

MEDICAL SOCIETY OF THE STATE OF NEW YORK
House of Delegates

Resolution 2020 – 54

Introduced by: First District Branch
 Third District Branch
 Fourth District Branch

Subject: End Restrictive Covenants

Referred to: Reference Committee on Governmental Affairs A

- 1 Whereas, AMA Code of Medical Ethics Opinion 11.2.3.1 states "Competition among physicians
2 is ethically justifiable"; and
3
4 Whereas, conversely, "Covenants-not-to-compete restrict competition, can disrupt continuity of
5 care, and may limit access to care"; and
6
7 Whereas, today's Health Systems span a large geographical area such that a non-compete
8 agreement effectively means "you'll never work in this town again"; and
9
10 Whereas, patients have the right to seek care from any physician, especially one with whom
11 there exists an ongoing patient-doctor relationship; and
12
13 Whereas, even if ultimately a court voids a noncompete agreement as being unreasonable, the
14 victory is clearly Pyrrhic as the physician's resources can be totally depleted by a legal battle
15 with a large health system; and
16
17 Whereas, California, Montana and North Dakota have enacted a near total ban on such
18 restrictive covenants without undue hardship suffered by business interests; therefore be it
19
20 RESOLVED, that the Medical Society of the State of New York seek legislation banning such
21 restrictive covenants for physicians; and be it further
22
23 RESOLVED, that the Medical Society of the State of New York advance this issue to the AMA
24 to end such restrictive covenants nationwide.

MEDICAL SOCIETY OF THE STATE OF NEW YORK
House of Delegates

Resolution 2020 – 55

Introduced by: The Nassau County Medical Society

Subject: Restrictive Covenants

Referred to: Reference Committee on Governmental Affairs A

- 1 Whereas, restrictive covenants were originally conceived at a time when small private practices
2 predominated; and
3
4 Whereas, those restrictions only applied to private practice and not to hospital care; and
5
6 Whereas, in New York State restrictive covenants cannot be enforced for lawyers and teachers
7 but has been upheld by the courts for physicians; and
8
9 Whereas, the large hospital systems have now gone mostly to new version of the restrictive
10 covenant that does not allow physicians to work for any of its competitors in any of their
11 locations, thus forcing physicians to leave the area entirely; and
12
13 Whereas, a small practice that brings in a new physician, if that physician after 3 years leaves
14 and takes his/hers patients and referring physicians, that can have a substantial impact on the
15 practice and although a non-compete or non-solicitation agreement can be put in place to
16 protect the practice, it should be tailored based on the individual situation and not apply to all
17 instances; and
18
19 Whereas, it is not reasonable that any large hospital system with thousands of doctors on staff
20 to make the same claim that one physician leaving will have substantial impact on their
21 operations. Making it nearly impossible for physicians to leave their job without moving is an
22 effect way to hold down physician compensation; therefore, be it
23
24 RESOLVED, that MSSNY should seek legislation on restrictive covenants that does not allow
25 non for profit health care systems to create restrictive covenants that prevent physicians for
26 working for one of their competitors.

Report of the Reference Committee on Governmental Affairs A – Speaker Extraction

10. RESOLUTION 54 END RESTRICTIVE COVENANTS

and
RESOLUTION 55 RESTRICTIVE COVENANTS

Original Resolution 54 reads as follows:

RESOLVED, that the Medical Society of the State of New York seek legislation banning such restrictive covenants for physicians; and be it further

RESOLVED, that the Medical Society of the State of New York advance this issue to the AMA to end such restrictive covenants nationwide.

Original Resolution 55 reads as follows:

RESOLVED, that MSSNY should seek legislation on restrictive covenants that does not allow non for profit health care systems to create restrictive covenants that prevent physicians for working for one of their competitors.

