TO: MSSNY Officers, Councilors and Trustees

FROM: Members of MSSNY’s Legislative & Physician Advocacy Committee

DATE: November 5, 2015

RE: Resolution 109–2015 House of Delegates
Mandatory Reporting of Elder Abuse

Introduced by the Medical Student Section

The following resolution was referred to the Council by the House of Delegates. The resolution was forwarded to the Legislative and Physician Advocacy Committee for further study and recommendation for the Council’s consideration:

RESOLVED, That MSSNY advocate for mandatory elder abuse reporting by healthcare workers and all healthcare agencies involved in elderly care in the State of New York.

Resolution 109 urges MSSNY to advocate for mandatory elder abuse reporting by healthcare professionals in the State of New York.

The Reference Committee heard testimony in support of and in opposition to this Resolution. It appears from recent studies that there is an under reporting of elder abuse in NYS. However, elder abuse takes many forms. In a recently published study entitled *Under the Radar: New York State Elder Abuse Prevalence Study*, the highest rate of mistreatment occurred for major financial exploitation. Other forms of abuse also occur including neglect, emotional and physical abuse. Healthcare professionals are not the only members of society best suited to report elder abuse. Outside of the Nursing Home setting (PHL Sec. 2803-d), there is currently no requirement for physicians or other clinicians to report elderly abuse and there is no central, statewide repository of data on cases of elder mistreatment. Section 473 of the Social Services law does provide immunity for anyone who reports suspected elder abuse to a state agency. Elder abuse cases can come to the attention of several agencies capable of providing investigation and intervention services. In addition to Adult Protective Services, which operates in every county in the state, New York State also has several not-for-profit programs that specialize in investigating cases of elder abuse and responding to the needs of elder abuse victims. Each service system has its own data collection system. There is no simple answer to the question of whether mandatory reporting of elder abuse benefits or harms an individual victim or older victims overall. This will depend on the individual victim, agency expertise, local law enforcement and adult protective services response, and level of family and community support. Requiring healthcare workers to report elder abuse will at least assure that the appropriate agency will investigate an, where warranted, take action to protect the vulnerable elderly. The Reference Committee received much testimony in opposition to further mandates but agreed with supporters of the resolution that physician concern for the wellbeing of their patients should outweigh concern regarding a mandate which has the best interest of patients at its core. However, the delegates were very concerned about the penalties which could accrue for failure to adhere to the mandate. Consequently, the Resolution was referred to Council.

Discussion was similarly divided at the September 9th meeting of the Committee on Legislative and Physician Advocacy. It was recommended that the resolution should be amended to create a mandate
without penalty. The representative for the students, however, thought that a penalty would serve as motivation for the reporting of elder abuse. Another suggestion was for MSSNY to seek funding for the development of educational programs to increase physician awareness of the signs of elder abuse and the need to address this problem. The representative for the students, however, said that the state is already conducting educational programs on this topic. He noted that New York was one of only three states without elder abuse reporting requirements. Following link to report listing state laws: http://www.napsa-now.org/wp-content/uploads/2014/11/Mandatory-Reporting-Chart-Updated-FINAL.pdf

Another member of the Committee expressed his belief that child abuse reporting has been successful because there is an infrastructure to address the reported incidents. There is no comparable infrastructure in New York for elder abuse. He stated that putting in a mandatory reporting system in advance of a system to fairly investigate and evaluate the report is extremely problematic. Physician will feel that they would have to make reports of unsubstantiated suspicions just to cover themselves from potential liability.

The Committee, however, felt that elder abuse is both a significant concern to society at large and to physicians who are genuinely concerned for the wellbeing of their patients. Consequently, the Committee, while not supportive of a reporting mandate for the reasons stated above, did feel that physicians should have a better understanding of the symptoms and signs of elder abuse and the agencies to which they may report their concerns, recommends adoption of the below stated substitute resolution.

**Recommendation:** That the MSSNY Committee on Legislation & Physician Advocacy urge the MSSNY Council to adopt the following substitute resolution in lieu of Resolution 109.

**RESOLVED,** that the Medical Society of the State of New York provide its members with educational opportunities for a better understanding of elder abuse.