

## 1 MEDICAL SOCIETY OF THE STATE OF NEW YORK 2014 HOUSE OF DELEGATES

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3 Report of: Reference Committee on Governmental Affairs and Legal Matters (A)4  
5 Presented by: Thomas T. Lee, MD, Chair  
67  
8 Mister Speaker and Members of the House of Delegates:  
910 Your reference committee recommends the following consent calendar for acceptance:  
1112 **FILE FOR INFORMATION**

- 13 (1) GA Report 1—HOD—2014 MSSNY
- Legislative Program*
- 
- 14

15 **RECOMMENDED FOR ADOPTION**

- 16 (2) Resolution 61—Development of a Transparent and Fair Payment Process for ERISA Plans
- 
- 17

18 **RECOMMENDED FOR ADOPTION AS AMENDED OR SUBSTITUTED**

- 19 (3) Resolution 50—Medical Malpractice Insurance Education for Employed Physicians
- 
- 20 (4) Resolution 51—Affordable Care Act And NYS Medical Tort Reform
- 
- 21 (5) Resolution 52—Physician Liability and Patient Protection Under the False Claims Act
- 
- 22 (6) Resolution 53—Protection for Licensed Physicians Not Participating in Government Healthcare
- 
- 23 Plans
- 
- 24 (7) Resolution 54—Restriction on Certifying Boards
- 
- 25 (8) Resolution 55—American Board of Medical Specialties (ABMS) Should Stick to Its Mission
- 
- 26 and
- 
- 27 Resolution 64—Protecting Rights of Residency Trained Physicians to Practice Medicine Within
- 
- 28 Their Scope of Practice and Maintain Board Certification While Doing So
- 
- 29 (9) Resolution 56—Maintenance of Licensure (MOL)
- 
- 30 (10) Resolution 57—Exclusion of Physicians From the New York State Health Benefit Exchanges
- 
- 31 and
- 
- 32 Resolution 59—Protection of Private Practice
- 
- 33 (11) Resolution 58— Changes in Pre-Certification for Medications to Reduce Delays
- 
- 34 (12) Resolution 60—Access to Timely Care
- 
- 35 (13) Resolution 62—Driving While Intoxicated, Impaired or Distracted By All Substances
- 
- 36 (14) Resolution 63—Application of Debt Collection Improvement Act of 1996
- 
- 37 (15) Resolution 65—Requirement for Pharmacists to Label Expiration Date on Dispensed Medication
- 
- 38 (16) Resolution 66—Alternative Maintenance of Certification
- 
- 39 (17) DGA-A Committee Report HOD 2014-Sunset Report

1  
2 (1) LEGISLATIVE AND PHYSICIAN ADVOCACY COMMITTEE (GA REPORT 1)  
3

4 RECOMMENDATION:  
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6 Mister Speaker, your reference committee recommends that the Annual Report of the Legislative  
7 and Physician Advocacy Committee be approved and filed for information.  
8

9 Mister Speaker, your reference committee noted that the report of the Legislative and Physician  
10 Advocacy Committee was a presentation of the Medical Society's 2014 *Legislative Program*, which  
11 was approved by the MSSNY Council at its meeting on November 7, 2013.  
12

13  
14 (2) RESOLUTION 61 DEVELOPMENT OF A TRANSPARENT AND FAIR PAYMENT  
15 PROCESS FOR ERISA PLANS  
16

17 RECOMMENDATION:  
18

19 Mister Speaker, your reference committee recommends that *RESOLUTION 61 BE ADOPTED*.  
20

21 Resolution 61 asks MSSNY to introduce a resolution at the AMA House of Delegates asking the  
22 AMA to seek federal legislation or regulation which would require ERISA Plans to develop and  
23 administer a transparent and fair process for the payment of claims to providers, similar to States  
24 prompt payment laws and CMS regulation.  
25

26 Your reference committee agrees with the concerns of this resolution. This is a long-standing  
27 problem. While New York State has adopted rules governing the time frames for paying claims, they  
28 do not apply to coverage provided through self-insured employers, which is covered by ERISA.  
29 While some states have attempted to pass laws to require prompt payment timeframes to apply to  
30 self-insured plans, a recent court federal Court of Appeals decision (*America's Health Ins. Plans v.*  
31 *Hudgens*) has determined that such state regulation is pre-empted by federal law. To that end, the  
32 federal Department of Labor has adopted regulations that establish time frames within which claims  
33 governed by ERISA must be decided (within 30 days of the receipt of the claim), but those  
34 regulations do not address the periods within which payments must be actually for services that have  
35 been approved and rendered. The AMA has adopted policy (D-385.973 ) that states that "Our AMA  
36 will seek federal legislation that would modify Employee Retirement Income Security Act law to  
37 incorporate a clause that addresses timely payment of medical claims of health care practitioners who  
38 provide treatment in good faith to the members of self-funded group employer-sponsored health  
39 plans," as well as several policies (such D-385.984) that call upon the AMA to advocate for the  
40 elimination of ERISA pre-emption of state prompt payment laws. However, it does not appear that  
41 these policies actually call upon AMA to require the federal Department of Labor set forth specific  
42 timeframes for payment of ERISA claims. Therefore, your reference committee recommends  
43 adoption of this resolution.  
44

