

May 10, 2021

**TO: MSSNY OFFICERS, COUNCILORS AND TRUSTEES**

**FROM: MSSNY LEGISLATIVE & PHYSICIAN ADVOCACY COMMITTEE**

**RE: RESOLUTION 100 - ROLE OF PRIVATE EQUITY IN MEDICINE & RESOLUTION 105-  
WALL STREET ACQUISITION OF MEDICAL PRACTICES**

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At the 2020 MSSNY House of Delegates, the following resolutions were considered, and referred to Council.

**Resolution 100 (Role of Private Equity in Medicine and Wall Street)**

RESOLVED, that MSSNY advocate to preserve access to care for patients and protect the careers of physicians in the event of contract transitions, bankruptcy, etc. or other adverse events of their employer/ management company; and be it further

RESOLVED, that MSSNY partner with the American Medical Association, other interested national medical state and specialty societies, and other appropriate bodies to determine the circumstances under which corporate or private equity investment could lead or has led to market efforts that increases the cost of health care to consumers without a commensurate increase in access or quality; and be it further

RESOLVED, that should there be circumstances under which corporate or private equity investment in health care could lead or has led to negative market effects that MSSNY work with other interested parties to advocate for corrections to the market; and be it further

RESOLVED, that this resolution be forwarded to the American Medical Association.

**Resolution 105 (Wall Street Acquisition of Medical Practices)**

RESOLVED, that MSSNY advocate to the legislature that ownership of any aspect of medical practice and financial support be strictly prohibited from any private equity, venture capitalists and other risk-taking investment groups; and be it further

RESOLVED, as many states have a variety of laws concerning this issue that this topic be elevated to the AMA to create a national policy thus protecting patients and physicians from predatory financial activities that are not consistent with quality health care.

MSSNY has long argued that ownership of medical practices in New York State must always be under the control of physicians licensed to practice medicine in New York State, and not corporate entities. Technically speaking, private equity companies do not own the medical practice themselves, but provide “back office” support for the practice (as management services organizations, or MSOs). In some cases, this structure has provided independent physician practices with financial support to stay in private practice instead of being forced to become employed with a health system. With that in mind, the initial L & PA committee discussion focused on the significant number of physicians employed by independent contractors of companies with substantial private equity investment and loans, the current trend of purchasing physician staffing companies, and whether this creates significant conflicts of interest. Many physicians may not recognize the potential conflicts of interest between shareholders and investors of these entities, and physicians and patients, as well as the operational, legal, and ethical effects of non-physician ownership on clinical practices.

When it was discussed at a subsequent meeting of the L&PA Committee, it was noted by Committee members that the American Medical Association had in 2019 adopted a report [Corporate Investors | AMA \(ama-assn.org\)](#) and prepared a short guidance document [Issue brief: Corporate Investors | AMA \(ama-assn.org\)](#) consistent with the report's conclusions to educate physicians on the risks and considerations connected with affiliating a practice with a private equity group.

Private equity firms are increasingly investing in physician practices and at a rate dramatic enough to prompt Congress to look into their impact on the rise in healthcare costs, particularly in the context of efforts to address surprise out of network medical bills. Discussions by the reference committee, and at the October Legislative Committee, meeting noted that private equity in the investment of medical care could help in some cases to preserve access to care for patients from private practice physicians, but that also there could be issues in the long term as a result of contract transitions, bankruptcy, etc. or other adverse events of their employer/ management company. MSSNY has long maintained policies, including 95.980 (Use of Percentage-of-Fee Based Compensation Arrangements) that:

“recognizes that the continuation of the corporate practice of medicine doctrine’s prohibition against an unlicensed person or entity’s influence in the practice of medicine is necessary to uphold these principles and to protect against potential abuses and fraudulent activity.”

The committee first recommended asking the AMA to study and make recommendations on this issue, but after further research, it was discovered that they already examined the impact of private acquisitions and equity on private medical practices and made recommendations, which MSSNY will promote and use as a guidance.

