

MSSNY Ad Hoc Scope of Practice Committee
September 11, 2020

Participants

Dr. Lisa Eng – Co-Chair
Dr. Rose Berkun - Co-Chair
Dr. Bonnie Litvack – MSSNY President
Dr. Art Fougner – MSSNY Past-President
Dr. Atul Gupta
Dr. Maria Paone
Dr. Purvi Parikh
Dr. Julie Vieth
Phil Schuh
Moe Auster

The meeting began at 11:30. Dr. Berkun and Dr. Eng welcomed the participants, and the minutes of the May 20, 2020 Committee meeting were approved.

Meetings on Governor’s EOs and NP Legislation

Dr. Litvack gave an overview of the meetings she had: (1) with the Governor’s office raising strong concerns regarding the string of Executive Orders that have waived otherwise applicable physician supervision or collaboration requirements with CRNAs, physician assistants (PAs) and Nurse Practitioners (NPs) and (2) Senator Rivera, Chair of the Senate Health Committee, raising strong concerns regarding his legislation that would extend and expand existing NP modified independent practice provisions. She also noted that she had testified at a legislative hearing examining Covid and hospitals where she raised concerns with the lingering Executive Orders. In particular, in all these meetings she noted that the emergency which had prompted the Executive Order had passed, and there was no need to continue to waiver of these laws.

Dr. Paone noted that there was never a need for these practitioners to be authorized to practice without physician supervision or collaboration. Dr. Parikh agreed, and noted the importance of advocating for meaningful “guardrails” around NPs practicing independently that ensures necessary physician collaboration to protect patients. Dr. Paone reiterated that the medical training of physicians through a variety of specialty care services far exceeds the more limited training of NPs.

Dr. Litvack noted that our goals need to be realistic, because based upon our meeting with Senator Rivera, it will be exceedingly difficult to re-instate the written collaborative agreement requirement for all NP care that existing prior to 2015. Instead, we should be developing legislative recommendations to protect patients that ensure meaningful collaboration between a NP and a physician. Mr. Auster noted that the California legislation authorizing independent NP practice, AB 890, while strongly opposed by organized medicine, did include some detailed referral requirements between NPs and physicians to better protect patients. These should be further examined for possible recommendations.

MSSNY Survey

Dr. Litvack noted that, in response to a request for more information about patient harms arising from the Governor’s EOs, MSSNY developed a physician survey to which 567 physicians responded. She shared some of the results of the survey with Senator Rivera and his staff. Mr. Auster provided more details about the survey, including that:

- Over ¾ of the respondents who worked alongside independently practicing NPPs noted that they had committed an error

- Over 90% of those believed that the error would have preventable had there been typical physician oversight
- Nearly 90% believe that the Governor's Executive Order waiving statutory supervision or collaboration requirements should end.
- 50% of respondents believed the quality of care provided by independently practicing NPPs during the pandemic response was "poor"; 30% believed it was "fair"; 12% believed it was "good"; and 7% believed it was "excellent"
- A Litany of comments that articulated the importance of NPs and PAs to ensuring the availability of care for patients, but also noting the limitations of providing care without essential physician oversight. A recurring theme in these comments was that "they don't know what they don't know".

Dr. Eng Presentation

Dr. Eng reiterated her strong concerns with the efforts by midwives to bypass regulatory imposed certificate of need requirements to establishing birth centers. The regulations were adopted last fall and guidance recently provided regarding how they can apply for a CON. However, they have advanced legislation that would permit a midwife-led birth center to bypass CON if they receive accreditation.

Dr. Eng then gave a brief presentation of her data collection of harms to patients caused by non-physician professionals (Power point attached) including NP, PA and CRNA. She received data from one of the malpractice insurance companies over the last decade that showed a significant number of paid claims, including errors in diagnosis, medication errors, or improper performance. Her power point also included a lengthy list of anecdotes compiled by Dr. Parikh (from physicians across the State) of errors committed by non-physician professionals practicing independently after the EO permitting unsupervised practice.

Dr. Eng suggested that MSSNY reach out to MLMIC and the AMA for additional data. Dr. Vieth noted examples of physicians being sued for errors of PAs. Dr. Fougner noted his recommendation that NPs should be under the jurisdiction of the Office of Professional Medical Conduct if they practice independently.

There was a discussion regarding HHS' recent announcement that permits pharmacists to provide pediatric immunizations, despite state laws (such as New York's) that prohibit such immunizations except for the flu vaccine. MSSNY, the AMA and the AAP issued press releases opposing this HHS declaration.

Next Steps

Dr. Eng urged a MSSNY public relations campaign to educate the public to ensure they understand who may be treating them, and that it may not be a physician. All agreed about the importance of making sure the public understands the concerns for patient care, but we need to be careful in approaching this. Dr. Litvack noted that she will be having a discussion with MSSNY's PR consultant regarding how best to advance our quality of care concerns through the media.

Mr. Auster noted that he would drafting a letter to the Governor's office as a follow up to the recent meeting that shared the results of the recent survey, as well as the anecdotes compiled by Dr. Parikh. The materials would also be used for a letter to key legislators in opposition to S.8936/A.10990 to expand NP independent practice. Dr. Berkun suggested that physicians e-mail Mr. Auster to provide additional suggestions for what should be in these communications.

The meeting ended at 12:40