45  
46 (3) RESOLUTION 50 MEDICAL MALPRACTICE INSURANCE EDUCATION FOR  
47 EMPLOYED PHYSICIANS  
48

49 RECOMMENDATION:  
50

1 Mister Speaker, your reference committee recommends that the *FOLLOWING SUBSTITUTE*  
 2 *RESOLUTION 50 BE ADOPTED IN LIEU OF RESOLUTION 50:*

3 **RESOLVED, That the Medical Society of the State of New York work with MLMIC to**  
 4 **facilitate the development of voluntary learning materials to help to educate physicians**  
 5 **regarding malpractice coverage needs associated with practicing medicine in New York**  
 6 **State.**

7  
 8 Resolution 50 asks MSSNY in collaboration with MLMIC and the State Insurance Department to develop  
 9 a program for employed physicians regarding importance of adequate malpractice coverage, including the  
 10 benefits and pitfalls of using different types of insurance and insurers, difference between “claims made”  
 11 and “occurrence” coverage, and importance of “tail coverage.”

12  
 13 Your reference committee heard much testimony in support of the concept of the resolution. One of the  
 14 many reasons many physicians are becoming employees of hospitals is because of the perceived need to  
 15 no longer have to personally pay for liability insurance. However, there are many instances when  
 16 physicians may need to consider the implications of being covered under a umbrella hospital policy,  
 17 including when they need to purchase their own medical liability coverage, such as when they leave the  
 18 employment of the hospital, or the hospital were to go bankrupt. This would be important information for  
 19 these physicians to have. Your reference committee was advised that MLMIC had indicated it would be  
 20 interesting in helping to develop this educational initiative. Your reference committee recommended the  
 21 above revised substituted resolution to provide greater flexibility as to the most appropriate manner to  
 22 develop materials to educate physicians on this important topic. Your reference committee also  
 23 recommended assuring that such educational programs be available for all physicians, not just those that  
 24 are currently employed or thinking of becoming employed.

25  
 26 (4) RESOLUTION 51 AFFORDABLE CARE ACT AND NYS MEDICAL TORT  
 27 REFORM

28  
 29 RECOMMENDATION:

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 31 Mister Speaker, your reference committee recommends that the *FOLLOWING SUBSTITUTE*  
 32 *RESOLUTION 51 BE ADOPTED IN LIEU OF RESOLUTION 51:*

33  
 34 **RESOLVED, that as part of its advocacy efforts to achieve comprehensive medical liability**  
 35 **tort reform, the Medical Society of the State of New York should educate the public that**  
 36 **patient access to necessary care is being threatened due to the confluence of decreased**  
 37 **payment from health insurers resulting from implementation of the Affordable Care Act**  
 38 **and the exorbitant cost of medical liability insurance.**

39  
 40 Resolution 51 asks MSSNY to recommend the development and passage of comprehensive medical  
 41 liability reform to partially offset reduced compensation to physicians by Exchange plans.

42  
 43 Your reference committee agrees with the intent of this resolution. Your reference committee heard many  
 44 comments about the importance of achieving medical liability reform, and that this importance is  
 45 heightened as a result of the ACA. MSSNY has adopted a myriad of policies in support of legislation to  
 46 reduce the huge cost of medical liability insurance facing physicians, both in terms of necessary tort  
 47 reform as well as subsidies to offset the cost of this coverage. Working to achieve this goal is one of  
 48 MSSNY’s top legislative priorities. To this end, legislation (A.3335, Schimminger) has been introduced  
 49 at MSSNY’s request that would achieve a number of important medical liability tort reforms, including a  
 50 \$250,000 cap on non-economic damages in medical liability actions; joint and several liability reform;  
 51 and assuring that a physician consulted for a Certificate of Merit for a medical malpractice lawsuit be

1 disclosed. However, the bulk of the policies that MSSNY has adopted in support of liability reform pre-  
2 dated the adoption and implementation of the Affordable Care Act, which has in some cases particularly  
3 with regard to Exchange products caused health insurers to reduce payments to participating physicians.  
4 Since the purpose of this resolution appears to be more focused on MSSNY messaging in support of  
5 medical liability reform, your reference committee recommended adoption of above substituted resolution  
6 so that this messaging goal was clearly articulated in the policy statement.

7  
8 (5) RESOLUTION 52 PHYSICIAN LIABILITY AND PATIENT PROTECTION UNDER  
9 THE FALSE CLAIMS ACT

10  
11 RECOMMENDATION:

12  
13 Mister Speaker, your reference committee recommends that the *FOLLOWING SUBSTITUTE*  
14 *RESOLUTION 52 BE ADOPTED IN LIEU OF RESOLUTION 52:*

15  
16 **RESOLVED, that the Medical Society of the State of New York together with the AMA**  
17 **advocate for changes to the False Claims Act to assure that physician liability under the**  
18 **False Claims Act is limited to those instances where the practitioner has actual knowledge**  
19 **that a claim presented is false; and be it further**

20  
21 **RESOLVED, that this resolution be forwarded to the American Medical Association for**  
22 **consideration at its next Annual meeting.**

23  
24 Resolution 52 asks MSSNY to a) support legislation and regulation to limit physician liability under False  
25 Claims Act specifically to those instances where the practitioner presented a claim proven to be false or  
26 fraudulent and the practitioner knew that the claim was false or fraudulent; b) support legislation and/or  
27 regulation which would compensate patients, utilizing the proceeds of False Claims Act settlements, for  
28 the adverse economic and/or health impact of any unnecessary, and/or inappropriate treatment that may  
29 have resulted in the settlement, and c) submit a resolution to the AMA to support legislation and  
30 regulation which would limit physician liability under the False Claims Act and compensate patients for  
31 the adverse economic and health impact of any unnecessary or inappropriate treatment that may have  
32 resulted in the settlement.

