

**MEDICAL SOCIETY OF THE STATE OF NEW YORK 2022 HOUSE OF DELEGATES**

**Report of the Reference Committee on Governmental Affairs and Legal Matters (A)  
Presented by: Ellen Braunstein, MD, Chair**

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Mister Speaker and Members of the House of Delegates:

Your Reference Committee recommends the following consent calendar for acceptance:

**FILED FOR INFORMATION**

1. Legislation and Physician Advocacy Committee (GA Report 1)

**SUNSET REPORT - RECOMMENDED FOR ADOPTION**

2. 2022 Government Affairs & Legal Matters Sunset Report

**RECOMMENDED FOR REAFFIRMATION**

3. Resolution 55 - Physician Freedom to Manage Their Patients
4. Resolution 61 - Insurance Reform

**RECOMMENDED FOR ADOPTION AS AMENDED**

5. Resolution 50 - Non-Compete Agreements and Certain Restrictive Covenants in Professional Contracts
6. Resolution 51 - Membership Option of Medical Licensure
7. Resolution 52 - Covid Hazard Pay
8. Resolution 54 - Protecting State Medical Licensing Boards from External Political Influence
9. Resolution 56 - Mitigation of The Unintended Consequences for Quality of Care Triggered by Value-Based Payment Models
10. Resolution 58 - Abolish "Preferred" Status of Laboratories
11. Resolution 59 - Fair Health Database
12. Resolution 60 - Electronic Submission of Medical Records
13. Resolution 62 - Opt Out of Online Physician Rating Websites
14. Resolution 63 - Protection of Peer Review

**RECOMMENDED FOR REFERRAL TO COUNCIL**

15. Resolution 57 - Unintended Consequences of Value-Based Payment Models —Conflicts of Interest

**RECOMMENDED NOT FOR ADOPTION**

16. Resolution 53 - Expediting Action by OPMC in Cases of Prescribing Abuse

1 **1. LEGISLATIVE AND PHYSICIAN ADVOCACY COMMITTEE (GA REPORT 1)**

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3 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE ANNUAL REPORT OF THE**  
4 **LEGISLATION AND PHYSICIAN ADVOCACY COMMITTEE BE APPROVED AND FILED**  
5 **FOR INFORMATION.**

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7 Your Reference Committee noted that the Report of the Legislative and Physician Advocacy  
8 Committee was a presentation of the Medical Society’s 2021 Legislative Program, which was  
9 approved by the MSSNY Council at its meeting on November 4, 2021.

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12 **2. POLICY SUNSET REPORT**

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14 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE SUNSET REPORT FOR**  
15 **GOVERNMENTAL AFFAIRS AND LEGAL MATTERS (A) FOR 2022 BE ADOPTED**

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18 **3. RESOLUTION 55 – PHYSICIAN FREEDOM TO MANAGE THEIR PATIENTS**

19  
20 Original Resolution 55 reads as follows:  
21 RESOLVED, That the Medical Society of the State of New York should seek legislation to  
22 prohibit elected officials from interfering with the right of licensed physicians to treat their  
23 patients to the best of their ability; and be it further

24  
25 RESOLVED, that any physician treating a patient off label with an FDA-approved medication,  
26 who has obtained informed consent and has a reasonable scientific basis for that treatment  
27 decision, shall be presumed to be practicing within the standard of care.

28  
29 **RECOMMENDATION A:**  
30 **THE REFERENCE COMMITTEE RECOMMENDS THE FOLLOWING REAFFIRMATION OF**  
31 **MSSNY POLICY INSTEAD OF RESOLUTION 55**

32  
33 **75.988 Medicare and ‘Off Label’ Uses of Drugs:**  
34 MSSNY confirms its strong support for the autonomous clinical decision-making  
35 authority of physicians to prescribe medications for ‘off-label” use. (HOD 2004-67;  
36 Modified and reaffirmed HOD 2014; Reaffirmed HOD 2015-53)

37  
38 Your Reference Committee heard from multiple physicians opposed to this resolution. They  
39 were concerned that it would be perceived as an endorsement of physicians treating patients  
40 with therapies that have not been scientifically proven to be successful. The Reference  
41 Committee recommended that MSSNY instead re-affirm long-standing policy protecting the right  
42 of physicians’ clinical decision-making authority.

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44 **RECOMMENDATION B:**  
45 **THE REFERENCE COMMITTEE RECOMMENDS REAFFIRMATION OF MSSNY POLICY**  
46 **75.988.**

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50 4. **RESOLUTION 61 – INSURANCE REFORM**

51  
52 Original Resolution 61 reads as follows:

53 RESOLVED that MSSNY advocates for widespread comprehensive and immediate insurance  
54 reform that:

55 A. holds insurers accountable for actions that compromise the care of their patients and the well  
56 being of their partnering physician practices

57  
58 B. Allows physicians to compare fees so as to decide whether they can afford to continue  
59 accepting specific insurance plans.

