
41 *the primary obligation of physicians to serve the interests of their patients before their own, and*  
42 *demean the profession of medicine.*

43  
44 Finally, Section 238-A of New York's Public Health Law discusses restrictions on self-referrals  
45 which could conflict with the legality of PODs.



1 Your reference committee understands the complexities of the healthcare industry have created  
2 differing models by which physicians operate to develop efficiencies and work toward profitable  
3 operations. However, due to the possibility of further legal, legislative or regulatory action on this  
4 topic, your reference committee believes that this resolution must be referred to council for  
5 further research and debate.

6  
7 17. RESOLUTION 109 - ELECTRIC “STAND UP” SCOOTERS: A POTENTIAL PUBLIC  
8 HEALTH PROBLEM

9  
10 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 109 NOT BE**  
11 **ADOPTED.**

12  
13 Resolution 109 asks (1) That the Medical Society of the State of New York work against  
14 proposed legislation or regulation both local and statewide that would allow e-scooters/e-bikes;  
15 and (2) That the Medical Society of the State of New York ask the American Medical  
16 Association to ask for prohibition of e-scooter and e-bikes on a national level.

17  
18 Your Reference Committee heard testimony both in support and opposition with the large  
19 majority opposing this resolution. While your reference committee understands that there are  
20 safety concerns surrounding the proliferation of e-bikes and e-scooters, your reference  
21 committee supports regulation that promotes safety and not an outright ban. New York City has  
22 already banned them, and counties have the option to do so. E-bikes and e-scooters are useful  
23 for those that wish to utilize these modes of transportation but are unable to do so due to  
24 limitations in physical capacity.

25  
26 Your reference committee was advised that electric scooters/bikes are becoming increasingly  
27 popular. This popularity runs in tandem with an increase in scooter-related accidents. According  
28 to the National Conference of State Legislatures, e-bikes sales increased 83 percent between  
29 May of 2017 and May of 2018, and e-bikes made up 10 percent of overall bikes sales in the  
30 U.S. for that time period. A 2016 study examining the relative probability of an e-bike versus a  
31 conventional bike to be involved in a traffic conflict did note that there was a higher risk of  
32 conflict at an intersection for e-bikes, because of higher speeds approaching an intersection.  
33 Otherwise, the study found little or no difference with regards to risk or actual conflicts  
34 (<http://tiny.cc/EBikes>). Further, your reference committee was informed that the U.S. CDC has  
35 announced their intent to study accident patterns caused by electric scooters.

36  
37 Your committee is concerned about governmental overreach regarding a ban on e-bikes and e-  
38 scooters and believes that they also may have some positive aspects. Therefore, your reference  
39 committee believes that further study should be completed regarding the implications of  
40 legalization in New York and further believe that MSSNY must be involved in any policy  
41 formation and discussion on the topic.

1 18. RESOLUTION 110- GROCERY BAGS- SINGLE USE

2

3 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 110 NOT BE**  
4 **ADOPTED.**

5

6 Resolution 110 asks (1) that the Medical Society of the State of New York encourage education  
7 for shoppers in regard to proper reusable shopping bag hygiene; and (2) that MSSNY oppose  
8 limits on single-use grocery bags to help prevent the spread of foodborne illness.

9 Your Reference Committee heard testimony split on the first resolved and in overwhelming  
10 opposition to the second resolved. Your reference committee was advised that a task force  
11 appointed by Governor Cuomo said that New York stores hand out 23 billion plastic bags a  
12 year, becoming a scourge on the environment. The New York State legislature has recently  
13 approved a 2019-2020 budget bill that bans the use of single-use plastic bags. The ban will be  
14 implemented in March 2020. Governor Cuomo said the statewide ban will “help to reduce the  
15 greenhouse gas emissions associated with plastic bag production and disposal, from petroleum  
16 used to produce the bags to emissions from the transportation of bags to landfills.”

17

18 Your reference committee was informed that this ban excludes the bagging of produce, frozen  
19 products, meats, prescriptions, and other products relating to sanitary and confidential  
20 concerns. Additionally, per your reference committee, Suffolk County – the original county in  
21 which this ban was introduced – has seen a substantial decrease of 1.1 billion plastic bags in  
22 one year which will have a profound long-term positive effect on the environmental health.  
23 There has been no substantiated evidence from the CDC or any medical or scientific source  
24 indicating that reusable bags lead to the spread of foodborne illness. Finally, counties do have  
25 the option to opt-out of this ban.