33  
34 Your reference committee shares the concerns with the sponsors of the resolution. Your reference  
35 committee heard testimony that highlighted concerns that physicians and hospitals can be found to have  
36 violated the False Claims Act, even if they did not have specific intent that the claim they submitted was  
37 false. The federal statute provides that “no proof of specific intent to defraud is required” for False  
38 Claims Act liability, and can be shown where the defendant acted with “deliberate ignorance of the truth  
39 or falsity of the information” or “reckless disregard of the truth or falsity of the information.” Your  
40 reference committee was advised that the AMA has adopted policy H-330.774, which calls for the AMA  
41 “to expend those resources necessary to monitor situations where physicians are under investigation, to  
42 provide financial and legal assistance where it is determined these are necessary, and to lobby for  
43 modification or repeal of the Federal False Claims Act and similar federal statutes” and H-175.984 which  
44 among other provisions calls for the AMA to “intensify efforts to urge federal policy makers to apply  
45 traditional definitions of fraud and abuse which focus on intentional acts of misconduct and activities  
46 inconsistent with accepted medical practice” and “to work in a coalition of other health care organizations  
47 to lobby for restrictions on the use of the False Claims Act.” While these policies are similar to the goal  
48 of this resolution, they are not exactly on point with the resolution. Therefore, your reference committee  
49 recommended that MSSNY adopt a substitute resolution to pursue the goals articulated in the resolution  
50 and forward it to the AMA. However, because your reference committee was not sufficiently clear

1 regarding the component of the resolution that seeks to provide patient compensation, it recommends that  
2 component be deleted from the policy statement.

3  
4 (6) RESOLUTION 53 PROTECTION FOR LICENSED PHYSICIANS NOT  
5 PARTICIPATING IN GOVERNMENT HEALTHCARE PLANS

6  
7 RECOMMENDATION:

8  
9 Mister Speaker, your reference committee recommends that the *FOLLOWING SUBSTITUTE*  
10 *RESOLUTION 53 BE ADOPTED IN LIEU OF RESOLUTION 53:*

11  
12 **RESOLVED, That the Medical Society of the State of New York re-affirm MSSNY Policies**  
13 **2012-60, 2013-53 and 2013-54**

14  
15 Resolution 53 asks MSSNY to re-affirm policies 2012-60, 2013-53 and 2013-54 which protect the rights  
16 of New York State physicians who are not participating in government healthcare plans as well as ban  
17 discriminatory increases in their license fees, taxes, supplements, investments, increments, etc. The  
18 specific policies called for re-affirmation are noted below.

19  
20 Each of the MSSNY policies identified in Resolution 53 identify critically important issues to assure  
21 physicians are not forced to participate in government-sponsored health insurance programs as a  
22 condition of licensure or as a condition of obtaining state government funded Excess insurance or other  
23 state funded financial assistance programs. Consistent with these policies, in 2013, MSSNY successfully  
24 fought a proposal that had been contained in the Executive Budget proposal that would have required  
25 physicians to participate in Medicaid as a condition of participation in the Excess Malpractice Insurance  
26 program.

27  
28 Your reference committee was made aware that, with regard MSSNY Policy 2013-54, which included  
29 among its goals to ask the AMA to “support federal legislation to repeal provisions in PPACA that  
30 require physicians to enroll in Medicare, Medicaid and other governmentally sponsored health insurance  
31 programs as a condition of referring, ordering or prescribing for patients enrolled in these programs,” the  
32 resolution was introduced at the last AMA Annual meeting by the New York delegation and was referred  
33 for further study. Your reference committee recommended adoption of the substitute resolution as it was  
34 a clearer statement of the direction to the House, and to delete the additional language that sought to  
35 further describe the policies seeking to be reaffirmed. While there was a suggestion during reference  
36 committee testimony that the resolution be amended to incorporate a statement that the physician's right  
37 to prescribe should not be limited by government, it was believed that this concept was embodied in the  
38 three policies being reaffirmed (and noted below).

39  
40 **MSSNY Policy 2012-60 - that the Medical Society of the State of New York adopt as policy**  
41 **that medical licensure in New York State shall not require participation in Medicare,**  
42 **Medicaid, or any other governmentally sponsored health insurance program.**

43  
44 **MSSNY Policy 2013-53:**

45 **That the Medical Society of the State of New York re-affirm MSSNY Policy 2012-60;**

46  
47 **That the Medical Society of the State of New York adopt as policy that the ability to**  
48 **practice to the full extent of NYS medical licensure shall not be infringed based on**  
49 **enrollment and/or participation in any publicly funded or private health-insurance**  
50 **program;**

51

1           **That the Medical Society of the State of New York adopt as policy that physician**  
 2           **participation in the Excess Medical Liability Insurance Program should not be based upon**  
 3           **participating in Medicare/Medicaid, State Insurance Exchange, and/or any governmentally**  
 4           **subsidized health insurance program**