60  
61 C. Insists that insurers provide updated specialty specific payment schedules annually so that  
62 proper payment can be determined

63  
64 D. Forces insurers to provide notice and good reason for dropping physicians from their panels  
65 and when doing so that this change be approved by the state department of financial services  
66 so that a provider group may have the opportunity to address any such legitimate grievance on  
67 behalf of the insurer.

68  
69 E. That insurers be required to prove the necessity of any recoupment of overpayment before  
70 withholding further payments.

71  
72 F. That the prompt payment act be enforced so that insurers pay within the 45-day period and  
73 that interest be recouped when they fail to do so.

74  
75 **RECOMMENDATION A:**

76 **THE REFERENCE COMMITTEE RECOMMENDS THE FOLLOWING REAFFIRMATION OF**  
77 **MSSNY POLICY INSTEAD OF RESOLUTION 61**

78  
79 **165.917 Carriers' Failure to Obey PHL 4406-c (5A) Release of Fee Schedule:**

80 MSSNY will work with the NYS DOH to amend appropriate provisions of law to assign  
81 monetary penalties for failure to comply with requests for fee schedules. Failing  
82 legislative relief, MSSNY will study the feasibility of bringing appropriate legal action  
83 against carriers in New York who are identified as refusing to provide requested fee  
84 schedule data. (HOD 2003-52; Reaffirmed HOD 2013; Reaffirmed HOD 2016-56)

85  
86 **165.918 Time Limit for Retrospective Denials:**

87 MSSNY continues in its efforts to seek legislation, regulation or other appropriate means  
88 to prohibit retrospective refund requests by health plans in all circumstances except  
89 fraud. Short of achieving a complete ban on retrospective refund requests, MSSNY  
90 seek legislation, regulation or other appropriate means to limit to 90 days the time within  
91 which a health plan can seek such a refund, or other significant restrictions on the ability  
92 of health plans to seek such refunds, such as limiting the time that a health plan can  
93 seek a refund to the same time that a physician has to file a claim with such health plan.  
94 (HOD 2003-69; Reaffirmed HOD 2013; Reaffirmed HOD in lieu of 2017-108)

95  
96 **165.968 Liability of Managed Care Entities As Well As Their Employees,**  
97 **Agents, Ostensible Agents And Representatives:**

98 MSSNY will develop or support legislation or regulation requiring that whenever an  
99 employee, agent, ostensible agent and/or representative of a managed care entity  
100 makes a determination that affects a patient's health, both the individual and the entity  
101 should be held liable for any adverse outcome to the patient arising directly from the  
102 determination or as a consequence of the determination. (HOD 1997-114; Reaffirmed

103 HOD 1998-84; Reaffirmed HOD 2014; Reaffirmed HOD 2015-57; Reaffirmed HOD  
104 2020-56)

105  
106 **120.890 We're Mad as Hell and We aren't Going to Take it Anymore**

107 MSSNY will aggressively work with county and specialty medical societies across the  
108 State to collect examples of health insurers inappropriately denying payment for care,  
109 appropriately delaying patient access to needed treatment and abusive audit practices  
110 for redress by the New York State Department of Financial Services and the NYS  
111 Department of Health. MSSNY will educate physicians regarding strategies to assist in  
112 collecting examples for review by state oversight agencies, such as the use of relevant  
113 ICD-10 codes that identify in the electronic medical record when patients have difficulty  
114 accessing care due to inappropriate denials. (HOD 2021-56)

115  
116 **120.952 Insurance Companies Dis-enrollment of Participating Physicians**

117 The Medical Society of the State of New York will seek legislation that would expand  
118 physician protections similar to those enunciated in Public Health Law § 4406-d for non-  
119 renewal of a network contract for both managed care plans and HMOs in order to enable  
120 physicians to have the right to appeal a plan's non-renewal decision and have a hearing,  
121 if needed.

