

C.10.7.

TO: MSSNY's Officers, Councilors and Trustees

FROM: MSSNY's Legislative & Physician Advocacy Committee

DATE: October 20, 2016

**RE: Resolution 107 – 2016 House of Delegates
Protection of Clinical Decision Making and Ownership of Medical Practices
New York State Society of Plastic Surgeons**

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, MSSNY will seek legislation and/or regulation to enable the sharing in fees of professional services in a medical practice with other medical professionals licensed by the New York State Department of Education; and be it further

RESOLVED, MSSNY will seek legislation and/or regulation for medical practices sharing in fees, which ensures physicians maintain total control of all clinical judgment and clinical decision-making; and be it further

RESOLVED, MSSNY will seek legislation and/or regulation which ensures physician majority ownership in a medical practice sharing in fees with other medical professionals licensed by the New York State Department of Education.

Resolution 107 urges MSSNY to seek legislation and/or regulation: (1) to enable the sharing in fees of professional services in a medical practice with other medical professionals licensed by the New York Department of Education; (2) for medical practices sharing in fees which ensures physicians maintain total control of all clinical judgment and clinical decision-making; and (3) which ensures physician majority ownership in a medical practice sharing in fees with other medical professionals licensed by the New York State Department of Education.

At the House of Delegates, the Reference Committee heard testimony in support of this Resolution and was informed that many ancillary health care professionals have collectively advanced legislation (S.5862, LaValle/ A.8153, Peoples-Stokes) that would permit multidisciplinary partnerships, limited liability companies, and professional service corporations with physicians. This is currently prohibited by various laws including the corporate practice of medicine doctrine. They argue that the advent of patient-centered medical homes, health homes, accountable care organizations and other value based payment models are shifting health care delivery to more collaborative models rendering existing legal prohibitions on the formation of limited liability companies, partnerships and professional service corporations by allied health professionals with physicians outdated.

While the Reference Committee saw real value in sharing fees with ancillary health care professionals including behavioral health care professionals, a large amount of testimony was received in opposition to efforts to enable the formation of business corporations by multi-disciplinary professionals. Current law (Sec. 6530(19)), however, also prohibits physicians from sharing in the fees for a professional service other than with a partner, employee, or associate in a professional firm or corporation. This Resolution seeks to afford ancillary non-employee health professionals the ability to share fees with a physician practice to enable payment for care coordination without destabilizing existing professional corporations or jeopardizing physician health care decision making. This would enable physician practices to pay for behavioral care coordination without hiring new employees and without disrupting legitimate existing structural corporate limitations. The Reference Committee recommended that the House of Delegates adopt the first two Resolveds but not adopt the third Resolved since they believed this would enable physicians to co-own business corporations and partnerships with non-physicians thereby destabilizing the integrity of physician decision-making.

Many of the delegates, however, concerned about the implications of the corporate practice of medicine, felt that the entire Resolution should be defeated. Ultimately, the Resolution was referred to allow Council to review and contemplate the complexities of its impact upon physician practice and quality of care.

At the September 7 meeting, the Committee on Legislative and Physician Advocacy discussed and expressed many of the same positives and negatives of this resolution expressed by HOD delegates. While they want to protect collaboration, they were also very concerned about the “slippery slope” toward risk sharing. At least one member of the Committee noted that the shift to value-based incentive and global payments disadvantages physicians in some specialties who will not be able to compete fairly with hospital systems for the costs associated with ancillary services. While many members of the Committee recognized the validity of this concern, they are also were very concerned regarding the long term implications of permitting such inter-disciplinary practices, and appeared to oppose adoption of the entire Resolution. Given these extensive concerns, at the October 19 meeting, staff recommended and the Committee agreed that the entire resolution should not be adopted.

RECOMMENDATION: That the MSSNY Council *NOT ADOPT* Resolution 107.