5  
 6           **MSSNY Policy 2013-54:**

7           **That the Medical Society of the State of New York support federal legislation to repeal**  
 8           **provisions in PPACA that require physicians to enroll in Medicare, Medicaid and other**  
 9           **governmentally sponsored health insurance programs as a condition of referring, ordering**  
 10           **or prescribing for patients enrolled in these programs;**

11  
 12           **That the Medical Society of the State of New York forward this resolution to the AMA for**  
 13           **consideration at its next Annual meeting**

14  
 15  
 16       (7)       **RESOLUTION 54 RESTRICTION ON CERTIFYING BOARDS**

17  
 18       **RECOMMENDATION:**

19  
 20       Mister Speaker, your reference committee recommends that *SUBSTITUTE RESOLUTION 54 BE*  
 21       *ADOPTED IN LIEU OF RESOLUTION 54:*

22  
 23       **RESOLVED, that the Medical Society of the State of New York advocate, including if**  
 24       **necessary seeking legislation, to assure that health insurers and hospitals do not limit**  
 25       **network participation, staff privileges, employment, or payments solely as a result of not**  
 26       **having specialty board certification; and be it further**

27  
 28       **RESOLVED, that the Medical Society of the State of New York oppose any measure that**  
 29       **would require specialty board certification as a condition of licensure.**

30  
 31       Resolution 54 asks MSSNY to a) take appropriate action against payers and hospitals attempting to limit  
 32       their physician panels based on specialty board certification b) urge the credentialing committees of  
 33       payers and hospitals to use specialty board recommendations on practice limitations as no more than  
 34       suggestion or reference, as opposed to guideline or policy c) take appropriate action to oppose any  
 35       measure that would require state licensure to be in any way based on specialty board certification; and d)  
 36       take appropriate action to oppose any attempt by a specialty board or payer to restrict the practice and/or  
 37       reimbursements of any physician based on specialty board certification

38  
 39       Your reference committee agrees with the concerns articulated in this resolution. Your reference  
 40       committee heard testimony about the increasing hassles associated with maintaining board certification.  
 41       Last year, MSSNY adopted policies that highlighted the hassles and huge costs associated with  
 42       maintaining board certification, as well as advocating for increased transparency by these boards. Many  
 43       have expressed concerns regarding efforts by some to condition physician licensure on attainment of  
 44       board certification and/or re-certification. That has not yet been proposed in New York. Others have  
 45       expressed concern, as articulated in this resolution, that hospitals and health plans are seeking to require  
 46       board certification. To address this concern, your reference committee was also advised that in  
 47       furtherance of this goal legislation (A.8979, Schimminger) has been introduced at the request of MSSNY  
 48       that would prohibit a hospital from denying privileges solely as a result of lack of specialty board  
 49       certification. The bill would also similarly prohibit a health plan from requiring a physician to have board  
 50       certification as a condition of participation on the insurer's network. Your reference committee believes  
 51       that MSSNY's policy should reflect this goal. Moreover, your reference committee agrees that MSSNY

1 policy should specifically state that it is opposed to any attempt to mandate board certification as a  
2 condition of licensure.

3 (8) RESOLUTION 55 AMERICAN BOARD OF MEDICAL SPECIALTIES (ABMS)  
4 SHOULD STICK TO ITS MISSION

5  
6 and

7  
8 RESOLUTION 64 PROTECTING RIGHTS OF RESIDENCY TRAINED PHYSICIANS  
9 TO PRACTICE MEDICINE WITHIN THEIR SCOPE OF PRACTICE  
10 AND MAINTAIN BOARD CERTIFICATION WHILE DOING SO

11  
12 RECOMMENDATION:

13  
14 Mister Speaker, your reference committee recommends that the *FOLLOWING SUBSTITUTE*  
15 *RESOLUTION 55 BE ADOPTED IN LIEU OF RESOLUTIONS 55 AND 64:*

16  
17 **RESOLVED, that the Medical Society of the State of New York oppose the denial or**  
18 **revocation of board certification or re-certification by a specialty board for any reason**  
19 **other than inadequate knowledge in the specialty; and be it further**

20  
21 **RESOLVED, that the Medical Society of New York oppose the establishment of scope of**  
22 **practice limitations through the use of board certifications by the American Board of**  
23 **Medical Specialties and its member organizations; and be it further**

24  
25 **RESOLVED, that this resolution be forwarded for consideration at the next American**  
26 **Medical Association Annual meeting**

27  
28 Resolution 55 asks MSSNY to a) adopt as its policy that any American Board of Medical Specialties  
29 (ABMS) Specialty Board should not attempt to define or to constrain a physician's professional activity  
30 beyond that which that Board may certify, and b) submit a resolution to the AMA Annual meeting urging  
31 that ABMS notify all its member organizations that they should adhere to their mission as a credentialing  
32 body, establishing educational and evaluation standards for certification in a particular specialty and that  
33 scope of practice issues as not within their purview.