122  
123 The Medical Society will urge the Department of Financial Services to require that all  
124 health insurance companies doing business in the State of New York, provide clear and  
125 concise justification with appropriate documentation, which substantiates a decision to  
126 terminate or non-renew a physician's participation status. When a physician receives a  
127 notification that his/her participation agreement is being terminated or not renewed, an  
128 appropriate appeals mechanism be provided which allows adequate time for the  
129 physician to seek appropriate counsel (if necessary) and to assemble any necessary  
130 and supporting documentation which may be needed to assist in the appeal. (HOD  
131 2012-259)

132  
133 **RECOMMENDATION B:**

134 **THE REFERENCE COMMITTEE RECOMMENDS REAFFIRMATION OF MSSNY POLICIES**

135 **120.890, 120.952, 165.917, 165.918 AND 165.968**

136  
137 The resolution highlights the pervasive problem experienced by many physicians of delayed  
138 payments by insurers, abusive audits and inappropriate dropping from networks without  
139 adequate appeal rights. However, MSSNY has ample policy in each of these areas, and has  
140 been advocating for various pieces of legislation to address these abuses. Moreover, through  
141 its new Director of Payment & Practice, MSSNY has been aggressively working with county  
142 medical societies and physicians to share examples of abusive payor tactics with various  
143 regulatory agencies. Therefore, instead of adopting new policy that is largely redundant of  
144 existing MSSNY policy, the recommendation was to re-affirm several existing MSSNY policies  
145 that are substantially similar to the resolution. At the Reference Committee hearing, there was  
146 testimony that the sponsor of the resolution agreed with the recommendation to re-affirm these  
147 MSSNY policies.

151 5. **RESOLUTION 50 – NON-COMPETE AGREEMENTS AND CERTAIN RESTRICTIVE**  
152 **COVENANTS IN PROFESSIONAL CONTRACTS**  
153

154 Original Resolution 50 reads as follows:

155 RESOLVED, that MSSNY advocate for unanimous support of Senate Bill S6425 which  
156 addresses this issue.

157  
158 **RECOMMENDATION A:**

159 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**  
160 **AMENDMENT BE ACCEPTED INSTEAD OF ORIGINAL RESOLUTION 50:**

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162 **RESOLVED, That the Medical Society of the State of New York support legislation that**  
163 **would prohibit non-compete clauses in health care employment contracts.**

164  
165 **RECOMMENDATION B:**

166 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 50 BE**  
167 **ADOPTED.**

168  
169 Your Reference Committee heard extensive testimony on this resolution. The legislation  
170 referred to in the resolved, S.6425/A.9591 [Bill Search and Legislative Information | New York](#)  
171 [State Assembly \(nyassembly.gov\)](#), would prohibit most restrictive covenants, also known as  
172 “non-compete” clauses, in all employment contracts in New York State. There was much  
173 testimony in support of the goal resolution of the resolution to prohibit all restrictive covenants,  
174 but there was testimony in opposition or in favor of re-affirming existing MSSNY policy.  
175 Physicians in support discussed the very difficult position they find themselves when they are  
176 subject to contractual non-compete provisions that limit where that physician can deliver care if  
177 they leave employment. Physicians in opposition discussed the burden on private practice  
178 physicians, particularly the risk of bringing on a younger physician to expand care availability to  
179 patients, but then have that physician leave their employ and start their own medical practice in  
180 the same region. The Reference Committee carefully considered the well-thought-out  
181 perspectives of both sides of the argument but recommended that MSSNY support prohibiting  
182 restrictive covenants altogether in all health care employment contracts because of concerns  
183 that MSSNY will not have sufficient credibility to advocate for the restriction or prohibition of  
184 restrictive covenants if they seeking to exempt themselves from its application.  
185  
186

187 6. **RESOLUTION 51 – MEMBERSHIP OPTION TIED TO MEDICAL LICENSURE**  
188

189 Original Resolution 51 reads as follows:

190 RESOLVED, that the Medical Society of the State of New York seek legislation/regulation to  
191 include an opt out membership fee to be determined tied to initial medical licensure and every  
192 renewal.  
193

194 **RECOMMENDATION A:**

195 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**  
196 **AMENDMENT BE ACCEPTED INSTEAD OF ORIGINAL RESOLUTION 51:**

197  
198 **RESOLVED, that MSSNY continue to investigate how best to enable physicians through**  
199 **an uncomplicated process to make MSSNY and county medical society membership**  
200 **payments through their biennial licensure re-registration process.**

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202 **RECOMMENDATION B:**

203 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 51 BE**  
204 **ADOPTED.**

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At the Reference Committee hearing, several physicians spoke in favor of the resolution noting that it could potentially significantly increase MSSNY membership by reminding the over 100,000 licensed and registered New York physicians of the importance to their profession of supporting MSSNY. However, some physicians also raised concerns regarding MSSNY being the only physician association that would be benefitted by this proposal, when there are other associations (for example, the New York State Osteopathic Society) that also provides professional development for physicians. Other physicians raised concerns about possible delays in payment to MSSNY that could occur if the physician makes payment to the Education Department rather than directly to MSSNY.

Therefore, the Reference Committee recommended MSSNY a substitute resolution calling for MSSNY to continue in its efforts, similar to its existing policy, calling for MSSNY to investigate the logistics of including MSSNY and county society opt-out dues as part of the biennial re-registration process.

