2014 Sunset Review of MSSNY Policy and Position Statements
Governmental Affairs and Legal Matters B

20.000 ALCOHOL AND ALCOHOLISM:
(See also Accident Prevention, 10.000; Drug Abuse, 65.000; Health Insurance Coverage, 120.000;
Reimbursement, 265.000; Tobacco Use and Smoking, 300.000)

20.996 **Detoxification Coverage in Minimum Benefits Package of Uninsured:** MSSNY endorsed the position that coverage for detoxification be included in any minimum benefits package for the uninsured. (Council 6/13/91)

Recommendation: Sunset. Policy is obsolete.
Health insurance plans available in the Marketplace must cover 10 categories of essential health benefits. One of these categories is mental health and substance abuse services. (Substance abuse is also known as substance use disorder.)

These services include behavioral health treatment, such as psychotherapy and counseling. They also include mental and behavioral health inpatient services and substance use disorder treatment. Marketplace plans must provide certain "parity" protections between mental health and substance abuse benefits on the one hand, and medical and surgical benefits on the other.

This means that in general, limits applied to mental health and substance abuse services can't be more restrictive than limits applied to medical and surgical services. The kinds of limits covered by the parity protections include deductibles, copayments, coinsurance and out-of-pocket limits and the number of days or visits covered.

For the commercially insured, beginning January 1, 2011, insurers must offer group or blanket accident and health insurance policies which include parity of coverage for mental health and substance abuse.

25.000 ALTERNATIVE HEALTH CARE:
(See also Reimbursement, 265.000)

25.999 **Practice Standards:** MSSNY has adopted policy that maintains that all physicians, including practitioners of alternative medicine, should be held to the same standards of practice and that this policy be utilized in educating our legislators and the general public regarding the problem. (HOD 95-66)

Recommendation: Reaffirmation

35.000 CHIROPRACTIC:

35.996 <u>Holistic Medicine</u>: MSSNY will inform the Board of Regents of the State of New York it has adopted the position that the practice of holistic medicine by Chiropractors is ***not*** part of the authorized practice of Chiropractic, and request that it issue an Order for such Chiropractors to desist and refrain from such practice of medicine. (The Council directed that the word "not" be highlighted by boldface type to indicate stronger emphasis of the intent of the resolution). (Council 3/27/97)

Recommendation: Reaffirmation. While there is no bill which seeks to allow for such a change in the chiropractor's scope of practice, we should remain vigilant.

40.000 CLINICAL JUDGMENT:
(See also Hospitals, 150.000)

40.998 <u>Communication in the Physician-Patient Relationship</u>: MSSNY holds that effective patient care requires the free and unfettered exchange of information on treatment alternatives and that discussion of these alternatives between physicians and patients should not subject either party to criminal sanctions; and will communicate this position to the membership. (HOD 98-153)

Recommendation: Sunset.

40.999 <u>Protection from Criminal Prosecution for Good Faith Clinical Judgment</u>: MSSNY has adopted the position that physicians, acting in good faith while exercising clinical judgment in the delivery of medical care, should be exempt from criminal prosecution as a result of untoward outcomes as a result of said judgment, and intends to initiate appropriate legislation to assure such protection. (HOD 95-64)

Recommendation: Reaffirmation

65.000 DRUG ABUSE:

65.999 <u>Testing in the Work Place for Drug and Alcohol Abuse</u>: MSSNY recognizes the right of employers to require drug and alcohol testing within certain limitations, as follows: (1) Drug and alcohol testing of applicants for employment in order to prevent drug and alcohol abusers from entering the work place. Patients taking medication which artificially triggers a positive test should have due process to be retested to exclude illegal drug or alcohol. (2) Drug and alcohol testing of employees for cause, provided that such testing is done under qualified medical supervision and that economic and other assistance is given in the rehabilitative process. (3) Random drug and alcohol testing of employees whose jobs may have an impact on public safety, under conditions as in number 2 above. (4) Drug and alcohol tests must be performed by New York State certified laboratories where adequate quality control processes are in effect and where a full chain of custody procedure is maintained on each specimen. In addition, each positive test result must be confirmed by means of gas chromatography/mass spectrometry or an

equally accurate test. (5) Confidentiality must be maintained at all stages of the process. (6) Drug testing is appropriate when implemented in conjunction with a program for rehabilitation and treatment of employees who are psychologically or physically dependent. (Council 12/21/89)

Recommendation: Reaffirmation.

75.000 DRUGS AND MEDICATIONS:
(See also Abortion and Reproductive Rights, 5.000; Drug Dispensing, 70.000; Home Health Care, 135.000; Pharmaceutical Advertising, 227.000; Public Health & Safety, 260.000; Reimbursement, 265.000; Sports and Physical Fitness, 290.000)

75.997 **Serialized Prescriptions:** MSSNY unequivocally takes the position that serialized prescriptions shall not be another subtle means of open-ended taxation of the physician community. (HOD 94-175)

Recommendation: Sunset. While the triplicate prescription forms originally had to be purchased by physicians since the program shifted to the official state prescription form several years ago, physicians have not paid for the forms. Moreover, this concern will become extraneous with the implementation of the eprescribing mandate.

85.000 EDUCATION:
(See also Emergency Care, 87.000; Managed Care, 165.000; Tobacco Use and Smoking, 300.000; Vaccines, 312.000; Weight Management & Promotion of Healthy Lifestyles, 320.000)

85.991 **Preservation of Opportunities for US Graduates and IMGs Already Legally Present in This Country:** In the event of reductions in the resident workforce in the State of New York, the Medical Society of the State of New York will advocate for a mechanism of resident selection which promotes the maintenance of resident physician training opportunities for all qualified graduates of United States Liaison Committee on Medical Education and American Osteopathic Association accredited institutions.

MSSNY adopts and will publicize the position that if hospitals reduce the number of residency positions they offer, MSSNY will continue to advocate for equal consideration in the candidate selection process of IMGs who are already legally present in this country.

MSSNY will ask the AMA to urge the Educational Commission for Foreign Medical Graduates (ECFMG) to reduce the number of examinations it offers abroad, in the light of decreased availability of residency position; and make it clear to graduates of international medical schools that the opportunity for residency training and practice in the United States are becoming extremely limited.

This information should be included in the initial application materials given to the candidates prior to the examination. (HOD 97-228; Reaffirmed Council 3/19/98)

Recommendation: Reaffirmation

85.993 **<u>Opposition to Medical Resident Education Fee</u>:** MSSNY will continue to strongly oppose any legislation that includes an annual fee for medical residents. The Division of Governmental Affairs of MSSNY will continue to strongly oppose any New York State budget that includes an annual fee for medical residents; and will report to the MSSNY-RPS any further action attempted by the State of New York regarding this issue as soon as possible. (HOD 97-86)

Recommendation: Reaffirmation

95.000 **ETHICS:**

95.979 **<u>Testimony in Professional Liability Cases</u>:** MSSNY takes the position that a physician who provides expert medical testimony in bad faith and/or who provides expert medical testimony that has no recognized scientific validity, is guilty of professional misconduct, and should be reported to the appropriate Office of Professional Medical Conduct.

MSSNY shall encourage all national specialty organizations to enact rules and disciplinary methods, utilizing the American Association of Neurological Surgeons as a model, to promote fair and honest expert testimony. (HOD 00-82)

Recommendation: Reaffirmation

95.980 **<u>Use of Percentage-of-Fee Based Compensation Arrangements</u>:** The Medical Society reaffirms its support for the underlying principle that a physician's dedication to providing competent medical service for his or her patient is paramount. Moreover, we also support the opinion that the physician's control over clinical decision-making must remain unencumbered and independent from non-clinical influence. The Medical Society recognizes that the continuation of the corporate practice of medicine doctrine's prohibition against an unlicensed person or entity's influence in the practice of medicine is necessary to uphold these principles and to protect against potential abuses and fraudulent activity**.** Physicians must remain knowledgeable of and in control of the business aspects of their practice and should not relinquish such authority to non-physician business entities. In our opinion, the following "business" decisions and activities involving control over the physician's individual practice of medicine should be made by a physician and not by a non-physician or entity:

- ownership and control of a patient's medical records, including determining the contents thereof;
- selection (hiring/firing as it relates to clinical competency or proficiency) of professional, physician extender and allied health staff;
- set the parameters under which the physician will enter into contractual relationships with third party payors
- decisions regarding coding and billing procedures for patient care services; and
- approval of the selection of medical equipment.