34  
35 Resolution 64 asks MSSNY to a) oppose the denial or revocation of board certification by a specialty  
36 board for any reason other than inadequate knowledge in the specialty or inability to maintain, obtain or  
37 renew a license to practice medicine b) advocate on behalf of an appropriately trained and licensed  
38 physician's ability to provide care within his/her scope of practice c) oppose the establishment of scope of  
39 practice limitations through the use of board certification by the American Board of Medical Specialties  
40 and its member organization and d) submit this resolution for consideration at the 2014 Annual Meeting  
41 of the American Medical Association House of Delegates.

42  
43 Your reference committee shares the concerns of the sponsors of the resolution. As noted in the whereas  
44 clauses in the resolution, in September 2013, the American Board of Obstetrics & Gynecology (ABOG)  
45 adopted a policy to exclude obstetrician/gynecologists from eligibility for Board certification or  
46 recertification if they treated male patients or did not devote 75% of their practices to obstetrics and  
47 gynecology. The policy identified eight narrow exceptions under which a male patient could be treated by  
48 a Board-certified/eligible physician. Later that year, in response to protests from certain Board certified  
49 obstetrician/gynecologists, two additional exceptions were created for treating men with anal cancer or  
50 pelvic pain. However, the broad prohibition against the treatment of male patients remained in place. In  
51 response to the continued outcry, ABOG ultimately ended its prohibition on treating male patients

1 entirely and said that certified ob-gyns must only devote the “majority” of their practice to obstetrics and  
 2 gynecology, as opposed to 75%. Your reference committee heard testimony about the importance of  
 3 assuring that medical specialty boards stay focused on assuring appropriate educational criteria for those  
 4 who wished to say they are board certified in that area, and not on defining which patients these  
 5 physicians should treat. Since Resolutions 55 and 64 essentially relate to the same topic, your reference  
 6 committee recommended to combine the resolutions and set forth a single policy statement.

7  
 8  
 9 (9) RESOLUTION 56 MAINTENANCE OF LICENSURE (MOL)

10  
 11 RECOMMENDATION:

12  
 13 Mister Speaker, your reference committee recommends that the *FOLLOWING SUBSTITUTE*  
 14 *RESOLUTION 56 BE ADOPTED IN LIEU OF RESOLUTION 56:*

15  
 16 **RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy**  
 17 **2013-166; and be it further**

18  
 19 **RESOLVED, that the Medical Society of the State of New York submit a resolution for**  
 20 **consideration at the next Annual Meeting of the American Medical Association urging that**  
 21 **the AMA oppose the FSMB MOL program as a condition of licensure.**

22  
 23 Resolution 56 asks MSSNY and the AMA to oppose any Maintenance of Licensure (MOL) initiative that  
 24 creates barriers to practice, is administratively unfeasible, is inflexible with regard to how physicians  
 25 practice (clinically or not), that does not protect physician privacy, and that is used to promote policy  
 26 initiatives (rather than competence) such as participation in health plans, subscription to data exchanges,  
 27 and specialty board certification, etc.

28  
 29 Your reference committee shares the concerns of the sponsors of this resolution. At the 2013 MSSNY  
 30 House of Delegates, a resolution was adopted that called for MSSNY to oppose any attempt to require  
 31 MOL as a condition of continued practice. While the resolution appears to call for a number of criteria to  
 32 assure such MOL programs are reasonable for physicians to achieve, using the FSMB’s stated criteria as a  
 33 benchmark, it is not nearly as strong as the statement that MSSNY adopted at last year’s House of  
 34 Delegates that calls for MSSNY to oppose it being linked to medical licensure in any way. Therefore,  
 35 your reference committee recommends that MSSNY’s existing policy be re-affirmed. Your reference  
 36 committee also believes that last year’s policy should be supplemented by asking MSSNY to bring this  
 37 resolution to the AMA.

38  
 39 **2013-166 - That MSSNY oppose any efforts by the New York State Education Department,**  
 40 **Office of the Professions, to require the Federation of State Medical Boards (FSMB)**  
 41 **maintenance of licensure (MOL) program as a condition of medical licensure.**

42  
 43  
 44 (10) RESOLUTION 57 EXCLUSION OF PHYSICIANS FROM THE NEW YORK STATE  
 45 HEALTH BENEFIT EXCHANGES

46  
 47 and

48  
 49 RESOLUTION 59 PROTECTION OF PRIVATE PRACTICE

50  
 51 RECOMMENDATION:



1  
2 Mister Speaker, your reference committee recommends that the following *SUBSTITUTE*  
3 *RESOLUTION 57 BE ADOPTED IN LIEU OF RESOLUTIONS 57 AND 59:*

4  
5 **RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy**  
6 **2013-61; and be it further**

7  
8 **RESOLVED, that the Medical Society of the State of New York continue to advocate to the**  
9 **Governor's office, New York State Health Insurance Exchange officials, the New York State**  
10 **Legislature and New York's Congressional delegation that all plans sold inside and outside**  
11 **of New York's Health Insurance Exchange have robust physician networks that enable**  
12 **patients to have sufficient choice of treating physicians and enable patients to continue to be**  
13 **covered for care provided by physicians with whom there are long-standing treatment**  
14 **relationships; and be it further**

15  
16 **RESOLVED, that the Medical Society of the State of New York take efforts to prevent**  
17 **hospitals from directing their physician employees to not refer patients to private-practice**  
18 **physicians; and be it further**

19  
20 **RESOLVED, that the Medical Society of the State of New York continue its ongoing public**  
21 **relations efforts to assure the public and policymakers are aware of the problems of narrow**  
22 **insurer networks**

23  
24 Resolution 57 asks MSSNY to a) petition the Governor's Office to monitor, on an ongoing basis, all  
25 termination or exclusion actions that New York insurers take in connection with the offering of Health  
26 Benefit Exchange plans offered in New York State b) petition the New York Congressional Delegation to  
27 investigate certain New York insurers' Health Benefit Exchange activities, in which they have excluded  
28 large numbers of participating physicians from their Exchange plans, thus preventing new plan enrollees  
29 being treated by those physicians; and c) mount a concerted public relations campaign to highlight these  
30 insurers' onerous exclusionary activities.