## 7. RESOLUTION 52 – COVID HAZARD PAY

Original Resolution 52 reads as follows:

RESOLVED, that the Medical Society of the State of New York seek legislation/regulation that these physicians and other members of the healthcare team working during a state disaster emergency be entitled to hazard pay; and be it further

RESOLVED, that this issue be brought forward to the AMA for similar legislation/regulation at the national level.

### **RECOMMENDATION A:**

**THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE AMENDMENT BE ACCEPTED INSTEAD OF ORIGINAL RESOLUTION 52:**

**RESOLVED, that the Medical Society of the State of New York work with the American Medical Association and the federation of medicine to seek a state and/or federal program to provide hazard pay bonuses to physicians and other health care staff delivering care during a state and/or federal disaster emergency.**

### **RECOMMENDATION B:**

**THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 52 BE ADOPTED.**

Your Reference Committee heard testimony from several physicians in support of the resolution. While the federal government has provided several subsidy programs to enable health care providers to navigate the worst of the pandemic, (including the Provider Relief Fund and the Paycheck Protection Program), these programs do not directly reward health care professionals for the emergency care that was provided in both hospitals and in physicians' offices. The Reference Committee recommended a substitute resolution to more specifically articulate the goals of the resolution.

253 8. **RESOLUTION 54 – PROTECTING STATE MEDICAL LICENSING BOARDS FROM**  
254 **EXTERNAL POLITICAL INFLUENCE**  
255

256 Original Resolution 54 reads as follows:

257 RESOLVED, That the Medical Society of the State of New York work with the AMA and the  
258 Federation of State Medical boards and other interested parties to work to create policy that  
259 prohibits outsider political influence from interfering with the function of state medical licensing  
260 boards.

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262 **RECOMMENDATION A:**

263 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**  
264 **AMENDMENT BE ACCEPTED INSTEAD OF ORIGINAL RESOLUTION 54:**  
265

266 **RESOLVED, That the Medical Society of the State of New York work with the AMA and**  
267 **the Federation of State Medical boards and other interested parties to work to help**  
268 **minimize external interference with the independent functioning of state medical**  
269 **disciplinary and licensing boards.**  
270

271 **RECOMMENDATION B:**

272 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 54 BE**  
273 **ADOPTED.**  
274

275 The Reference Committee heard testimony from several physicians in support of the resolution,  
276 but also concerns from some physicians regarding the ambiguous term “outsider political  
277 influence”. Whether someone may be considered to be an “outsider” attempting to exert  
278 “political influence” might depend upon the particular perspective of a person expressing an  
279 opinion. While the goal of the resolution appears to be to protect medical boards from threats  
280 from those who disagreed with disciplining physicians for treating patients with unproven  
281 therapies during the pandemic, the words of the resolution could be interpreted in other ways.  
282 For example, there could be instances where it would be appropriate for a medical association  
283 to raise concerns with the functioning of a disciplinary board for being not aggressive enough or  
284 being too aggressive in its efforts to protect the public. Would that be considered “outsider  
285 interference”? Therefore, the Reference Committee recommended a substitute resolution to  
286 clarify that the goal of the policy is to help protect the independence of medical boards  
287  
288

289 9. **RESOLUTION 56 - MITIGATION OF THE UNINTENDED CONSEQUENCES FOR**  
290 **QUALITY OF CARE TRIGGERED BY VALUE-BASED PAYMENT MODELS**  
291

292 Original Resolution 56 reads as follows:

293 RESOLVED, That the Medical Society of the State of New York seek legislation prohibiting  
294 health insurance plans or organizations that employ physicians, from retaliating or discriminating  
295 against a physician because he or she has in good faith disclosed information critical of the  
296 organization relating to patient care, services, or conditions affecting patients or staff, to  
297 management personnel or an appropriate public agency or accrediting body; and be it further  
298

299 RESOLVED, That the Medical Society of the State of New York seek legislation prohibiting a  
300 healthcare insurance plan or organization from dismissing physicians based on those  
301 physicians’ patient expenditures; and be it further  
302

303 RESOLVED, That the Medical Society of the State of New York seek legislation prohibiting the  
304 use of Merit Incentive Payment System (MIPS) scores in the hiring of physicians.  
305

306 **RECOMMENDATION A:**  
307 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**  
308 **AMENDMENTS BE ACCEPTED INSTEAD OF ORIGINAL RESOLUTION 56:**  
309

310 **RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy**  
311 **80.989; and be it further**  
312

313 **RESOLVED, that MSSNY continue to advocate to protect physicians against wrongful**  
314 **termination from employment or network participation for reasons related to the cost of**  
315 **the care provided or directed by a physician for their patients.**  
316