The 2019 AMA BoT Report recommended the following:

1. That our American Medical Association (AMA) reaffirm Policy H-215.981, which opposes federal legislation preempting state laws prohibiting the corporate practice of medicine; states that the AMA will continue monitoring the corporate practice of medicine and its effect on the patient-physician relationship, financial conflicts of interest, and patient-centered care; and directs the AMA to provide guidance, consultation and model legislation regarding the corporate practice of medicine, at the request of state medical associations, to ensure the autonomy of hospital medical staffs, employed physicians in non-hospital settings, and physicians contracting with corporately-owned management service organizations.
2. That our AMA reaffirm Policy H-225.950, which affirms that a physician’s paramount responsibility is to his or her patients, and which outlines principles related to conflicts of interest and contracting.
3. That our AMA reaffirm Policy H-285.951, which states that physicians should have the right to enter into whatever contractual arrangements they deem desirable and necessary but should be aware of potential conflicts of interest due to the use of financial incentives in the management of medical care.
4. That our AMA reaffirm Policy H-160.960, which states that when a private medical practice is purchased by corporate entities, patients shall be informed of the ownership arrangement by the corporate entities and/or the physician.

5. That our AMA encourage physicians who are contemplating corporate investor partnerships to consider the following guidelines:
  - a. Physicians should consider how the practice's current mission, vision, and long-term goals align with those of the corporate investor.
  - b. Due diligence should be conducted that includes, at minimum, review of the corporate investor's business model, strategic plan, leadership and governance, and culture.
  - c. External legal, accounting and/or business counsels should be obtained to advise during the exploration and negotiation of corporate investor transactions.
  - d. Retaining negotiators to advocate for best interests of the practice and its employees should be considered.
  - e. Physicians should consider whether and how corporate investor partnerships may require physicians to cede varying degrees of control over practice decision-making and day-to-day management.
  - f. Physicians should consider the potential impact of corporate investor partnerships on physician and practice employee satisfaction and future physician recruitment.
  - g. Physicians should have a clear understanding of compensation agreements, mechanisms for conflict resolution, processes for exiting corporate investor partnerships, and application of restrictive covenants.
  - h. Physicians should consider corporate investor processes for medical staff representation on the board of directors and medical staff leadership selection.
  - i. Physicians should retain responsibility for clinical governance, patient welfare and outcomes, physician clinical autonomy, and physician due process under corporate investor partnerships.
6. That our AMA support improved transparency regarding corporate investment in physician practices and subsequent changes in health care prices.
7. That our AMA encourage national medical specialty societies to research and develop tools and resources on the impact of corporate investor partnerships on patients and the physicians in practicing in that specialty.
8. That our AMA support consideration of options for gathering information on the impact of private equity and corporate investors on the practice of medicine.

Given the significant materials that have already been developed by the American Medical Association (AMA) to educate physicians regarding the considerations associated with affiliation with a private equity group, MSSNY should help promote these materials to physicians. MSSNY should also continue to monitor the development of private equity investment in physician practices to ensure that these investments do not conflict with MSSNY's existing policy to ensure that physician judgment to ensure patients receive the care they need is unencumbered by corporate considerations.

The following recommendations are based on background information from the AMA and were vetted with the Legislative & Physician Advocacy Committee, via email, who gave their broad support. Furthermore, after suggestions from Dr. Zapata and Dr. Dowling, a third resolved was added to incorporate the goals of the first resolved from Resolution 100 to advocate to protect continuity of care for patients.

## **RECOMMENDATION**

**THAT THE MSSNY COUNCIL ADOPT THE FOLLOWING SUBSTITUTE RESOLUTION:**

**RESOLVED, that the MSSNY continue to work with the American Medical Association (AMA) to help educate physicians regarding the risks and considerations associated with practice**

**affiliation with corporate or private equity investment, consistent with materials developed by the AMA to educate physicians for that purpose; and be it further**

**RESOLVED, that the MSSNY continue to strongly advocate to protect against corporate interference in physician decision making affecting the care and treatment of patients; and be it further**

**RESOLVED, that MSSNY continue to advocate to protect continuity of care for patients including access to care by their physicians in the event of contract transitions, bankruptcy, or other adverse events that may arise from practice affiliation with corporate or private equity investment.**

**FOR COUNCIL APPROVAL**