

10/27/20 MEETING OF THE MSSNY EMPLOYED PHYSICIANS COMMITTEE

Dr. Art Fougner, Chair
Dr. Alan Astrow
Dr. Maria Basile
Dr. Joshua Cohen
Dr. Julia Faller
Dr. Howard Huang
Dr. David Jakubowicz
Dr. Reginald Knight
Dr. William Latreille
Dr. Bonnie Litvack, MSSNY President
Dr. Dan Young

Moe Auster (MSSNY staff)
Brenda Van Nest (MSSNY staff)

The meeting began at 7:30 AM. Dr. Fougner welcomed the participants.

Resolutions 54/55

The Committee members discussed Resolutions 54 and 55 referred to Council from the MSSNY House of Delegates relating to restrictive covenants. Resolution calls upon MSSNY to: 1) “seek legislation banning such restrictive covenants for physicians”; and 2) “advance this issue to the AMA to end such restrictive covenants nationwide”. Resolution calls on MSSNY to “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”.

Dr. Fougner noted the Reference Committee recommended that MSSNY support legislation to prohibit restrictive covenants in health system employment contracts, but that it should be expanded to include private physicians’ practices that are managed by private equity firms (through Management Services Organizations or MSOs). Dr. Litvack noted that, at the September 17 MSSNY Council meeting, some physicians raised concerns that some larger groups would object to MSSNY advocating to eliminate all restrictive covenants, as they use them sometimes when they recruit younger physicians. Dr. Young raised concerns that efforts to support repeal of restrictive covenants could alienate hospitals for whom MSSNY is seeking their support to promote medical staff memberships. Dr. Latreille noted that there is little risk an employed physician will leave and compete against the hospital as a private practice physician, but there is the opportunity for that physician to become employed with a rival hospital.

Dr. Litvack noted that this is a patient protection issue, as a patient who seeks to see a physician impacted by a restrictive covenant could have to travel a long distance based upon the mileage restriction in the covenant. Dr. Fougner noted that lawyers do not use restrictive covenants. Dr. Astrow noted that he is concerned with young physicians trained by the hospital going into competition against that hospital, but still thinks restrictive covenants are wrong. Dr. Cohen agreed that all restrictive covenants were wrong, noting that physicians should be given “carrots” to stay with a hospital or group, not “sticks” to discourage leaving.

Dr. Latreille reiterated his strong support for prohibiting all restrictive covenants. Dr. Litvack agreed but also raised concerns that were raised at the MSSNY Council meeting about alienating certain group practice MSSNY members. Dr. Jakubowicz suggested MSSNY conduct a survey of physicians regarding their thoughts on restrictive covenants and bring the results to the Committee for further consideration. Dr. Astrow thought that strong action to limit restrictive covenants would be helpful to getting younger physicians to join MSSNY. Dr. Young reiterated his concern about physician member pushback against too strong a stance against

restrictive covenants. Dr. Huang raised concerns too, and shared his experience how the use of restrictive covenants was helpful to his group. Dr. Basile suggested that she would work with MSSNY's Communications Division to help ensure that the survey on restrictive covenants would be sent to as large as possible cohort of physicians.

The group recommended that the MSSNY Council adopt the following position in lieu of the original resolutions:

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 or in a contract between a Management Services Organization (MSO) and a physician that limits the ability of such physician to deliver care in the same region after the physician leaves employment from such health system or leaves the medical practice that utilizes that MSO; and be it further

RESOLVED, that the Medical Society of the State of New York conduct a survey of physician to assess their support or opposition to legislation to prohibit all restrictive covenants.

Unionization of Employed Physicians

Dr. Fougner discussed the importance of why employed physicians need unions, not just for economic reasons. He noted the example that unions sometimes have contracts with health insurance companies to manage their benefit plans, and their advocacy could help change an adverse plan policy to avoid losing that union's business. Dr. Astrow raised concerns with promoting physician unionization, noting that it would reduce the perceived professionalism of physicians, and that there have been instances where unions have advocated for their member interests at the expense of the public good. Dr. Litvack noted that, during the pandemic, the media was very attuned to the perspectives of the nurses' unions who raised concerns about lack of personal protective equipment (PPE) in the hospitals.

Dr. Latreille agreed with concerns that union affiliation could make physicians appear less professional, but that the world has changed significantly, as medical students today are less likely to want to be in private practice. Dr. Knight noted that it would be helpful to have a union to help negotiate on their behalf, and that MSSNY is well positioned to help facilitate such an affiliation. Dr. Astrow raised concerns that some unions have sought to protect, inappropriately, poorly performing members.

Mr. Auster noted that this debate has occurred repeatedly over the last 2 decades, and what were the next steps. Dr. Cohen suggested that MSSNY contact a few union representatives to have discussions for how MSSNY could facilitate representation for employed physicians (eligible to unionize pursuant to NLRB rules). Dr. Huang noted his previous discussions with Dr. Dennis Nave of Onondaga County, who previously sought to create a local physician affiliation with the Teamsters.

Dr. Fougner suggested that he would facilitate presentations by union representatives for the next Committee meeting. Dr. Latreille reiterated that the care delivery world has changed for physicians. Dr. Astrow noted that physicians should still always strive to aim high.

The meeting ended at 8:30 AM