Moreover, the following health care decisions should be made by a physician only and would constitute the unlicensed practice of medicine if performed by an unlicensed person:

- determining what diagnostic tests are appropriate for a particular condition;
- determining the need for referrals to or consultation with another physician/specialist;
- responsibility for the ultimate over-all care of the patient including treatment options available to the patient; and
- determining how much attention to devote to address a patient's needs.

As a result of the foregoing**,** the Medical Society supports the continuation of the corporate practice of medicine doctrine.

Additional information on this position is on file at MSSNY Headquarters, Office of the Executive Vice-President, ext. 304, E-mail: rabrams@mssny.org. This information addresses the following topics:

1) Use of credit cards to pay medical bills (percentage commission to bank or credit card company).
2) Use of collection agencies for a percentage of the medical fee collected.
3) Use of a practice management company on a percentage-of-fee basis, under any circumstances, including practice enhancement or marketing of the practice.
4) Use of a practice management company on a percentage-of-fee basis for non-clinical services where no patient referral or practice enhancement is involved, compared with use of "fair market value" as the basis for determining charges and maintaining the same restrictions.
5) Use of a billing service on a percentage-of- fee basis, compared to charges based on "fair market value," with periodic negotiation of the charges. What would be the effect of not permitting certain activities, such as referral of patients by the billing company to the practice?
6) Leasing/renting space, services or equipment to a physician (by another physician, for example) on a percentage-of-fee basis without restriction, compared to a situation where cost of the lease/rent is based on fair market value and there are restrictions, such as not allowing cross-referrals between the landlord and tenant physicians.
7) Sale of a practice for a percentage of future income by the widow(er) of a physician, or by him or herself, without restriction, compared to a sale where the seller severs all connections with the practice, including referrals.
8) Accepting or paying a fee for a patient referral to or from any source.
9) Receiving payment in return for ordering lab tests, prescription drugs, medical appliances etc. (Council 3/18/99)

Recommendation: Reaffirmation. There are many bills being advanced by non-physician providers who would like to do away with the corporate practice of medicine doctrine in order to partner with physicians. Some physicians support these bills. It is appropriate to continue this policy to protect the integrity of the physician decision-making process. Staff recommends a minor alteration to the last paragraph to replace the email address listed for the EVP with the email address of the current EVP.

95.987 **Expert Medical Witness - Ethical Guidelines of MSSNY Members:** MSSNY declares as an "Ethical Consideration" that physicians should aspire to the following objectives in providing expert medical testimony: (1) In order to have the requisite skill, knowledge and expertise to offer expert medical testimony, medical experts should devote the greater part of their professional activities to practicing their specialties rather that testifying in litigation cases; (2) That when medical experts do offer testimony in litigation cases, their testimony should be objective, represent generally accepted facts reflecting the consensus of the scientific community, consist of verifiable scientific truths and be limited to testimony in his/her sphere of professional medical expertise.

MSSNY defines an "Ethical Consideration" as a principle intended to be aspirational in character and which represents objectives toward which every member of the profession should strive. An Ethical Consideration is intended to provide principles upon which a physician can rely for guidance in specific situations. Being aspirational in character, while every member of the profession should strive toward the attainment of the objective, the failure to attain the objectives of the Ethical Consideration does not subject the individual to disciplinary action. MSSNY will seek appropriate legislation that would require individuals to satisfy the requirements of paragraphs 1 and 2 above in order to be qualified to provide expert medical testimony. (Council 9/22/94; Reaffirmed HOD 00-82)

Recommendation: Reaffirmation

95.988 **Ownership of Medical Facilities and Self-Referral:** MSSNY adopted as its position on physician ownership of medical facilities and self-referral the Guidelines of the American Medical Association's Council on Ethical and Judicial Affairs which were adopted by the AMA's House of Delegates in December 1992, and which are set forth in the 1992 AMA Policy Compendium, Section 140.961 entitled "Conflict of Interest - Physician Ownership of Medical Facilities," and read as follows:

(1) Physician investment in health care facilities can provide important benefits for patient care. However, when physicians refer patients to facilities in which they have an ownership interest, a potential conflict of interest exists. In general, physicians should not refer patients to a health care facility outside their office practice at which they do not directly provide care or services when they have an investment interest in the facility. (2) Physicians may invest in and refer to an outside facility, whether or not they provide direct care or services at the facility, if there is a demonstrated need in the community for the facility and alternative financing is not available. There may be situations in which a needed facility would not be built if referring physicians were prohibited from investing in the facility. Need might exist when there is no facility of reasonable quality in the community or when use of existing facilities is onerous for patients. In such cases, the following requirements should also be met:

(a) Individuals who are not in a position to refer patients to the facility must be given a bona fide opportunity to invest in the facility, and they must be able to invest on the same terms that are offered to referring physicians. The terms on which investment interests are offered to physicians must not be related to the past or expected volume of referrals or other business from the physicians. (b) There is no requirement that any physician investor make referrals to the entity or otherwise generate business as a condition for remaining an

investor. (c) The entity must not market or furnish its items or services to referring physician investors differently than to other invest-ors. (d) The entity must not loan funds or guarantee a loan for physicians in a position to refer to the entity. (e) The return on the physician's investment must be tied to the physician's equity in the facility rather than to the volume of referral. (f) Investment contracts should not include "non-competition clauses" that prevent physicians from investing in other facilities. (g) Physicians must disclose their investment interest to their patients when making a referral. Patients must be given a list of effective alternative facilities if any such facilities become reasonably available, informed that they have the option to use one of the alternative facilities, and assured that they will not be treated differently by the physician if they do not choose the physician-owned facility. These disclosure requirements also apply to physician investors who directly provide care or services for their patients in facilities outside their office practice. (h) The physician's ownership interest should be disclosed, when requested, to third party payors. (i) An internal utilization review program must be established to ensure that investing physicians do not exploit their patients in any way, as by inappropriate or unnecessary utilization. (j) When a physician's financial interest conflicts so greatly with the patient's interest as to be incompatible, the physician must make alternative arrangements for the care of the patient. (3) With regard to physicians who invested in facilities under the Council's prior opinion, it is recommended that they reevaluate their activity in accordance with this report and comply with the guidelines in this report to the fullest extent possible. If compliance with the need and alternative investor criteria is not practical, it is essential that the identification of reasonably available alternative facilities be provided.

(AMA Council on Ethical and Judicial Affairs Report C., I-1991) (HOD 93-30)

NB: Per General Counsel, because of developing federal and state law, it is strongly recommended that physicians consult legal counsel prior to acquiring ownership interests in health facilities.

Recommendation: Sunset. The resolution fails to comply with the federal and state Stark laws.

100.000 FAMILY AND MEDICAL LEAVE:
(**See also Hospitals, 150.000**)

100.999 Family and Medical Leave: MSSNY supports the passage of a minimum statewide standard Family Medical Leave Act which establishes standards for companies employing over a certain number of persons to allow men and women unpaid leave for a defined period when the birth or adoption of a child or serious illness of a family member occurs. (HOD 91-83)

Recommendation: Sunset. The FMLA enacted in 1993 entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

105.000 GENETICS:

105.998 Discrimination, Prevention of Selective in Insurance Plans: MSSNY will introduce or support legislation to forbid insurance companies from using as criteria

for issuance of coverage or premium rating for health, life and disability policies information derived from genetic screening. (HOD 96-172)

Recommendation: Reaffirmation. While the Genetic Information Nondiscrimination Act of 2008 prohibits issuers of health insurance from discrimination on the basis of the genetic information of enrollees and employers are prohibited from using genetic information in employment decisions, GINA does not apply to employers with fewer than 15 employees. GINA's protections in employment do not extend to the US military. Nor does it apply to health insurance through the TRICARE military health system, the Indian Health Service, the Veterans Health Administration, or the Federal Employees Health Benefits Program. Lastly, the law does not cover long term care insurance, life insurance or disability insurance.