26

27 19. RESOLUTION 123 - PHYSICIANS CONVICTED OF A NONVIOLENT CRIME

28

29 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 123 NOT BE**  
30 **ADOPTED.**

31

32 Resolution 123 asks (1) That the Medical Society of the State of New York seek the passage of  
33 state regulation and/or legislation so that qualified physicians who have to serve a sentence can  
34 serve Society by providing care to individuals that do not have access to care; and (2) That the  
35 Medical Society of the State of New York send a resolution to the American Medical Association  
36 to seek the passage of federal regulation and/or legislation so that qualified physicians who  
37 have to serve a sentence can serve their debt to Society by providing care to individuals that do  
38 not have access to care.

39

40 Your reference committee heard split testimony, mostly in opposition to this resolution. Your  
41 Reference Committee understands the underlying intent of this resolution. However, there is  
42 currently no known precedent for this concept and it raises a litany of ethical and legal concerns.  
43 Many non-violent crimes committed by a physician would cause the OIG to exclude them from  
44 participating in federal healthcare programs, especially if their debt to society includes  
45 incarceration. Any free clinic, FQHC, or other community health center will generally not employ  
46 someone who is excluded from the federal health care programs or wouldn't be able to pass a  
47 criminal background check. It is up to a judge's discretion if they wish to hand down community

1 service as their sentence and the type of service allowed would be discussed upon acceptance  
2 of plea or sentencing.

3

4 Further, your reference committee does not believe it is appropriate to support policy that would  
5 appear to advocate for providing “lesser” care to certain populations.

6

7 20. RESOLUTION 124 - Patient and Physician Protection from Telemedicine

8

9 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 124 NOT BE**  
10 **ADOPTED.**

11

12 Resolution 124 asks that the Medical Society of the State of New York seek limits on  
13 telemedicine that would “protect our patients and ourselves as physicians”.

14

15 Your reference committee heard testimony in opposition to this resolution. This testimony spoke  
16 to concerns about restricting care in rural communities and mentioned instances where multiple  
17 follow-ups may be necessary. Your Reference Committee understands that service provided via  
18 telemedicine must be performed to the same standards of care as those performed in person.  
19 However, MSSNY already has established policy that seemingly runs counter to the intent of  
20 this resolution, which would restrict the availability of telemedicine.

21

22 Current MSSNY policy states that MSSNY will work with individual legislators throughout the  
23 state to introduce legislation that would require parity of payment between services provided in-  
24 person and via telemedicine. Under New York’s parity law, private health plans cannot exclude  
25 coverage for any telemedicine service that would be covered if delivered in-person. New York  
26 Medicaid reimburses for medically necessary services over live video, and specialty care such  
27 as dermatology and ophthalmology for store-and-forward telehealth. Providers in New York  
28 delivering services via telemedicine must be licensed in New York and acting within their scope  
29 of practice. Additionally, MSSNY has policy encouraging insurance companies to develop  
30 incentives to use information technology in the care of their patients. For that reason, your  
31 reference committee recommends this resolution not be adopted.

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1 Your chairperson is grateful to the committee members, namely Rose Berkun, MD; Brian  
2 Meagher, MD; Peter Deane, MD; Daniel Choi, MD; and Barry Rabin, MD.

3

4 Your reference Committee Chairman also wishes to express his appreciation to Mike Avella, Jr.  
5 and Carrie Harring for their help in preparation of this report.

6

7 Respectfully submitted,

8

9

10 \_\_\_\_\_  
Rose Berkun, MD, Chair, Erie County

\_\_\_\_\_ Daniel Choi, MD, Suffolk County

11

12

13 \_\_\_\_\_  
Brian Meagher, MD, Chautauqua County

\_\_\_\_\_ Barry Rabin, MD, Onondaga County

14

15

16 \_\_\_\_\_  
Peter Deane, MD, Monroe County

\_\_\_\_\_ William Spencer, Jr., MD, Suffolk County

17