

TO: MSSNY Officers, Councilors and Trustees

FROM: MSSNY Employed Physicians Rights Committee

DATE: March 7, 2024

RE: Resolution 57 – Employed Physician Bill of Rights
Introduced by the Saratoga County Medical Society

The following resolution was referred to the Council by the House of Delegates. The resolution was forwarded to the Employed Physicians Committee for further study and recommendation for the Council's consideration.

RESOLVED, that the Medical Society of the State of New York recommend the following as a Bill of Rights for employed physicians:

Physicians employed by a health care organization (HCO) have the right to

- **Participate in the governance of the HCO,**
- **Participate in the operational and strategic planning of the HCO,**
- **Establish the requirements of employment, including evaluations thereof, without regard for economic considerations,**
- **Determine the standards for quality, safety, privileging, peer review, and professional conduct,**
- **Establish medical staff by-laws and be able to select and remove medical staff leaders,**
- **Control the use of medical staff funds,**
- **Availability of independent legal counsel,**
- **Advocate for physicians and patients with any and all authorities without fear of retaliation from the HCO,**
- **Availability of adequate resources to provide for and improve patient care,**
- **Make treatment decisions, including referrals, based on the best interest of the patient, subject to review only by physician peers,**
- **Full due process before either the medical staff or the HCO takes any adverse action against a physician, and**
- **Full protection from any retaliatory action when participating in good faith peer review activities.**

At the House of Delegates, the reference committee had recommended to the full House that the HOD adopt the resolution given the significant testimony in support of the resolution, and that it was important given the very high percentage of physicians who are now employed by hospitals and health systems. The author of the resolution advised that many of the components of the proposed Bill of Rights in the resolution are based upon the AMA Physician and Medical Staff Member Bill of Rights (AMA Policy H-225.942). However, that AMA resolution not only discusses the rights of employed physicians, but also their responsibilities. The resolution was ultimately referred to Council following debate at the HOD that the resolution as drafted did not directly address protections for the non-employed hospital medical staff, as well as concerns expressed regarding some of the wording in the resolution, which sought to distill the very broad AMA policy down to some very important essential protections.

During the meeting of Employed Physicians Committee to discuss the resolution, there was again great support expressed for the intent of the resolution, but also the need to clarify some of its language, both grammatically and substantively. Physicians discussing the resolution were a mix of those employed by health systems, and those not employed by health systems. In particular, Committee physicians advocated for edits in some of the defined protections to reflect the reality that most employees would not have the power to unilaterally define and establish the standards of employment but could have the power to meaningfully negotiate them. Committee physicians also agreed on changes to ensure the rights applied not only to employed physicians but to non-employed physicians on the hospital medical staff.

RECOMMENDATION: That the MSSNY Council adopt the following substitute resolution in lieu of original Resolution 57:

RESOLVED, that the Medical Society of the State of New York affirm the following as essential rights for physicians employed by a hospital or health care system or a member of a medical staff of a hospital or health care system:

Physicians employed by a Health Care organization (HCO) or a member of a medical staff of an HCO have the right to

- **Participate in the governance of the HCO,**
- **Participate in the operational and strategic planning of the HCO,**
- **Negotiate the conditions of employment,**
- **Negotiate the standards for quality, safety, privileging, peer review, and professional conduct,**
- **Establish medical staff by-laws and be able to select and remove medical staff leaders,**
- **Control the use of medical staff funds,**
- **Availability of independent legal counsel,**
- **Advocate for physicians and patients with any and all authorities without fear of retaliation from the HCO,**
- **Availability of adequate resources to provide for and improve patient care,**
- **Make treatment decisions, including referrals, based on the best interest of the patient, subject to review only by physician peers,**
- **Full due process before either the medical staff or the HCO takes any adverse action against a physician, and**
- **Full protection from any retaliatory action when participating in good faith peer review activities.**