RECOMMENDATION A:

THE REFERENCE COMMITTEE RECOMMENDS THAT THE FOLLOWING SUBSTITUTE AMENDMENTS BE ACCEPTED INSTEAD OF RESOLUTIONS 54 AND 55:

RESOLVED, that the Medical Society of the State of New York support legislation that prohibits a “restrictive covenant” provision in a health system-physician employment contract that limits the ability of such physician to deliver care in the same region after leaving employment from such health system.

RECOMMENDATION B:

THE REFERENCE COMMITTEE RECOMMENDS THAT RESOLUTION 54 BE ADOPTED AS AMENDED

Since both resolutions touched upon the subject of restrictive covenants, your Reference Committee believed it was important to combine the resolutions. Your reference committee heard mixed perspectives on Resolution 54 to ban all restrictive covenants but received more positive comments about Resolution 55 which was specific to large health systems' use of restrictive covenants. Your reference committee understands the concerns that there are instances where restrictive covenants can help protect physician practices that bring in a younger physician to train. Your reference committee believes that the above statement best reflects a position where MSSNY should be, which is to be supportive of legislative proposals that restrict large systems' use of restrictive covenants that may disrupt ongoing patient-physician treatment relationships.

Michele Nuzzi

Subject: FW: Art Fougner commented on "RC Report - Governmental Affairs A.pdf"

From: Dropbox <no-reply@dropbox.com>

Sent: Sunday, August 16, 2020 9:03 AM

To: Laurie Mayer <LMAYER@mssny.org>

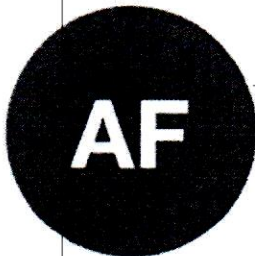
Subject: Art Fougner commented on "RC Report - Governmental Affairs A.pdf"

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Reply

Art Fougner added 1 new comment on RC Report - Governmental Affairs A.pdf



Art Fougner August 16

Item 10 - While commending the Reference committee for their thoughtful review, in this instance the Committee got it wrong. the Committee's substitute has somehow sidestepped the issue of private equity by limiting its scope simply to health systems. Some private equity contracts' covenants result in being just as limiting as health systems' clauses, forcing physicians to commute considerable distances from home and patients to do the same. From a patient's standpoint, these covenants often sever existing doctor-patient relationships. Patients must be assured that this relationship be preserved. These covenants impose a burden not only on the physician involved but on the patients as well. Some patients do not have the luxury of getting in their automobile and driving say 10 miles

to a new office. No, they must rely on either a friend, a cab, or public transportation.

Since California eliminated most restrictive covenants, Silicon Valley did not fall into the San Andreas fault. And human lives are far more precious than intellectual property.

Finally, I've heard that lawyers do not have restrictive covenants.

Physicians should not have them either. I support original resolution 54.

Michele Nuzzi

Subject: FW: Art Fougner commented on "RC Report - Governmental Affairs A.pdf"

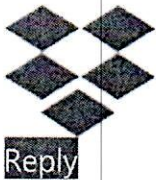
From: Dropbox <no-reply@dropbox.com>

Sent: Monday, August 24, 2020 7:59 AM

To: Laurie Mayer <LMAYER@mssny.org>

Subject: Art Fougner commented on "RC Report - Governmental Affairs A.pdf"

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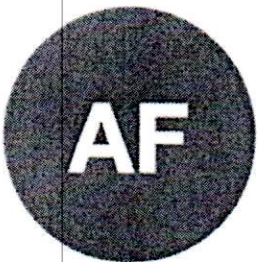


Art Fougner added 1 new comment on RC Report - Governmental Affairs A.pdf



Rose Berkun August 18

Agree with the ref com Recommendation A to the substitute amendment of resolutions 54 and 55



Art Fougner August 24

Unfortunately, Ref Com leaves a gaping hole which is Private Equity. I may be a physician but am also a patient who's suffered from such a

clause when one of my physicians left a large private equity group.
Restrictive covenants do not only restrict physicians - they restrict
patients. This practice must end. Period. Full stop.