317 **RECOMMENDATION B:**  
318 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 56 BE**  
319 **ADOPTED.**  
320

321 Your Reference Committee heard mixed testimony on this resolution. There was strong support  
322 for the first resolved to protect against retaliation for advocating on behalf of patients, but  
323 concerns were expressed regarding the second and third resolveds. The Reference Committee  
324 was advised that MSSNY has already adopted policy that calls for laws that protect physicians  
325 from retaliatory acts by employers and insurance companies for disclosing to government  
326 bodies actions that could adversely impact patient care. And there is New York law, Labor Law  
327 Section 741, that provides some protection for health care employees against employer  
328 retaliation for reporting to state agencies activities that could impact patient care ([NYS](#)  
329 [Nursing:Practice Information:Whistleblower Law \(nysed.gov\)](#)). This MSSNY policy substantially  
330 overlaps with the first resolved and therefore should be re-affirmed. The Reference Committee  
331 also recommended revising and combining the second and third resolveds to arrive at a more  
332 general consensus statement protecting physicians from the adverse consequences of ensuring  
333 that patients receive they care they need, even if it is expensive.  
334

335 **80.989 Ethical Protection of Physicians**

336 MSSNY will continue to support legislation that protects physicians from any retaliatory acts by  
337 employers, insurance companies, and other payers when they act in the best interest of their  
338 patients and in a manner consistent with their ethical obligations and consistent with state and  
339 federal laws. MSSNY will educate physicians regarding existing legal protections that limit  
340 retaliatory acts by employers, insurance companies and other payers when they act in the best  
341 interest of their patients in a manner consistent with their ethical obligations and consistent with  
342 state and federal laws. (HOD 2019-73)  
343

344  
345 **10. RESOLUTION 58 - ABOLISH "PREFERRED" STATUS OF LABORATORIES**  
346

347 Original Resolution 58 reads as follows:

348 **RESOLVED, that The Medical Society of The State of New York (MSSNY) seek legislation and**  
349 **regulation to abolish any designation of a lab as "preferred" by any insurance company that**  
350 **would place an undue burden (including inadequate networks) upon an insured, that would**  
351 **otherwise result in limited access to care and potential harm to patients.**  
352

353 **RECOMMENDATION A:**  
354

355 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**  
356 **AMENDMENT BE ACCEPTED INSTEAD OF ORIGINAL RESOLUTION 58:**  
357



358 **RESOLVED, that the Medical Society advocate for health insurers to have comprehensive**  
359 **networks for delivery of lab services that ensure meaningful choice for physicians and**  
360 **affordability and accessibility for patients.**

361  
362 **RECOMMENDATION B:**  
363 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 58 BE**  
364 **ADOPTED.**

365  
366 The Reference Committee heard mixed testimony on this resolution. Some physicians  
367 expressed strong support for the resolution because of the need for physicians to refer their  
368 patients to laboratories they trust. Other physicians expressed concerns because they believed  
369 that labs should not be treated differently than other health care providers, for whom a health  
370 plan has a right to pick which should be in-network, provided that the network for services is  
371 adequate. Because the goal is to ensure comprehensive choice of lab services that are both  
372 affordable and accessibility for patients, as well as providing the quality sought by their treating  
373 physicians, the Reference Committee recommends adoption of the above substitute resolution.

374  
375 **11. RESOLUTION 59 – FAIR HEALTH DATABASE**

376  
377 Original Resolution 59 read as follows:

378 **RESOLVED, that MSSNY will lobby to have FAIRHEALTH restore its information in regard to**  
379 **the “frequency” of the data on which its statistics are based; and be it further**

380  
381 **RESOLVED, that MSSNY will ask the American Medical Association to similarly lobby to have**  
382 **FAIRHEALTH restore its information in regard to the “frequency” of the data on which its**  
383 **statistics are based.**

384  
385 **RECOMMENDATION A:**  
386 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**  
387 **AMENDMENTS BE ACCEPTED INSTEAD OF ORIGINAL RESOLUTION 59:**

388  
389 **RESOLVED, that the Medical Society of the State of New York work together with the**  
390 **American Medical Association to advocate to Fair Health to ensure the continued**  
391 **identification of the frequency by which a particular CPT code is used; and be it further**

392  
393 **RESOLVED, that MSSNY re-affirm MSSNY Policy 256.833.**

394  
395 **RECOMMENDATION B:**  
396 **THE REFERENCE COMMITTEE RECOMENDS THAT SUBSTITUTE RESOLUTION 59 BE**  
397 **ADOPTED.**

398  
399 The Reference Committee heard testimony from the sponsor of the resolution regarding  
400 concerns that Fair Health has stopped identifying the frequency by which a particular medical  
401 CPT code has been billed in a particular region, defined by the “geozip”. The concern is that  
402 this has implications for surprise billing Independent Dispute resolution proceedings, for which a  
403 prominent data point is the usual and customary charge for that region or geozip. If there are  
404 insufficient claims for that code in a particular geozip, Fair Health will broaden the region for  
405 defining usual and customary charge. MSSNY has for several years had policy (265.833)  
406 calling for working with Fair Health to ensure transparency in data collection and presentation.  
407 This policy should be re-affirmed, as well as clarifying that MSSNY should work with AMA to  
408 ensure the data on frequency of use of a code remains available for identification.