110.000 HEALTH CARE DELIVERY SYSTEMS:
(See also Health System Reform, 130.000; **Managed Care, 165.000)**

110.997 <u>The Need for Patients to be Informed as to the Difference Between Physicians and other Types of Health Care Providers so as to Allow the Patient to Make a Choice of a Physician or Other Health Care Provider Based on Informed Consent</u>: MSSNY will seek State and Federal legislation mandating that patients be notified whenever a health care provider other than a physician will provide care to a patient. (HOD 98-57; Reaffirmed HOD 99-83)

Recommendation: Reaffirmation.

110.998 <u>Nonphysician Practitioners in Today's Health Care Delivery Systems</u>:
(A) <u>Scope of Practice</u>: While the Medical Society is certainly concerned about system costs, our primary focus is and must be on quality. We believe, therefore, that non-physician professionals should be used in a manner commensurate with their training. It is clear, furthermore, that how we pay non-physician practitioners will directly affect how they practice. The medical community firmly believes that non-physician practitioners lack the education and training necessary to practice independently of physicians. A serious danger to the well-being of the citizens of this state will result if health care professionals, competent within their own fields, are permitted to work in areas beyond their competence and training and/or without an appropriate relationship with a physician. Moreover, to the extent that some advocate the expansion of the services performed by non-physician practitioners in the pursuit of system economies, but without an adequate educational base, costs will inevitably increase, not decrease. Therefore, while the Medical Society is committed to ensuring the efficient and responsible integration of these professionals into health care delivery teams, we should be moving toward an integrated system, not reversing statutorily created interrelationships which foster cohesion in our health delivery processes rather than fragmentation. Consequently, MSSNY strongly opposes any expansion of the scope of practice of non-physician practitioners which would undermine the quality of health care and compromise public safety. (B) <u>Practice Setting and Distribution</u>: Certain interests recommend increasing the number of non-physician practitioners to address perceived provider shortages in underserved areas of the state. MSSNY, for a variety of reasons, questions the reasonableness of this conclusion. Generally, it is difficult to entice physicians to practice in such locations where they must be on call constantly, have few professional colleagues with whom to interact and where

their spouses may not be able to find suitable jobs in such settings. Non-physician practitioners face similar, If not the same disadvantages. Furthermore, government should always be alert to initiatives which could result in the establishment of a two-tiered system of health care and, in effect, deny physician services to the elderly, poor and chronically ill. In light of the efforts of managed care organizations to significantly constrict staffing levels, and in view of the persuasiveness of managed care in New York State, we submit that government should carefully examine future work force requirements generally. (C) Manner and Extent of Compensation: In certain government forums, non-physician practitioners are advocating that they should receive the same amount of compensation paid to physicians for certain services. MSSNY specifically opposes any policy which would implement "parity" of payment between physician and non-physician providers. MSSNY supports the implementation of a differential payment structure based upon the provider's level of training, skill, expertise, responsibility and practice costs. Such a payment structure must necessarily recognize the inherent distinctions which exist between the extent of physician education and training as compared to that of non-physicians. Such distinctions in education, training, legal recognition and scope of practice demonstrate beyond argument the lack of any "equivalency" of service despite the claims by some non-physician practitioners. As noted above, the education of a nurse practitioner can be completed in as few as thirty-one months consisting of two years of junior college and nine months of advanced nurse practitioner certification program, or in as much as six years including four years of college and two years in a combined masters and certificate training program. By contrast, generalist physicians have at least eleven years of education and training, including four years of college, four years of medical school, three years of residency and often, additional years of fellowship training. A differential payment structure which recognizes and compensates those with greater skill, knowledge and training is absolutely necessary to assure that dedicated, talented and intelligent individuals are attracted to the profession of medicine. Obviously, young women and men are motivated to pursue the long and arduous work of medical licensure for a variety of reasons, not the least of which is the unique opportunities which the profession offers to serve society in a very direct and personal way. However, we must also recognize the necessity of fair and adequate compensation for those who pursue this course. Without such a structure, there would be inadequate training required of physicians today.

MSSNY strongly supports the provision of payment to a physician for all services provided by non-physician practitioners under the physician's supervision and direction regardless of whether such services are performed when the physician is physically present, so long as the ultimate responsibility for such services rests with the physician. Such a payment relationship is completely consistent with the functional relationships required by NY law which clearly prescribe that the physician is ultimately responsible for services provided by nurse practitioners and certified nurse midwives with whom the physician is collaborating, and physician assistants who the physician is supervising. As a result, MSSNY opposes direct reimbursement to non-physician practitioners. (Council 1/19/95)

Recommendation: Reaffirmation.

115.000 HEALTH CARE PROFESSIONALS/PROVIDERS:
(See also Acquired Immunodeficiency Syndrome [AIDS], 15.000)

115.994 **Certified Medical Assistants/Medical Assistants - Preservation of Physician Autonomy in Employment and Assignment of Duties:** MSSNY will develop and promote regulation and/or legislation that allows Certified Medical Assistants and Medical Assistants to continue to perform the usual duties of their position under the direct supervision of their physician employers if the physician has evaluated and approved their ability to do so, making this a part of the Annual Legislative Agenda until this goal has been attained. (HOD 96-68)

Recommendation: Reaffirmation.

117.000 HEALTH INFORMATION TECHNOLOGY:
(See Managed Care, 165.000; Medicare, 195.000)

117.994 **Medical Smart Cards:** MSSNY to urge the American Medical Association to study and develop a "white paper" on the issue of medical smart cards and aligned technology, including the role of organized medicine in smart card development, the emergence of regional health information organizations (RHIOs), the opportunity for State and Specialty Societies to obtain grants to educate and inform members of opportunities in this and similar emerging technology and to enumerate the implications which these technologies have for physicians, patients and healthcare, in general. (HOD 09-92)

Recommendation: Reaffirmation

120.000 HEALTH INSURANCE COVERAGE:
(See also Abortion and Reproductive Rights, 5.000; Alcohol and Alcoholism, 20.000; Reimbursement, 265.000)

120.984 **Parity in Reimbursement for Mental Health Services**: MSSNY will seek the introduction of legislation requiring insurers to provide coverage for mental illness and substance abuse in their basic contracts on a parity level with all other medical services and that reimbursement for such services be made on a parity level for all physicians at rates normally paid for all other medical care. MSSNY will urge the AMA to support The Mental Health Equitable Treatment Act of 1999 which would provide full insurance parity for adults and children with the most severe mental illness. (HOD 99-263)

Recommendation: Sunset. This policy has been effectively achieved through enactment of both state and federal parity laws.

120.989 **Routine and Refractive Eye Examination:** It is MSSNY's position that third-party payors make it abundantly clear to patients that *eyeglass riders, routine eye examinations, vision care services, vision benefits, vision aid benefits, vision care benefits, eyeglass benefits* and any such benefits, as desirable as they may be, do not substitute for a full medical eye examination on a regular basis by a qualified ophthalmologist, and that when eyeglass benefits are provided, that such benefits provide coverage for a refractive examination and prescription of eyeglasses by an ophthalmologist or optometrist of the patient's choice. MSSNY will coordinate

efforts with medical specialty societies to introduce legislation requiring third-party payors to use uniform and precise language to describe benefits provided in eyeglass benefits and riders, and make it clear to patients that such examinations **do not substitute for a full medical eye examination on a regular basis. (HOD 98-**78)

Recommendation: Reaffirmation.

120.991 **Certain Types Of Well Examinations To Be Covered By All Insurers:** It is MSSNY's position that: (a) age appropriate well examinations should be covered services by all insurers; and (b) age appropriate preoperative consultative evaluations in patients who are undergoing surgery should be covered by all insurers.

In support of this position, MSSNY will petition the State Department of Insurance to require payment for these examinations by all insurers. (HOD 97-259)

Recommendation: Sunset. This is largely accomplished by existing state and new federal requirements.