31  
32 Resolution 59 asks MSSNY to support legislation to a) prohibit insurance plans from designing networks  
33 which completely exclude access to private primary care physicians and private specialists in a patient's  
34 community; and b) prohibit hospitals from directing their physicians to stop referring patients to private  
35 practice physicians and from attempting to remove private practice physicians from insurance company  
36 panels.

37  
38 Your reference committee agrees with the concerns articulated in these resolutions. Both resolutions  
39 dealt largely with the issue of narrow insurer networks. Your reference committee heard much testimony  
40 regarding health insurers significantly reducing their networks, and hospitals limiting staff physicians'  
41 ability to refer to non-employed physicians. MSSNY has recently adopted policy calling for health plans  
42 to include within its network any physician willing to meet the plan's participation criteria.

43  
44 MSSNY has been very vocal about the need for New York's Health Insurance Exchange to closely look  
45 at the networks that insurers have put together. MSSNY President-elect Dr. Andrew Kleinman and  
46 Manhattan ophthalmologist Dr. Patricia McLaughlin recently testified before a State Senate hearing  
47 asking the Legislature to address a wide variety of problems facing physicians and patients imposed by  
48 insurers offering Exchange plans, including assuring that the Exchange networks listed on insurers'  
49 websites are accurate, easily searchable, and comprehensive, as well as assuring that patients can  
50 purchase policies that enable such patient to have coverage to see the physician of their choice (out-of-  
51 network coverage). Concerns have been expressed that the insurer websites contain the names of several

1 physicians who are not participants in Exchange products. Moreover, no patient in downstate New York  
 2 can purchase coverage in the individual Exchange that provides the right to see a physician outside the  
 3 plan network. In addition, many physicians seeking to participate in insurer networks cannot. The  
 4 hearing generated significant media coverage that was in addition to the numerous articles that appeared  
 5 last fall where MSSNY President Dr. Sam Unterricht was quoted regarding narrow insurer networks.  
 6 Articles appeared in the *Albany Times Union*, *New York Times*, *Syracuse Post-Standard*, *Capital New*  
 7 *York* and WNYC (NYC NPR).

8  
 9 As a result of MSSNY advocacy, the NYS Exchange intends to revise its criteria for the Exchange to  
 10 assure that plans send updated network listings to the State every 30 days rather than every 90 days;  
 11 assure greater delineation on plan websites of which physicians are participating in an insurer's Exchange  
 12 plan; and also intends to require insurers to offer out of network coverage. The reference committee  
 13 recommends the above substituted resolution which recognizes efforts already underway, including  
 14 reaffirming MSSNY policy that calls upon MSSNY to seek legislation to enable physicians to participate  
 15 with any plan of the physician's choosing provided the physician meets the plan's criteria ("any willing  
 16 provider").

17  
 18 **2013-61 - That the Medical Society of the State of New York continue to advocate for**  
 19 **legislation that requires health insurers to include within the network of any product**  
 20 **offered by the insurer any physician who is able to meet the terms of participation in that**  
 21 **network**

22  
 23 (11) RESOLUTION 58 CHANGES IN PRE-CERTIFICATION FOR MEDICATIONS TO  
 24 REDUCE DELAYS

25  
 26 RECOMMENDATION:

27  
 28 Mister Speaker, your reference committee recommends that the *FOLLOWING SUBSTITUTE*  
 29 *RESOLUTION 58 BE ADOPTED IN LIEU OF RESOLUTION 58:*

30  
 31 **RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy**  
 32 **120.961; and be it further**

33  
 34 **RESOLVED, that the Medical Society of the State of New York continue to advocate to**  
 35 **reduce the circumstances when pre-authorization for needed patient medications are**  
 36 **required, including eliminating the requirement for annual re-authorization once a prior**  
 37 **authorization for a prescription medication has been approved; and be it further**

38  
 39 **RESOLVED, that the Medical Society of the State of New York advocate to assure that**  
 40 **health plan pre-authorizations for prescriptions be completed within 24 hours.**

41  
 42 Resolution 58 asks MSSNY to advocate to assure that a) there be a minimum of delays for patients to  
 43 obtain medication b) that pre-certification for medications is kept at an absolute minimum; and c) pre-  
 44 certification not be repeated on an annual basis.

45  
 46 Your reference committee shares the concerns of the sponsors of the resolution. Your reference  
 47 committee heard testimony about the hassles associated with receiving necessary pre-certifications.  
 48 MSSNY has for many years fought to reduce the pre-authorization burdens that physicians face for all  
 49 forms of treatment for their patients, such as necessary surgery, diagnostic tests and prescription  
 50 medications. MSSNY has adopted many policies setting forth this goal, though they have not been  
 51 specific to pre-authorization for medications. One example is MSSNY policy 120.961 which calls upon



1 Health database is not a fee schedule. Therefore, your reference committee recommends adoption of the  
2 substituted resolution.