411 **265.833 Fair Health Transparency**

412 The Medical Society of the State of New York will continue to work with Fair Health to ensure  
413 appropriate transparency and fairness in the collection and presentation of its usual and  
414 customary charge data, as well as appropriate representation by practicing primary and  
415 specialty care physicians on the Fair Health Board of Directors. (HOD 2018-54; Reaffirmed  
416 HOD 2019-66)

417

418

419 **12. RESOLUTION 60 – ELECTRONIC SUBMISSION OF MEDICAL RECORDS**

420

421 Original Resolution 60 reads as follows:

422 RESOLVED, that MSSNY favor legislation and or regulations that require insurers to provide the  
423 means for electronic submission of requested records for medical necessity reviews.

424

425 **RECOMMENDATION A:**

426 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**  
427 **AMENDMENT BE ACCEPTED INSTEAD OF ORIGINAL RESOLUTION 60:**

428

429 **RESOLVED, that MSSNY advocate for favor legislation, and/or regulations or other**  
430 **regulatory intervention that require insurers to provide the means for electronic**  
431 **submission of requested records for medical necessity reviews.**

432

433 **RECOMMENDATION B:**

434 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 60 BE**  
435 **ADOPTED.**

436

437 Your Reference Committee heard testimony regarding the hassles that physicians have  
438 experienced based on excessive medical record requests from some insurers as part of the  
439 claims review process. The Reference Committee was made aware that insurance companies  
440 have exacerbated this hassle by requiring physicians to mail paper records to a regional office  
441 of the insurer, and that often health insurers deny they ever received these records. As noted in  
442 the whereas, MSSNY has brought this issue to the attention of the NY Department of Financial  
443 Services. As a result, included in the DFS Administrative Simplification Report ([NYSDFS:  
444 Report of New York's Health Care Administrative Simplification Workgroup - October 3, 2021](#))  
445 was an obligation on insurers to ensure they can accept medical records submitted via an  
446 electronic portal. The Reference Committee was advised that MSSNY is already taking steps to  
447 bring these concerns to the DFS in response to concerns brought by physicians that some  
448 insurers' electronic portals are not able to accept medical records. The Reference Committee  
449 recommended a technical amendment to clarify the action steps requested of MSSNY, which  
450 could involve state agencies working with regulated health insurance plans to ensure they have  
451 functioning web portals for medical record submission.

452

453

454

455 **13. RESOLUTION 62 - OPT-OUT OF ONLINE PHYSICIAN RATING WEBSITES**

456  
457 Original Resolution 62 reads as follows:

458 RESOLVED, that MSSNY advocate for NYS regulation requiring online rating websites that  
459 accept comments concerning physicians practicing in NYS to have a defined resolution/  
460 arbitration process to determine if patient complaints have been resolved and to create a  
461 process to remove comments if they have been resolved; be it further

462  
463 RESOLVED, that MSSNY advocates for NYS regulation that grants the right to NYS Physicians  
464 to opt-out of having their professional information, and comments about their clinical  
465 interactions, from being included on a specific online physician rating site; and be it further

466  
467 RESOLVED, that MSSNY brings a similar measure to the AMA for consideration.

468  
469 **RECOMMENDATION A:**

470 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**  
471 **AMENDMENTS BE ACCEPTED INSTEAD OF ORIGINAL RESOLUTION 62:**

472  
473 **RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policy**  
474 **117.987: and be it further**

475  
476 **RESOLVED, that MSSNY continue to investigate and advocate for opportunities to**  
477 **protect physician reputations against inaccurate online commentary.**

478  
479 **RECOMMENDATION B:**

480 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 62 BE**  
481 **ADOPTED.**

482  
483 The Reference Committee heard extensive testimony on this resolution. Some physicians  
484 expressed strong support, highlighting the professional harm that can occur as a result of  
485 unproven online adverse comments from patients. Other physicians expressed sympathy for  
486 the concerns, but also noted the significant legal difficulty in regulating internet content.  
487 Therefore, your Reference Committee recommends re-affirmation of MSSNY's existing  
488 comprehensive policy, 117.987, which is very similar to AMA Policy 487.960 referred by one of  
489 the speakers during the Reference Committee hearing. The policy incorporates several steps to  
490 push back against Internet misinformation. The Reference Committee also recommends adding  
491 an additional resolved calling for MSSNY to continue to undertake efforts to educate physicians  
492 and identify opportunities for physicians to challenge inaccurate comments made about them  
493 online.