120.995 **Parity of Coverage for Mental Illness, Alcoholism and Substance Abuse in Medical Benefits Programs endorsed by MSSNY:** MSSNY supports parity of coverage for mental illness, alcoholism and substance abuse and will seek legislation, based on language within the Americans With Disabilities Act, that will mandate that all Third Party Insurance Carriers, including ERISA exempt entities, provide coverage for mental illness, alcoholism and substance abuse on a parity basis with other medical conditions. (HOD 96-251)

Recommendation: Sunset. Policy has been largely achieved through state and federal law.

120.998 **Reimbursement When Patients Refuse to Sign Health Insurance Forms:** MSSNY is urgently requesting the New York State Department of Insurance to draft measures which would ensure that health insurance companies be obliged to reimburse physicians for documented medical services performed in accordance with the patient's insurance plan whether or not the patient agrees to sign the insurance forms. (Council 7/23/92)

Recommendation: Reaffirmation.

120.999 **Health Insurer Abuses:** MSSNY has urged the Superintendent of Insurance to enhance the means by which consumer and physician complaints regarding health insurance programs are addressed in a timely, informed and effective manner, through: (1) Development and identification of clearly defined complaint and review procedures; (2) Imposition of penalties designed to deal with insurance carrier abuses; (3) Provisions of 1-800 number enabling consumer and physician access to appropriate personnel associated with established appeals and grievance processes.

MSSNY is vigorously pursuing legislation or regulation to limit health insurance abuses which would include specific requirements with respect to the responsibility

of the Superintendent of Insurance to more adequately monitor the activities of health insurers in the State. (HOD 91-34)

Recommendation: Reaffirmation. Despite the fact that the Department of Financial Services has a unit which investigates physician prompt pay, external appeals and other complaints, this policy statement should be retained.

150.000 HOSPITALS:
(**See also Clinical Judgment 40.000; Ethics**, **95.000; Medical Examiner System, 185.000; Nuclear War, Weapons and Terrorism, 215.000; Practice Management, 240.000; Reimbursement, 265.000; Vaccines, 312.000; Weight Management & Promotion of Healthy Lifestyles, 320.000)**

150.975 MSSNY to Take All Appropriate Measures to Facilitate Transfers of Non-acute Patients to Physicians' Offices: MSSNY should take all appropriate measures to allow hospital emergency departments to facilitate the transfer of non-acute patients to physicians' offices in appropriate situations. (HOD 00-77)

Recommendation: Reaffirmation.

150.976 Opposition to the Criminalization of the Infractions of State Statutes and Regulations Regarding Post Graduate Supervision and Staffing: MSSNY will notify all teaching hospitals of the importance of adherence to the requirements of State Statutes and Regulations regarding Post Graduate Supervision and Staffing. MSSNY shall continue to oppose the Criminalization of good faith medical **judgment, and each teaching institution required to comply with State Statutes and** Regulations Regarding Post Graduate Supervision and Staffing regulations shall provide on a yearly basis a copy of those regulations to each house officer and each attending physician. (HOD 99-172)

Recommendation: Reaffirmation.

150.977 Prohibit Institutions from Mandating In-House Testing: MSSNY will seek measures to prohibit mandatory in-hospital pre-operative testing when those tests, including but not limited to blood and urine, EKGs, chest X-rays, etc are performed in a qualified physician's office or in a state-and/or CLIA-accredited facility. (HOD 98-126)

Recommendation: Reaffirmation.

150.978 For Profit Hospitals and Nursing Homes: MSSNY will vigorously support current law prohibiting for-profit businesses from entering the New York hospital and nursing home market. (Council 12/18/97)

Recommendation: Reaffirmation. This remains important given ongoing state budget discussions.

150.979 In-House Testing, Prohibition of Institutions from Mandating: MSSNY believes that institutions should allow physicians to perform any mandated pre-

operative testing outside the institution and will encourage institutions to adopt this policy. (HOD 96-126)

Recommendation: Reaffirmation.

150.980 **Services, Provision of on a Seven Day A Week Basis:** MSSNY supports the provision of all appropriate services on a seven day a week basis to assure timely evaluation treatment and safe discharge of patients and will encourage hospitals to comply with this policy. (HOD 96-127)

Recommendation: Reaffirmation.

150.982 **Medical Directors in New York State, Guidelines Regarding the Role of:** MSSNY supports the following Guidelines Regarding the Role of the Hospital Medical Director: (1) The hospital governing body, management and medical staff should jointly determine if there is a need to employ a medical director; establish the purpose, duties, and responsibilities of this position; establish the qualifications for this position; and provide a mechanism for medical staff input into the selection, evaluation and termination of the hospital medical director; (2) The organized medical staff should maintain overall responsibility for the quality of the professional services provided by individuals with clinical privileges and should have the responsibility of reporting to the governing body; and (3) Government regulations which mandate that a hospital medical director has authority over the medical staffs should be repealed.

MSSNY will seek modification of existing laws and regulations consistent with these guidelines. (HOD 95-72)

Recommendation: Reaffirmation.

150.984 **Outpatient Medical Services:** MSSNY is seeking legislation to provide that practitioners whose practices are supported, sponsored by and financially beneficial to hospital controlled satellite diagnostic and therapeutic facilities be held to the same self-referral standards to which the community-based practitioners are held. (HOD 93-77)

Recommendation: Reaffirmation.

150.985 **Incident Reports:** MSSNY is working with the Hospital Association of New York State to ensure that a copy of a hospital incident report which has been forwarded to the New York State Department of Health be sent to any physician whose name is included in such incident report. MSSNY is seeking to ensure that physician identifying information included in hospital incident reports submitted to the New York State Department of Health remain confidential and not be publicly disclosed, as well as seeking to ensure that all information developed by review of incidents required to be reported including, but not limited to “Statements of Deficiency” be covered under existing New York State confidentiality statutes and not be subject to disclosure through the Freedom of Information Law (FOIL). (HOD 92-40)

Recommendation: Reaffirmation

150.986 **Physical Examination for Physicians (Annual):** MSSNY continues to meet with the Department of Health and other interested parties to clarify existing issues pertaining to the physical examination requirements under Section 405.(b)(10) of the Health Department regulations. MSSNY takes the following position with regard to the physical examination requirements: (1) Physicians should have the option of going to his/her personal physician for the physical examination; (2) If the physician opts to have the physical examination performed by the personal physician, the medical records pertaining to the physical examination should be retained in the office of the personal physician. (3) The attestation form which the hospital must retain to document the physical examination should be standardized. MSSNY should be involved in the development of an attestation form. (HOD 91-91)

Recommendation: Reaffirmation.

150.987 **Plan of Correction - Medical Staff Involvement in Development of:** MSSNY adopted the policy that a hospital medical staff must be appropriately involved in the development of a "Plan of Correction" as it pertains to the medical staff. Such involvement should be consistent with existing hospital medical staff Bylaws, rules and regulations. Hospital medical staffs were encouraged to amend their Bylaws, if necessary, to establish a procedure to ensure appropriate medical staff input into the development of a "Plan of Correction." (HOD 91-105)

Recommendation: Reaffirmation.

