

TO: MSSNY's Officers, Councilors and Trustees

FROM: MSSNY's Legislative & Physician Advocacy Committee

DATE: October 20, 2016

**RE: Resolution 100 – 2016 House of Delegates
Unionization of Employed Physicians
*Introduced by New York County***

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 for employed members, the Medical Society of the State of New York (MSSNY) seek acceptable union partners and publicize union membership as an option worth considering; and be it further

RESOLVED, that these organizational efforts be initiated before the 2017 meeting of the House of Delegates of the Medical Society of the State of New York (MSSNY).

At the House of Delegates, the Reference Committee heard testimony in support to of this Resolution and concurred with the intention of the sponsors. Physician unions are not a new phenomenon. They have existed for decades. For example, the Committee on Interns and Residents (CIR), which primarily represents residents employed by hospitals, was founded in 1957. Doctors Council was formed as the result of a merger between Doctors Association and Public Health Physician Association in 1978 and the Federation of Physicians and Dentists (FPD) was founded in 1981. The AMA in 1999 created a national labor organization called Physicians for Responsible Negotiation (PRN) to represent employed physicians.

In 1998, a Task Force was created as a result of action taken by the House of Delegates which passed a Resolution calling upon MSSNY to "pursue any and all remedies to enable physicians in NYS to engage in collective bargaining with third party payors". The Task Force conducted legal research and interviewed several unions with a view toward determining whether to create or affiliate with a union. It ultimately recommended that MSSNY affiliate with PRN. PRN had some early success and was allowed pursuant to a NLRB decision to facilitate an election at Lutheran General Hospital in the Chicago area to determine whether the 170 residents at the hospital wished to be represented by PRN. PRN, however, ran into great difficulty in organizing physicians who were employed by hospitals as a result of a US Supreme Court ruling in 2001 in which it was decided that hospital nurses are not eligible to become union members if they supervise other employees. Shortly thereafter, PRN announced it would close down its effort to

organized employed physicians since physicians who are employed by health care facilities bear the same disqualifying characteristics as do employed nurses.

The determination of whether a specific employee is a supervisor is identified under the facts of each case. To this day, unions including Doctors Council and CIR among others continue to represent the interests of residents and employed physicians. Hospitals continue to oppose these efforts and wage legal battles over whether employed physicians are able to be organized into a collective bargaining unit.

The Reference Committee at the HOD felt that the health system landscape has changed dramatically since the issuance of the Task Force reports. As health care economics and the private practice environment shift in response to market and policy forces, physicians in growing numbers are opting for direct employment with hospitals, health systems, and other entities. Data from the Physicians Foundation's 2014 Survey of America's Physicians show that only 35% of physicians describe themselves as independent practice owners, down from 49% in 2012 and 62% in 2008. In addition, 53% of physicians describe themselves as hospital or medical group employees, up from 44% in 2012 and 38% in 2008. And a recent Physicians Foundation study shows that the percentage of physicians across the country who are employed has nearly doubled between 2012 and 2015.

Moreover, the testimony received at the House supported a renewed focus on MSSNY representation of employed physicians. Since both Resolutions 100 and 101 sought similar relief, the Reference Committee combined them into one substitute resolution which incorporated each facet of both Resolutions so that in addition to recommending the adoption of the Resolved in this Resolution (for non-supervisory employed physicians), for those physicians who do not qualify for protection under the National Labor Relations Act, your Reference Committee agrees that MSSNY should create a separate Employed Physicians section to address other grievances and concerns raised by supervisory employed physicians.

The delegates, however, felt it was important to allow Council to review and contemplate the complexities of these innovative approaches toward membership. Consequently, the Resolution was referred to Council and then referred on to the Legislative and Physician Advocacy Committee for its consideration and recommendation.

Discussion at the September 7 meeting of the Legislative and Physician Advocacy Committee was unanimously in support of the adoption of this Resolution. The Committee then agreed at the October 19 meeting with staff's recommendation to adopt this resolution.

RECOMMENDATION: That the MSSNY Council adopt Resolution 100.