3  
4  
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6  
7 (13) RESOLUTION 62 DRIVING WHILE INTOXICATED, IMPAIRED OR DISTRACTED  
8 BY ALL SUBSTANCES

9  
10 RECOMMENDATION:

11  
12 Mister Speaker, your reference committee recommends that the *FOLLOWING SUBSTITUTE*  
13 *RESOLUTION 62 BE ADOPTED IN LIEU OF RESOLUTION 62:*

14  
15 **RESOLVED, that the Medical Society of the State of New York advocate to assure that**  
16 **persons whose ability to drive is impaired by recreational intake of drugs not listed as**  
17 **controlled substances under New York’s Public Health Law are still subject to penalties**  
18 **under New York law prohibiting driving while intoxicated or driving while ability impaired**  
19 **by drugs; and be it further**

20  
21 **RESOLVED, that the Medical Society of the State of New York continue to support**  
22 **programs that educate the public on the dangers of driving while intoxicated, or impaired.**

23  
24 Resolution 62 asks MSSNY to a) work to clarify the legal definition of driving while intoxicated or  
25 impaired, and b) support programs that educate the public on the dangers of driving while intoxicated,  
26 impaired or distracted.

27  
28 Your reference committee is sympathetic to the concerns articulated in this resolution. What this  
29 resolution appears to refer to is that, in order to be convicted of driving while impaired by drugs under  
30 New York State’s Vehicle and Traffic law, it must be shown that a person ingested a drug listed as a  
31 controlled substance under New York State’s public health law. However, as noted in the resolved  
32 clauses, there was a 2007 Court of Appeals case, *People v. Litto*, that hold that a person whose ability to  
33 drive was impaired by substances not specifically enumerated in the statutory controlled substances list  
34 was not subject to the same penalties for driving while ability-impaired by drugs. Legislation (A.6491-A,  
35 Cusick) has been introduced to resolve this “loophole.” The substituted resolution seeks to provide  
36 greater specificity as to the goals the resolution seeks to achieve.

37  
38  
39 (14) RESOLUTION 63 APPLICATION OF DEBT COLLECTION IMPROVEMENT ACT OF  
40 1996

41  
42 RECOMMENDATION:

43  
44 Mister Speaker, your reference committee recommends that the *FOLLOWING SUBSTITUTE*  
45 *RESOLUTION 63 BE ADOPTED IN LIEU OF RESOLUTION 63:*

46  
47 **RESOLVED, that the Medical Society of New York urge the American Medical Association**  
48 **to advocate for changes to the Debt Collection Improvement Act of 1996 so as to exempt**  
49 **CMS from having to report an outstanding debt to the Department of Treasury arising**  
50 **from a Medicare/Medicaid overpayment when such original overpayment is \$25 or less.**

51

1 Resolution 63 asks MSSNY to a) advocate that the Centers for Medicare and Medicaid Services (CMS)  
 2 use of the Debt Collection Improvement Act of 1996 (DCIA) which requires federal agencies to refer  
 3 delinquent debts to the Department of Treasury and/or Treasury Office Program, be applicable only for  
 4 debts from overpayments exceeding \$10.00 and b) forward this resolution to the AMA HOD for its  
 5 consideration and redirection to the appropriate federal agency for implementation on a national level.  
 6

7 Your reference committee agrees with the concerns of the sponsor of this resolution. Under the DCIA,  
 8 federal debts which are delinquent for more than 180 days are to be referred to the Treasury Department  
 9 for further collection efforts, which could include offsetting other owed payments. This statute applies to  
 10 HHS. According to one legal summary, debts ineligible for referral include those: (1) in bankruptcy  
 11 status, (2) in an appeal status (3) at the Department of Justice, (4) where the debtor is deceased, (5) federal  
 12 entity debt where the debtor is a federal agency, (6) where the principal balance is less than \$25, or (7)  
 13 debt under fraud and abuse investigation where the investigating unit has provided the contractor with  
 14 specific instructions not to attempt collection. However, there are differing opinions regarding whether  
 15 the \$25 threshold also includes interest, penalties, and administrative costs, so it is possible one \$10  
 16 overpayment could, with interest and penalties, add up over the \$25 threshold, and require reporting to  
 17 Treasury. The substituted resolution simply clarifies the resolution to note that an overpayment below  
 18 \$25 be exempt from DCIA even if interest and penalties cause the amount to ultimately exceed \$25.  
 19

20 (15) RESOLUTION 65 REQUIREMENT FOR PHARMACISTS TO LABEL  
 21 EXPIRATION DATE ON DISPENSED MEDICATION  
 22

23 RECOMMENDATION:  
 24

25 Mister Speaker, your Reference Committee recommends that the *FOLLOWING*  
 26 *SUBSTITUTE RESOLUTION 65 BE ADOPTED IN LIEU OF RESOLUTION 65:*  
 27

28 **RESOLVED, that the Medical Society of the State of New York reaffirm MSSNY**  
 29 **Policy 70.972.**  
 30