150.988 **Economic Credentialing and Medical Staff Privileges:** It is the position of MSSNY that: (1) No hospital or ambulatory facility shall curtail, restrict, or terminate the medical staff privileges of any physician without adherence to established procedures set forth in the medical staff Bylaws, and only after the accordance of due process rights pursuant to the procedures specified in the Federal Health Care Quality Improvement Act of 1986, or in accordance with provisions of the hospital or ambulatory facility medical staff Bylaws; and (2) No hospital or ambulatory facility shall curtail, restrict, or terminate the medical staff privileges of any physician based upon economic criteria unrelated to the quality of patient care; and (3) No hospital ambulatory facility shall solicit, require, or accept any payment as direct or indirect consideration for the awarding or granting by the hospital or ambulatory facility of the right to exercise medical staff privileges. This prohibition shall not apply to required payment of medical staff dues or medical society dues that may be required of all members of the hospital or ambulatory facility medical staff. (HOD 92-33)

MSSNY's Hospital Medical Staff Section developed a MSSNY Policy Paper on Economic Credentialing and Exclusive Contracts which was approved by Council on July 23, 1992. The Policy Paper is available, upon request, at the Society Headquarters in Lake Success. MSSNY affirmed the concept that the credentialing of physicians for medical staff appointment or reappointment should be based solely on issues of competency, training and quality of patient care. The Society is seeking regulatory or legislative remedies to assure that only those with appropriate medical training, experience and ongoing clinical expertise will have the ability to establish standards of care and measure practice by these standards. MSSNY has communicated to the Hospital Association of the State of New York,

its component associations and all other appropriate and interested parties its concern over the use of an individual physician's economic performance data which is being generated by hospitals in an effort to link charges, cost and clinical outcome as a major parameter, in and of itself, for the purposes of credentialing and re-appointing physicians. Hospital medical staff physicians and their leadership were informed by MSSNY to take precautions against any hospital initiative aimed at restructuring medical staff Bylaws which would emphasize economics and which could ultimately undermine quality of care. (HOD 91-67)

Recommendation: Reaffirmation.

160.000 LICENSURE:
(See also Managed Care, 165.000; Medicare, 195.000)

160.981 **Development of Legislation Regarding Physical Therapists (PTs):** MSSNY will seek through legislation, regulation, or whatever means necessary, the adoption of the following amendment to the New York Education Law:

(1) Needle electromyography is the practice of medicine and shall be performed and interpreted only by physicians licensed in the State of New York who are appropriate to perform and interpret such tests by virtue of specialty and training; and

(2) Physical therapists shall be limited in the scope of electrodiagnostic practice to the role of technicians utilized to perform nerve conduction studies under the direct supervision of a licensed physician who is appropriate to perform or interpret such tests by virtue of specialty and training; and

(3) Non-licensed individuals as defined by the NYS Department of Education may not perform needle electromyography under any circumstance, whether or not the individuals are supervised by a licensed provider of any type.

MSSNY will request that the State of New York Insurance Department and the State of New York Workers' Compensation Board, as they relate to the care of individuals sustaining automobile and work related injuries, respectively, adopt these resolutions in whole into their prevailing and future statutes. (Council 11/2/00)

Recommendation: Reaffirmation.

160.982 **Enforcing Licensing Statutes**: MSSNY will seek support of the appropriate regulatory bodies to enforce licensing statutes to ensure that HMOs do not permit non-physician practitioners to perform services beyond the scope of their licensure. (Council 3/13/00)

Recommendation: Reaffirmation. The threat continues to exist.

160.984 **Citizenship Requirement for Medical Licensure:** MSSNY will support legislation to extend the authority of the Board of Regents to grant an extension of the three-year waiver of U.S. citizenship or immigration status requirements for a physician with alien citizenship status who has trained in New York and who works in pubic hospitals regardless of whether they are located in areas designated as medically

under-served. The extension would continue until the citizenship or permanent residency issue is resolved. (HOD 00-92)

Recommendation: Sunset. DOH has determined that all public hospitals in NYC are located in medically underserved areas. Moreover, MSSNY had previously achieved the objective of this resolution.

160.985 **Destruction of the Doctor-Patient Relationship and the Practice of Medicine by Insurers:** MSSNY will seek legislation to discourage activities by insurers and other third parties that weaken or destroy the doctor-patient relationship including, but not limited to, the profusion of telephone based evaluation and referral by non-physicians.

Where managed care plans and insurers utilize nurses for "on-call" triage purposes, such nurses shall be licensed in New York State and provide, establish and maintain appropriate medical documentation of their activities as well as timely follow-up documentation to the patient's primary care physician regarding the nurse's assessment and recommendation; and that where MCOs provide triage services they must assume the liability for adverse events which may ensue. (HOD 98-75)

Recommendation: Reaffirmation.

160.986 **New York State Licensure Requirements:** MSSNY will seek, through regulation or legislation, a requirement for a full New York State license for all physicians who provide medical advice, diagnosis or treatment through the technology of Telemedicine for patients located in New York State. Excluded from this full New York State license requirement would be traditional physician-to-physician consultations which occur on an infrequent basis. (HOD 98-63)

Recommendation: Sunset. See 160.989 below which is duplicative of this policy.

160.987 **Statutory Authority for Licensure:** MSSNY supports the statutory transfer of authority for license restoration from the Education Department to the Board for Professional Medical Conduct. (Council 2/6/97)

Recommendation: Reaffirmation. While the OPMC is also involved in restoration determinations and provides guidance to the Education Department as to whether a license should be restored the Education Department remains the final arbiter as to whether a physician's license should be restored.

160.988 **Licensure Restoration Process:** MSSNY supports the following recommendations of the Office of the Professions, New York State Education Department, to improve and streamline the license restoration process. An in-depth license restoration application to be developed with the burden being placed on the physician to explain why he or she should have the license back. The establishment of a minimum waiting period of three years between the time a physician's license is revoked and the time that a physician may reapply for license restoration. The minimum waiting period is currently one year. A graduated application fee for restoration to be set so the physician covers the administrative cost of the restoration. There is currently no fee or charge. The need for a

personal appearance in every case to be eliminated, but to permit the state board the option of calling for a personal appearance. (Council 2/6/97)

Recommendation: Reaffirmation. The minimum waiting period in statute is two years.

160.989 **Licensure Requirement for Providing Medical Advice Through Telemedicine:** MSSNY will urge the New York State Board of Medicine to require full New York State licensure for an individual providing medical advice through the technology of Telemedicine from in or out of state for patients under treatment in New York State. Such medical advice requiring full licensure would entail the performance of an act that is part of a patient care service initiated in this state and affecting the diagnosis or treatment of the patient. Excluded from this full licensure requirement would be traditional informal physician-to-physician consultations ("curbside consultations") that are provided without expectation of compensation. MSSNY will recommend further monitoring and study of the areas of Telemedicine encompassing confidentiality of patient information, professional liability, coding and reimbursement, and will seek the development of legislation and/or regulation requiring the full New York State licensure of Medical Directors and physicians employed by managed care systems or other health insurers in or out of state who make decisions which affect medical care. (Council 10/24/96)

Recommendation: Reaffirmation.

160.990 **Laser Surgery:** MSSNY has adopted the position that laser treatments should be prohibited by those not licensed as MD, DO, DMD, DDS, DPM-trained and will include this as a priority item in its 1997 legislative program. (HOD 96-80)

It is the position of the Medical Society of the State of New York that laser surgery be performed only by appropriately credentialed and licensed physicians or by those categories of practitioners specifically licensed by the State to perform surgical services. (HOD 91-45)

Recommendation: Reaffirmation of HOD 96-80 and sunset of HOD 91-45. The two policies appear to conflict as 1991 policy appears to enable a broader cohort of practitioners to perform laser surgery.

160.991 **Self-Incriminating Questions:** MSSNY has urged the American Medical Association to proceed further and revise the second recommendation of its Board of Trustee's Report 13 (I-93) to urge that questions as in current illnesses that might interfere with the competency to practice be applied to all such illnesses, physical as well as psychiatric and addictive, and not to the past history of such illnesses if those illnesses do not extend into current impairment, and to amend its Board of Trustee's Report 13 (I-93) so that it applies to all licensing, board certifying, and credentialing procedures. MSSNY has urged the AMA to add to its Board of Trustee's Report 13 (I-93) a strong emphasis on the need for very strict confidentiality legislation and regulations on state, federal and private levels in regard to any such information obtained, and to implement recommendations 4 and 5 of said report relating to the impact of the Americans with Disability Act (ADA) concerning these matters. (HOD 94-161)

Recommendation: Reaffirmation.

160.992 **Mandated CME for Re-registration of Medical Licensure:** The Society strongly reaffirmed its opposition to any linkage between legislatively mandated CME with re-registration of medical licenses. (HOD 93-15)

Recommendation: Reaffirmation.