494  
495 **117.987 Internet Ranking/Rating of Physicians**

496 The Medical Society of the State of New York will:

497 (1) work with appropriate entities to encourage the adoption of guidelines and standards  
498 consistent with AMA policy governing the public release and accurate use of physician  
499 data;

500 (2) continue pursuing initiatives to identify and offer tools to physicians that allow them to  
501 manage their online profile and presence.

502 (3) seek legislation that supports the creation of laws to better protect physicians from  
503 cyber-libel, cyber-slander, cyber-bullying and the dissemination of Internet  
504 misinformation and provides for civil remedies and criminal sanctions for the violation of  
505 such laws;

506 (4) work to secure legislation that would require that the Web sites purporting to offer  
507 evaluations of physicians state prominently on their Web sites whether or not they are

508 officially endorsed, approved or sanctioned by any medical regulatory agency or authority  
509 or organized medical association including a state medical licensing agency, state  
510 Department of Health or Medical Board, and whether or not they are a for-profit  
511 independent business and have or have not substantiated the authenticity of individuals  
512 completing their surveys. (HOD 2012-257)  
513  
514

515 **14. RESOLUTION 63 – PROTECTION OF PEER REVIEW**  
516

517 Original Resolution 63 reads as follows:

518 RESOLVED, that the Medical Society of the State of New York pursue all actions including via  
519 legislative or regulatory actions that would reverse the expansion of discovery to cover  
520 comments attributed to unidentified speakers as decided in Siegel v. Snyder, et al. (201 NY Slip  
521 Op 07264 (2nd Dept., 12/22/21)).  
522

523 **RECOMMENDATION A:**

524 **THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE**  
525 **AMENDMENTS BE ACCEPTED INSTEAD OF ORIGINAL RESOLUTION 63:**  
526

527 **RESOLVED, that MSSNY advocate through legislation or other legal means to overturn**  
528 **the court ruling in *Siegel v. Snyder* that inappropriately expanded the discovery of**  
529 **comments during peer review proceedings; and be it further**  
530

531 **RESOLVED, that the Medical Society of the State of New York re-affirm MSSNY Policies**  
532 **225.988 and 225.992.**  
533

534 **RECOMMENDATION B:**

535 **THE REFERENCE COMMITTEE RECOMMENDS THAT SUBSTITUTE RESOLUTION 63**  
536 **ADOPTED.**  
537

538 Your Reference Committee heard much testimony in support of this resolution. Long standing  
539 law provides that discussion at a hospital quality peer review committee is exempt from  
540 disclosure in litigation, except for statements made by a person who becomes a party to the  
541 litigation. In December, a 2d Department Appellate Division court concluded that a hospital  
542 peer review committee must be able to establish that statements made at a peer review meeting  
543 were not made by the party involved in the litigation, and that if it is unclear who made the  
544 statements, the material is discoverable. Physicians raised strong concerns regarding the  
545 chilling impact that this court decision could have on physician participation in hospital peer  
546 review discussions. This in turn could have substantial adverse impact on efforts to improve  
547 patient care delivery in hospitals based upon honest and thorough discussions in a peer review  
548 forum. It was noted at the Reference Committee hearing that MSSNY has existing policy that is  
549 broader than the proposed resolution because it seeks to ensure that all discussions at a  
550 hospital peer review proceeding, including those made by a physician who becomes a party to a  
551 lawsuit, remain confidential. To that end, MSSNY and several other physician and hospital  
552 advocacy organizations have sought legislation to achieve that policy's goals (A.1165/S.1800 of  
553 the 2019-2020 legislation session -[Bill Search and Legislative Information | New York State](#)  
554 [Assembly \(nyassembly.gov\)](#)). Therefore, in addition to advocating for efforts to overturn the  
555 Court's ruling in this case, these existing MSSNY policies should be re-affirmed.  
556

557 **225.988 Peer Review Protection:**

558 MSSNY will advocate for a change in New York Education and Public Health Laws to  
559 allow the peer review process to accomplish its goals of enhancing patient safety and  
560 quality of care by protecting from discoverability the statements made by a reviewed

561 physician during the peer review process. Such legislation is to be pursued distinctly  
562 and separately from its effort to effect global reform of the medical tort system.  
563 Also, MSSNY will notify its members of the current discoverability of peer review  
564 activity. (HOD 2008-70; Reaffirmed HOD in lieu of 2017-101)  
565