31 Resolution 65 urges the MSSNY to: (1) seek legislation to require that all prescription medications  
 32 dispensed in the State of New York be labeled with the expiration date on the stock bottle from which it is  
 33 dispensed; and (2) bring a similar resolution to the AMA.  
 34

35 Your Reference Committee heard testimony in support of this Resolution. Your Reference Committee  
 36 was informed that pharmaceutical manufacturers are required to place an expiration date on the  
 37 container/label of a drug product as a prerequisite to marketing the product in the United States. Once the  
 38 manufacturer's container is opened and drug product is transferred to another container for dispensing or  
 39 repackaging, the expiration date no longer applies. However, in New York State, while the prescription  
 40 labels will often contain expiration dates, they are not expressly required by statute. To that end, your  
 41 reference committee was advised that legislation (S.1310, Stavisky) has been introduced to include this  
 42 requirement on prescription labels. In any event, your reference committee was advised that MSSNY had  
 43 already adopted substantially similar policy, and believes that this policy should be re-affirmed.  
 44

45 **70.972 Require Pharmacies to Print the Expiration Dates of Medications On All Prescription**  
 46 **Labels:** MSSNY will support legislation to require that expiration dates of prescribed drugs be listed on  
 47 the package for consumers, and to provide for enforcement of such provisions by the New York State  
 48 Attorney General, and MSSNY will ask its delegation to propose a similar resolution to the American  
 49 Medical Association. (HOD 00-162)  
 50  
 51

## (16) RESOLUTION 66 ALTERNATIVE MAINTENANCE OF CERTIFICATION

## RECOMMENDATION:

Mister Speaker, your Reference Committee recommends that the *FOLLOWING SUBSTITUTE RESOLUTION 66 BE ADOPTED IN LIEU OF RESOLUTION 66*:

**RESOLVED, that the Medical Society of the State of New York introduce a resolution at the next American Medical Association meeting asking the AMA to explore the feasibility of developing an alternative Maintenance of Certification (MOC) program as a member benefit.**

Resolution 66 asks MSSNY to explore the possibility of an alternative Maintenance of Certification Program unique to the needs of physicians as a member benefit, and asks the AMA to undertake a similar study.

Your reference committee heard testimony in support of this resolution. Many physicians have expressed concern about the huge costs and hassles associated with maintenance of certification programs that may be required by their specific specialty board. It was expressed by some that MSSNY and the AMA could provide this function to counteract the increasing power of the various FSMB specialty boards. Given the fact that this resolution was submitted late, your reference committee did not believe it had sufficient expertise to determine whether MSSNY resources could be allocated to this function. Therefore, your reference committee recommended that this resolution be forwarded to the American Medical Association to determine whether it could provide this function.

## (17) SUNSET REVIEW (14-A)

## RECOMMENDATION A:

Mister Speaker, your Reference Committee recommends that the Sunset Report for Governmental Affairs and Legal Matters (A) *BE AMENDED BY REAFFIRMING MSSNY POLICY 130.992*:

**130.992**      **Reimbursement for Medically Necessary Emergent Services Provided by Non-participating Managed Care Physicians and Hospitals:** MSSNY will seek appropriate legislation which would require all managed care entities operating in the State of New York to reimburse physicians and hospitals for medically necessary emergency services provided in good faith to managed care subscribers, without consideration of participation status. (HOD 94-84)

## RECOMMENDATION B:

Mister Speaker, your Reference Committee recommends that the Sunset Report for Governmental Affairs and Legal Matters (A) *BE AMENDED BY REAFFIRMING MSSNY POLICY 165.954*:

**165.954**      **Prudent Layperson – 911 Calls:** MSSNY reaffirms its support of the prudent layperson standard for emergency medical service and opposes triage by 911 dispatch which divert 911 (Emergency Dispatch) calls to non-emergency facilities, other than birthing centers or those facilities identified by the local REMAC (Regional Medical Advisory Committee) because of geographic constraints. (Council 10/28/98)

1 RECOMMENDATION C:  
2

3 Mister Speaker, your reference committee recommends that Sunset Review document for  
4 Governmental Affairs and Legal Matters (A) *BE ADOPTED AS AMENDED*

5  
6 Your reference committee heard testimony from Emergency Physicians expressing concern that MSSNY was  
7 sunseting policies that urge support for legislation to require a “prudent layperson” standard for insurance  
8 coverage of emergency services in New York. While that has been law since 1996, and there have been  
9 enforcement efforts by the Attorney General when insurers have attempted to evade this statutory protection,  
10 it was argued that such policies were so important that they should remain part of MSSNY Policy. Therefore,  
11 your reference committee recommended that the Sunset Report be amended to re-affirm rather than sunset  
12 MSSNY Policies 130.992 and 165.994. It should also be noted that since MSSNY Policy 260.969 is largely  
13 duplicative of MSSNY Policy 165.994, that policy should be sunsetted.

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Your chairperson is grateful to the committee members, namely Joseph C. Dreyfus III, MD; Walid S. Hammoud, MD; Greg Pinto, MD; Jean Shiraki; and Xiaosong Song, MD.

Your reference committee chair also wishes to express her appreciation to Morris M. Auster, Esq., Elizabeth Dears Kent, Esq., Pat Clancy, Barbara Ellman, Don Moy, Esq., and Miriam Hardin for their help in preparation of this report.

Respectfully submitted,

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