160.993 **Self-Incriminating Questions on Application Forms by Licensing, Certifying and Credentialing Bodies:** MSSNY takes the position that questions regarding past history of referral and treatment for alcohol and other drug disorders and mental and emotional illness should not be used on application forms by licensing, certifying, and credentialing bodies because it is not believed that such questions are pertinent to a physician's current ability to practice medicine but merely infringe on privacy matters. MSSNY is urging that such bodies instead ask a question regarding the applicant's current ability to practice medicine, such as: "Is your ability to practice medicine currently impaired by any physical, mental, emotional, alcohol or substance abuse disorder?" (Council 7/23/92)

Recommendation: Reaffirmation.

160.994 **Therapeutic Ultrasound:** It is the position of the Medical Society of the State of New York that therapeutic ultrasound be performed only by individuals licensed to practice medicine and surgery or by those who have been specifically authorized by law to perform these services. (HOD 91-47)

Recommendation: Reaffirmation.

160.995 **Cryotherapy:** It is the position of the Medical Society of the State of New York that cryotherapy be performed only by individuals licensed to practice medicine and surgery or by those who have been specifically authorized by law to perform these services. (HOD 91-46)

Recommendation: Reaffirmation.

160.996 **Diathermy:** It is the position of the Medical Society of the State of New York that diathermy be performed only by individuals licensed to practice medicine and surgery or by those who have been specifically authorized by law to perform these services. (HOD 91-48)

Recommendation: Reaffirmation.

175.000 **MEDICAID:**
(See also Drugs and Medications, 75.000; Health Insurance Coverage, 120.000, Medicare, 195.000; Professional Medical Conduct, 250.000; Reimbursement, 265.000)

175.989 **Expanding Scope of Commission on Medicaid:** MSSNY will urge widening the scope of the proposed Commission on Medicaid to include general issues of health expenses in New York State. (HOD 00-52)

Recommendation: Sunset. No such Commission exists.

175.994 **Emergency Care Exemption Under a Regionalized System:** MSSNY takes the position that managed care organizations should make an exception for emergency medical situations covered under the regional system of emergency care and strongly opposes any attempt to delay or deny payment for medically necessary emergency services in a regionalized facility that may not be part of the managed care network of approved hospitals. (Council 6/2/94)

Recommendation: Sunset. Identical to 165.999. Also, unnecessary as the prudent person layperson has been the standard in place since 1996.

175.995 **Funding for Medicaid Services:** MSSNY has urged the Governor of the State of New York not to impose co-payments on Medicaid services, including nursing and therapy visits, paraprofessional services, prescriptions, and clinic visits. In addition, MSSNY has urged the Governor to: (1) Retain the existing Medicaid personal care program; (2) Retain Medicaid payments to hospitals for patients receiving alternative level of care services; and (3) Not to freeze Medicaid reimbursement rates for home health care providers. (HOD 93-106)

Recommendation: Reaffirmation.

175.996 **"Pill Mill" Centers:** MSSNY is seeking regulatory or statutory reform mandating that physicians affiliated with Medicaid "Pill Mill" Centers where there is undisputed evidence of Medicaid abuse be subject to an expedited license review and suspension as may be required by the appropriate agencies. MSSNY is seeking to ensure that suspension of any physician's license be based on direct and verifiable identification of the clinic(s) in question by the appropriate enforcement and investigative agencies and established community organizations, and not solely upon indirect and tangential criteria. Such unacceptable criteria would include, but not be limited to, Medical Management Information Services (MIS) computerized billing records or superficial and unreliable "spot check" site visits productive of only anecdotal and ultimately inadmissible evidence as gathered by the funding agency of the Medical Assistance Program. (Council 1/19/92)

Recommendation: Reaffirmation.

175.999 **Medicaid - Title XIX Recipients:** The position of the Medical Society of the State of New York is that all Title XIX (Medicaid) recipients must have equal access to high-quality health care along with freedom of choice as to the source from which they receive such care. This quality care should be delivered in an efficient manner by appropriately recognized and varying alternative mechanisms of medical care delivery. Reimbursement for medical service rendered to Title XIX (Medicaid) patients must be based on a realistic fee pattern, in keeping with current economic realities and with the physician mode of practice. Such fee patterns must be subject to periodic adjustments in the same manner as are all other recognized alternative mechanisms of medical care delivery. Further, there should be a: (1) Return of Medicaid patients to the offices of practicing physicians by revising the New York State Medicaid fee schedule to provide usual and customary fees, or to implement a realistically higher fixed fee schedule. (2) Well developed peer review system, administered by physicians at the local level and providing for an adequate appeals mechanism through physician ombudsmen. (3) Development of a program that would provide incentives to physicians for locating

in undeserved areas. (4) Unification of administrative and fiscal Medicaid responsibilities within a single Department at the State level.
(Council 4/22/82; Reaffirmed Council 6/3/04)

Recommendation: Reaffirmation.

180.000 MEDICAL DATA:
(See also Acquired Immunodeficiency Syndrome (AIDS), 15.000)

180.990 **FBI Raids:** MSSNY will take all necessary steps to ensure that government investigators not be permitted to remove records of patients from a physician's office without copies being made prior to removal.

MSSNY's position is that if patient records are seized and there is no provision made for copying of records at Government expense, copies must be made on side and left for the affected practitioners' use in ongoing care of their patients.

State and Federal legislation must be sought which would provide immunity for physicians from any physicians from any suit or administrative proceedings where it can be shown that absence of the patient records contributed to an alleged negligent act or where the patient records seized contain information relevant to defending against an alleged negligent act.

MSSNY will seek passage of State and Federal legislation that would ensure that FBI investigations regarding physicians should be done in a matter that is sensitive to the health of patients and the viability of the medical practice under investigation, and that physicians not be required to pay any fees to receive copies of their patient records which have been seized by the FBI. (HOD 00-73)

Recommendation: Reaffirmation.

180.991 **Privacy and Confidentiality:** MSSNY will seek legislative/regulatory relief to prevent insurance companies and other managed care organizations from selling, trading, transmitting, or in any way communicating, individually identifiable health information to third parties. Such legislative/regulatory relief should include a provision that patients be permitted to opt to provide individually identifiable information to third parties. (HOD 00-69)

Recommendation: Reaffirmation.

180.993 **Privacy of Medical Records:** It is MSSNY position that any proposed legislation should include:

1. Universal protection against pressuring physicians to re-release patient data to outside sources (i.e., in order to obtain medical insurance).
2. Civil and criminal penalties for individuals who violate the universal non-release policy.
3. Restrictions on the selling of physician prescription patterns to the pharmaceutical industry.

4. Requirements that informed consent be obtained from each individual participant in a medical insurance plan regarding release of patient information to third parties.
5. Universal protection against the release of patient data to any law enforcement agency unless required by a court order. (Council 3/18/99)

Recommendation: Sunset as HIPAA would preempt this field of inquiry.

180.994 **Confidentiality of Patient and Physician Data:** MSSNY will continue to take whatever measures appropriate to discourage insurance companies and other health care agencies from publishing social security numbers and tax identification numbers whether it is stored, transmitted, or disposed of, in paper, electronic, or other media, and will become a strong proponent in efforts that may be underway to protect the confidentiality of patient and physician information whether it is stored, transmitted, or disposed of, in paper, electronic, or other media. (HOD 98-88)

Recommendation: Reaffirmation.

180.996 **Access to Medical Records by Insurance Companies:** MSSNY strongly supports the option to allowing physicians to provide insurance companies with medical history summaries of prospective subscribers instead of actual copies of medical records in response to request for medical information. (HOD 97-76)

Recommendation: Sunset. Contracts dictate the manner by which medical record information is conveyed to plans.

185.000 MEDICAL EXAMINER SYSTEM:

185.998 **Autopsies Performed by Medical Examiner:** MSSNY will seek appropriate changes in New York State legislation and/or regulations to mandate the Coroner or Medical Examiner to release a copy of his autopsy findings to the attending physician and/or the hospital QA Committee in which the patient has expired. (HOD 95-105; Reaffirmed HOD 99-82)

Recommendation: Reaffirmation.

