TO: MSSNY Officers, Councilors and Trustees

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

DATE: November 5, 2015

RE: Resolution 117 – 2015 House of Delegates
Monopolization of Healthcare by Vertically Integrated Health Systems

Introduced by John Franco, MD and Charles Rothberg, MD and the
Suffolk County Medical Society

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 the Medical Society of the State of New York (MSSNY) seek legislation and regulation that vertically integrated hospital systems must prove to the Department of Health a need to employ an individual physician in the marketplace and obtain a Certificate of Need for each of their employed physicians; and be it further

RESOLVED, The certificate of need process should include an evaluation of the employment agreement, insofar as it be limited to fair market values of physician services and not to include ancillary services.

Resolution 115 urges MSSNY to: (1) seek legislation or regulation that requires vertically integrated hospital systems to prove to the Department of Health a need to employ an individual physician in the marketplace and obtain a certificate of need for each of their employed physicians; and (2) assure that the CON process include an evaluation of the employment agreement insofar as it be limited to fair market value of physician services and not to include ancillary services.

The Reference Committee received testimony in support and in opposition to this Resolution. Those who support the Resolution believe that large hospital systems monopolize the marketplace to such an extent that causes reimbursement to independent physicians to dramatically decrease and thereby serves to make hospital employment more appealing to the independent physicians. Physicians in opposition to this Resolution note that physicians should have a right to decide for themselves and without intrusion by state government as to whether they wish to sell their practice to the hospital and become employed. They further note that their decision to become employed is influenced by a number of factors, many of which are outside the control of the hospital. Finally, they note that MSSNY is an organization which represents all physicians including physicians employed by vertically integrated health systems and those who are not. This Resolution may have a negative impact on MSSNY membership. Consequently, the Reference Committee believed this is a Resolution which deserves much further scrutiny and, therefore, recommended that it be Referred to Council.

The sponsors of the Resolution addressed the concerns articulated above by saying that it was not their intention to impede or constrain a physician’s right to sell his/her practice. In their view a process such as the CON process should be established to slow things down to give the physician an opportunity to examine their options and to have the system demonstrate need and to appreciate the value of the practice to the community. They further expressed their belief that MSSNY policy should
be geared to the current membership who is not employed. They have asked staff to provide data concerning the make-up of MSSNY membership.

Staff notes that since 2005, individual memberships in MSSNY have decreased from 11,985 to 6,703. Institutional memberships (first created in 2011) have increased from 963 individuals to 2,048. Individual members associated with group practices have increased steadily from 480 in 2005 to 1,136 in 2015.

The sponsors are particularly concerned about the expansive growth of North Shore-LIJ on Long Island and its impact on the ability of physicians to remain in independent practice. Understandably, the sponsors want to keep independent practice alive. In addition, since NS-LIJ is also a health insurance company and it limits its network by including only those physicians it employs, the sponsors are concerned about the influence of the captive insurer/hospital employer on patient access to health care.

A member of the Committee stated that not all physicians are employed by vertically integrated systems; many are employed by large groups as well. He believes that this Resolution should be applicable to those group practices as well as vertically integrated systems.

Another Committee member stated that he was opposed to the Resolution. He indicated that most of the practices that are being purchased are regional providers and are well known to the community. In his case, his practice spent over a year and a half investigating and analyzing whether to accept the hospital's offer. The reality is that the world is changing and more physicians are becoming employed. A CON would drastically impede that opportunity for those physicians. In his opinion, collective negotiation is a far preferable solution for the independent practice physician.

When discussed in October, several members of the Committee stated that they were sympathetic to the sponsor's concerns but felt that for a number of reasons a CON speed bump was very problematic. They felt that a CON speed bump would have the unintended consequence of making it much easier for the institutions to justify hiring NPs and PAs instead of physicians. It was also noted that there already is a shortage of hospital beds in some regions of the state because of CON and this could bring similar results where hospitals would be prevented from bringing in additional physician employees. It was also stated that the hospital purchase of physician practices in rural areas has saved access to physician services in those communities where without being absorbed by the hospital a physician practice would need to close. It was thought that a CON speed bump would have the effect of de-valuing a physician's practice. Also, even though we can craft the Resolution to apply only to vertically integrated settings, nothing prevents the Legislature from applying it to physician group practices as well.

After much discussion, the Committee recommended that this Resolution, however well intended, be not adopted.

Recommenation: That the MSSNY Committee on Legislation & Physician Advocacy urge the MSSNY Council to not adopt Resolution 117.