566 **225.992 Confidentiality of Documents Submitted to Peer Review Committee:**  
567 MSSNY has adopted as policy that any materials or comments generated by a physician  
568 in response to a review by a Peer Review/Quality Committee of a hospital and/or a  
569 health care entity or organization should be confidential as regards discovery in a  
570 malpractice action.  
571

572 MSSNY has pledged to work with other interested parties, the Department of Health,  
573 and the appropriate legislators to develop legislation and/or regulations that would  
574 ensure such confidentiality. (HOD 1994-59; Reaffirmed HOD 2014)  
575

576  
577 **15. RESOLUTION 57 - UNINTENDED CONSEQUENCES OF VALUE-BASED PAYMENT**  
578 **MODELS —CONFLICTS OF INTEREST**  
579

580 Original Resolution 57 reads as follows:

581 RESOLVED, That the Medical Society of the State of New York seek to amend the New York  
582 State Patient’s Hospital Bill of Rights to include the following patient rights:  
583

- 584 1. The right, at all points in the patient’s care, to demand medical decisions that are  
585 informed by physicians;  
586
- 587 2. The right to an unbiased medical opinion and all relevant medical information, including  
588 information about treatments or services that are not reimbursed by the patient’s  
589 insurance company or may be better managed at another institution; and  
590
- 591 3. The right to complete disclosure of physicians’ financial conflicts of interest, that arise  
592 from insurance or employment contracts that could influence the care these physicians  
593 provide; and be it further  
594

595 RESOLVED, That the Medical Society of the State of New York ask the American Medical  
596 Association to work for legislation creating a National Patient Bill of Rights including the above  
597 points.  
598

599 **RECOMMENDATION:**

600  
601 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 57 BE REFERRED**  
602 **TO COUNCIL**  
603

604 The Reference Committee heard mixed testimony on this resolution. The sponsor of the  
605 resolution noted the importance of patients have a clear understanding of the financial  
606 relationships health care providers may have that may impact care delivery. However, others  
607 testified regarding the difficulty for physicians in ensuring compliance should this policy  
608 ultimately become law and suggested that even if the concept was generally supportable, it  
609 should not be a legal requirement. Some also suggested their support for the requirement that  
610 patient medical decisions be informed by physicians, but not the other two components. Given  
611 that there are many aspects to this proposal, each which could produce a lengthy debate  
612 among physicians as to proper wording, the Reference Committee recommended that it be  
613 referred to Council to develop a consensus policy.

614 16. **RESOLUTION 53 - EXPEDITING ACTION BY OPMC IN CASES OF PRESCRIBING**  
615 **ABUSE**  
616

617 Original Resolution 53 reads as follows:

618 RESOLVED, that the MSSNY recommends that the criminal code be amended to add the  
619 penalty of a minimal of one (1) year of termination of the provider's medical license (and  
620 applicable rules for all other providers with prescribing authority) when the abuse of prescribing  
621 privileges has been established by a court or other jurisdiction overseeing physicians who  
622 provide services in the state of New York.

623

624 **RECOMMENDATION:**

625

626 **THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 53 NOT BE**  
627 **ADOPTED**

628

629 Your Reference Committee heard some testimony in support of this resolution, but also  
630 significant testimony in opposition to MSSNY affirmatively advocating to establish specific  
631 licensure penalties in addition to the criminal consequences of inappropriate diversion of  
632 prescriptions. Your Reference Committee was advised that there already substantial criminal  
633 penalties under Article 178 of New York's Penal Law for Criminal Diversion of Prescription  
634 Medications, which begin at a Class A misdemeanor for a 4<sup>th</sup> degree offense and can reach as  
635 high as a Class C Felony for a 1<sup>st</sup> degree offense ([Criminal diversion of prescriptions and  
636 medications | Article 178 \(newyorklegaldefense.com\)](http://www.newyorklegaldefense.com)). Moreover, Education Law Section  
637 6530(9) makes a physician subject to professional license sanction, including loss of license, for  
638 being convicted of a crime. Instead of advocating for specific penalties, the Reference  
639 Committee believed a more productive path would be to continue to make physicians aware of  
640 the many adverse legal consequences that can occur because of the abuse of prescribing  
641 privileges. Therefore, the Reference Committee recommends that this resolution not be  
642 adopted.

Your Chairperson is grateful to the Committee Members, namely, Timothy Holahan, MD, Chris Kjolhede, MD, Carlo Milani, MD, Bruce Molinelli, MD, and Beverly Ortiz, MD

Your Reference Committee Chairman also wishes to express her appreciation to Moe Auster and Jennifer LaRose for their help in preparation of this report.

Respectfully submitted,

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