185.999 **Forensic Medicine:** MSSNY believes that the Medical Examiners System should be extended on a regional basis throughout the State to augment and direct any existing Coroner Systems and that the Medical Examiner's Office should be an entirely independent unit of government with a direct line of responsibility to the chief executive officer of the jurisdiction who should not delegate his responsibility to the appointee of another agency. Any funding for Medical Examiners' Offices available from the State should be paid to the city or county government and dedicated for the Medical Examiner's Office and not diverted to other agencies' non-related needs. (HOD 1980; Amended Council 12/19/91)

Recommendation: Sunset. Only know five county's have a Medical Examiner's office, Erie, Broome, Albany, Syracuse and NY City. The state used to fund these entities under Article 6 of the PHL, but no longer does. Given economic conditions of counties, even a regional concept may be beyond fiscal abilities of counties.

225.000 PEER REVIEW:

225.990 <u>MSSNY To Take Lead Re Quality Performance Improvement Activities in Physicians' Offices</u>: MSSNY will continue to participate in the development of quality performance improvement activities in physicians' offices. (HOD 99-173)

Recommendation: Reaffirmation.

225.991 <u>IPRO Citations, Mandatory Purging of After Specified Time Period</u>: MSSNY will request the Health Care Financing Administration (HCFA) to establish policy which would provide that Peer Review Organization (PRO) citations for matters that are not currently defined as quality issues, or those issues which are considered remote, be expunged. (HOD 96-128)

Recommendation: Reaffirmation with an editorial change of the name "Health Care Financing Administration (HCFA) to Centers for Medicare and Medicaid Services (CMS)"

225.992 <u>Confidentiality of Documents Submitted to Peer Review Committee</u>: MSSNY has adopted as policy that any materials or comments generated by a physician in response to a review by a Peer Review/Quality Committee of a hospital and/or a health care entity or organization should be confidential as regards discovery in a malpractice action.

MSSNY has pledged to work with other interested parties, the Department of Health, and the appropriate legislators to develop legislation and/or regulations that would ensure such confidentiality. (HOD 94-59)

Recommendation: Reaffirmation. While the bill is introduced each year and receives some favorable consideration, it has not yet been passed by both Houses of the Legislature.

225.993 <u>Fourth Scope of Work - PRO</u>: MSSNY strongly supports the following principles of operation of the Fourth Scope of Work of Peer Review Organizations that: (1) The review process be purely educational; (2) State medical associations and other appropriate professional societies be involved in the formulation of review criteria and that comments from state medical associations be included when criteria are published; (3) The reports and data obtained from the review process be made available to the AMA, state and specialty medical societies, as well as hospital medical staffs for comment and that, when published, such comments be included; (4) Compliance with guidelines be deemed sufficient proof of adequate medical practice. (HOD 93-10)

Recommendation: Sunset. IPRO is currently working on its 10th SOW.

225.994 <u>IPRO Reviewers</u>: MSSNY is taking all necessary and immediate steps to: (1) Assure that IPRO disclose the names, qualifications and performance of its reviewers; (2) Assure that physicians in New York State be given information on the specific guidelines IPRO utilizes to assess the qualifications and performance of its reviewers; 3) Require IPRO to utilize a board certified practicing physician of the same specialty from a like practice setting when PRO reconsideration

determinations are conducted; (4) Require IPRO to utilize the practice parameters as provided by the AMA and developed by its recognized specialty societies. (HOD 91-62)

Recommendation: Reaffirmation.

225.995 **Physician Specific Data, Release to the New York State Department of Health - PRO:** The MSSNY expressed deep concern and strong opposition to the routine release of any confidential physician and provider specific data by the Peer Review Organization to the New York State Department of Health. (HOD 91-51)

Recommendation: Sunset. IPRO is under contract with the State to provide this information.

225.996 **Review in Private Offices - PRO:** MSSNY endorsed the position of the AMA to: (1) Continue to monitor HCFA's pilot project on review of physician office care; (2) Continue to seek enactment of amendments to the PRO law prohibiting such extension; (3) Insist, should enactment not be obtained, that any such office review be non-disruptive, be based upon a review by peers only, be logical, and be based on medically sound measures of process and medical outcomes; and (4) Insist that physicians be compensated for the administrative cost required to complete such office review. (HOD 91-50)

Recommendation: Sunset.

225.997 **Physicians as Reviewers:** The MSSNY, in total cognizance of the rights and privileges of licensed practicing physicians, seeks legislation to require that all peer review activities, conducted under the auspices of the PRO, the New York State Department of Health, Office of Professional Medical Conduct, and/or any other authority commissioned to perform physician peer review, be performed by physicians currently engaged in that specialty or not more than five years removed from the practice of the same specialty. In addition, the physician conducting peer review should submit evidence of board certification by a specialty or subspecialty as recognized by the American Board of Medical Specialties.

MSSNY is seeking legislation that would include the performance of peer review within the definition of the practice of medicine. (HOD 90-39; Reaffirmed HOD 91-62 & HOD 96-52)

Recommendation: Reaffirmation.

225.999 **Physician Controlled Peer Review:** MSSNY, along with the AMA, endorses peer review that is physician controlled and is applicable to all patients and not just specific groups as currently exists. Continual development and promotion of new procedures for physician assessment of the quality and efficiency of medical care must be sought. This development and assessment can best be accomplished by organized physician groups at the local level regardless of funding source. The local review approval by local physician- sponsored organizations must be coordinated on a statewide level, always keeping in mind that physician-controlled peer review through locally sponsored physician organizations is the basis for effective peer review.

It is, therefore, the position of the Medical Society of the State of New York that the State Society should coordinate and assist in implementing mechanisms for peer review for all patients and that such coordination will ensure the review being done by physicians at the local level. (HOD 1981; Reaffirmed Council 3/9/95)

Recommendation: Reaffirmation.

230.000 PHYSICIAN DISCIPLINE:

230.998 <u>Confidentiality as a Key Element of the Physician Disciplinary Process in New York State</u>: MSSNY is seeking to prohibit the release of charges of physician misconduct by the OPMC to the public, pending final adjudication. The only exception to this intent would be situations in which the Commissioner of the New York State Department of Health has summarily suspended the license of a medical professional in the interest of public safety. All professional medical conduct hearings should be closed to the public consistent with the policy governing the conduct of hearings as in the case of all other licensed professionals. (HOD 92-12)

Recommendation: Sunset. Despite MSSNY opposition, legislation was enacted which will enable the release of charges is the hearing panel votes unanimously in support of charges.

230.999 <u>Maximizing Involvement of Physicians and Physician Organizations in Review Process</u>: MSSNY is continuing to evaluate the physician discipline process as revised by Chapter 606 of the laws of 1991, and, if determined to be necessary, to make recommendations on additional legislative refinements that will further the principles of maximizing the involvement of licensed physicians and recognized physician organizations in the process pursuant to which professional conduct of physicians is reviewed, so as to expedite and simplify this process, thus making it more fair to the accused physician and to the public. (HOD 91-9)

Recommendation: Reaffirmation. There have been many significant changes to the OPMC statute, the issue may arise in the future and we may be guided by these principles at that time.

262.000 QUALITY ISSUES:

262.999 <u>Task Force on Quality Medical Care</u>: MSSNY will establish a Task Force (a) to guide New York State physicians in setting up programs for their offices in order to be more successful in avoiding medical errors; (b) to work with appropriate hospital and long term care associations to develop better quality improvement programs for facilities in New York; (c) to report its findings and recommendations to the members of the 2001 House of Delegates 30 days prior to the 2001 Annual Meeting; (d) to request that the American Medical Association study and report underutilized clinical systems to improve the quality of medical care, and provide recommendations for fostering their implementation. (HOD 00-212)

Recommendation: Sunset. The Task force issues its report and a Committee on Quality Improvement and a subcommittee on Long Term Care were created and exist to this date

to effectuate the recommendations contained in that report and to enhance the quality of care in various care delivery settings.

270.000 RIGHTS AND RESPONSIBILITIES OF PHYSICIANS:

270.990 Protection from Discovery of Information Collected for Performance Improvement Activities: MSSNY will pursue legislation that would protect information collected for and action taken related to quality improvement activities in a physician's office in accordance with the New York State Department of Health's *Clinical Guidelines for Office-Based Surgery* from discovery, similar to that which already exists for Article 28 institutions. (HOD 99-101)

Recommendation: Reaffirmation. Despite ongoing efforts, quality improvement conducted in the physician office is not protected from discovery.

270.991 Collective Bargaining Unit (CBU): MSSNY will bring forward at the A-99 meeting of the AMA HOD a resolution containing the following points:

1. That the AMA, with all due haste, develop and implement a collective bargaining unit with no affiliation with existing national trade unions and consistent with our AMA Principles of Medical Ethics), for employed practicing physicians, in order to retain the physician's role as the patient advocate.

2. That the AMA continue vigorously to support antitrust relief that permits collective bargaining between groups of physicians and health plans/insurers under the National Labor Relations Act.

3. That the AMA develop and implement a CBU specifically for resident and fellow physicians, with no affiliation with national trade unions and consistent with the AMA Principles of Medical Ethics. (HOD 99-100; Council 4/25/99)

Recommendation: Sunset. The substance of this resolution was advanced by the AMA through the creation of Physicians for Responsible Negotiation (PRN). Unfortunately, due to a number of factors, this effort failed.

270.992 MSSNY's Support for Physicians in their Quest to be Considered Independent Contractors: MSSNY will communicate to all appropriate physicians or state medical societies its support of the activities of such physicians seeking to establish their right to act collectively in defining the terms and conditions of such physicians' relationships with managed care companies, insurers and/or other entities utilizing physician services. Such support be communicated in the *News of New York* and all other appropriate communication vehicles. (HOD 99-84)

Recommendation: Reaffirmation.

270.993 Disruptive Visits to Medical Offices by Government Investigators and Agents: MSSNY will support legislation and/or other appropriate means to ensure that State and Federal investigators and/or agents give a physician written notice prior to a visit to a medical office so that such visit may be scheduled upon mutual

agreement at a time when patients are not present in the medical office in any circumstance which lawfully permits a visit to a medical office without notice, such as a search warrant, arrest warrant or subpoena, investigators and/or agents should be required to initially identify themselves to appropriate medical staff in a quiet and confidential way that allows the physician an opportunity to comply in a manner that is least disruptive and threatening to the patients in the medical office at the time. (HOD 99-57)

Recommendation: Reaffirmation.

270.994 **Collective Bargaining:** The Council of the Medical Society of the State of New York will create a task force to explore fully all steps which must be taken to enable physicians, whether employees or independent contractors, to act collectively in negotiating all terms and conditions of the relationship between such physicians and insurers, HMOs and/or any other entities with which such physicians have employment or other economic arrangement. (HOD 98-70)

Recommendation: Sunset. A Task Force was formed and issued two reports. The work of the Task Force forms the basis for legislation currently being advanced by MSSNY.

270.995 **Physician Profiling:** Among the elements that should be included in any profiling system are the following: a) medical school and dates of graduation; b) residency or fellowship training; c) specialty board certification; d) hospitals where physicians has privileges; e) appointments to medical school facilities; f) primary practice location and phone number; g) membership in medical societies (AMA, state, specialty, county); h) foreign languages spoken in the office; i) license status and registration renewal date; j) final disciplinary actions taken by BPMC; k) felony or serious misdemeanor. (HOD 97-220; Council 5/21/98)

Recommendation: Sunset. The physician profiling law was established a decade ago.

270.996 **Social Security Number, Use as Provider Identifier:** MSSNY will pursue legislation which will require the use of the physician's UPIN numbers and prohibit the use of a physician's social security number for identification purposes other than in tax-related documents.

MSSNY will also pursue legislation which will prohibit the publication of social security numbers in any form which has the potential to or will be available to the public. (HOD 96-94)

Recommendation: Reaffirmation.

295.000 SURGERY:

295.997 **Office Based Surgery:** MSSNY will promote the implementation of the report of the Public Health Council Task Force on Office-Based (Ambulatory) Surgery as guidelines and guidelines only, and will promote legislation to preserve the privacy and confidentiality of the office-based practice. MSSNY will oppose legislation regulating office-based procedures until we have had sufficient experience with the guidelines. (HOD 00-93)

Recommendation: Reaffirmation.

295.998 **<u>Special Assistant at Surgery</u>:** MSSNY approved a new category of *Special Assistant* for appropriately trained and qualified surgical technicians acting as first assistant at surgery pursuant to regulation published in the State Register. (Council 5/20/99)

Recommendation: Sunset. A legislative effort in support of this policy was soundedly defeated a decade ago.

295.999 **<u>Postoperative Care</u>:** It is the position of the Medical Society of the State of New York that postoperative care is the physicians' responsibility. MSSNY has urged the New York State Education Department to prevent inappropriate involvement by non-physicians in postoperative medical/surgical patient care. (HOD 88-80; Reaffirmed Council 11/13/03)

Recommendation: Reaffirmation.

300.000 **TOBACCO USE AND SMOKING:**
(**See also Health Insurance Coverage, 120.000; Health Screening Programs, 125.000**

300.954 **<u>Tobacco Settlement Funds</u>:** MSSNY will work with state legislators, the Attorney General and other appropriate elected officials to seek passage of legislation that will devote a significant portion of tobacco settlement funds to: a comprehensive tobacco use prevention and cessation program similar to those now in place in Massachusetts, California, and Florida; and the expansion of access to medical care for the uninsured. MSSNY will immediately to monitor and comment on plans emerging within the State on the proposed uses of the tobacco settlement monies and report back to the House periodically and not less than at each annual meeting. (HOD 99-58)

Recommendation: Reaffirmation.

300.955 **<u>Tobacco Tax Use</u>:** MSSNY will support legislation that would increase the state tax on the sale of tobacco products, with the proceeds to be used for a comprehensive anti-tobacco campaign, expanded access to clinical care for uninsured New Yorkers, including care provided by private physicians, and other appropriate purposes. Included in the anti-tobacco effort would be an anti-tobacco advertising campaign, similar to those that were implemented as a result of "Question 1" legislation in Massachusetts. (HOD 99-56)

Recommendation: Reaffirmation. While the taxes were increased and monies applied to the goals recommended in this resolution ongoing strategies may be deployed in the future to again enhance funding for anti-tobacco campaigns.

310.000 **UTILIZATION REVIEW:**

310.999 **<u>Medical Director to be Required for all Third Party Payors</u>:** The Medical Society of the State of New York will seek whatever legislative or regulatory action

is necessary to insure that all health insurance companies that are licensed in the State of New York and performing utilization review have a physician medical director who is licensed by the State of New York, who is accessible and identifiable to the treating physician; and will seek regulatory action which assures that plan medical directors are held accountable for their medical review determinations. (HOD 97-58)

Recommendation: Reaffirmation.

315.000 VIOLENCE AND ABUSE:

315.996 <u>Identification and Reporting - Licensure Mandated CME</u>: MSSNY has reiterated its opposition to all mandated courses tied to licensure. Inasmuch as there is a mandated course of identification and reporting of child abuse and maltreatment for physicians and other medical personnel, it is the Society's position that all other professionals and personnel possibly involved in child abuse cases, including all judges, attorneys, court personnel, social service workers and others be mandated to complete course work or training in child abuse and family violence as a licensure or job requirement. (HOD 93-62)

Recommendation: Reaffirmation.

317.000 VOLUNTEER SERVICES OF PHYSICIANS:

317.997 <u>Immunity For Physicians Serving Volunteer Ambulance Corps</u>: MSSNY will seek passage of state legislation that would extend the "Good Samaritan" protection to physicians working on volunteer ambulance corps. (HOD 97-116)

Recommendation: Reaffirmation.

317.998 <u>Volunteer Physician Services</u>: MSSNY strongly encourages who wish to use the services on a voluntary basis to cover the cost of medical liability insurance as a part of their arrangement with the volunteering physician.
(HOD 96-53; Reaffirmed HOD 98-65 & 98-69)

Recommendation: Reaffirmation.