

**MSSNY Ad Hoc Scope of Practice Committee  
November 23, 2021**

**Participants**

Dr. Lisa Eng – Co-Chair  
Dr. Bonnie Litvack – MSSNY Past-President  
Dr. Art Fougner – Chair, MSSNY Board of Trustees  
Dr. Erik Blutinger  
Dr. Robert Rapaport  
Dr. James Slough  
Dr. Julie Vieth  
Troy Oechsner  
Moe Auster  
Zina Cary

The meeting began at 7:30. Dr. Eng welcomed the participants. Dr. Berkun had to miss the meeting at the last minute due to an illness.

**Legislative Hearing Regarding Pandemic Emergency Waiver**

Moe Auster and Zina Cary discussed the testimony provided by Dr. Niraj Acharya (substituting for Dr. Mehta) at a legislative hearing last week hosted by the chairs of the Assembly Health, Higher Education and Labor Committees and centered on how the COVID-19 pandemic has changed the delivery of health care services in New York State. Among the issues Dr. Acharya's raised included: the impact on the pandemic on physician wellness; promoting expansion of care through Telehealth, and MSSNY's strong concerns with the Executive Orders waiving otherwise applicable collaboration and supervision requirements for various non-physician practitioners. They noted that the afternoon session focused much more on scope issues. Both MSSNY and the NYS Society of Anesthesiologists raised concerns with the waivers, while representatives of the NPs, PAs and CRNAs defended the waivers.

Dr. Eng asked how the testimony was received. Assemblymembers Gottfried and Glick asked Dr. Acharya questions about evidence of errors by non-physicians working without supervision. Dr. Acharya gave examples from MSSNY's 2020 survey. The legislators also asked about any data or medical literature regarding medical errors due to lack of supervision, to which none of the testifiers were aware. Dr. Eng suggested that MSSNY do its own study, to which Mr. Auster responded it is always better to have an independent voice validating our concerns. Dr. Eng also noted that as a practical matter it was going to take a long time to gather the information to assess the extent of errors that occurred, but that we should continue to check with the malpractice insurance companies. The Committee agreed that it was also a good argument for not taking immediate action to put into statute the waiver provisions (Dr. Fougner likened it to having to prove the functioning of parachutes). Dr. Vieth shared data that she had come across. Dr. Fougner asked whether legislators were aware of how scope changes could exacerbate existing health equity challenges.

**Governor Executive Orders Relative to Waiving Scope**

Mr. Auster next discussed MSSNY's recent meeting along with Dr. Sellers, Dr. Litvack and Dr. Mehta with the Governor's office to raise concerns with the Executive Orders to address the healthcare worker shortage including waiving collaboration and supervision requirements for various non-physicians. He noted that MSSNY had argued that these changes were not necessary to address health care shortage given the absence of physicians being furloughed by hospitals for non-vaccination. Dr. Fougner asked if proof was requested of the Governor's office of physicians being furloughed from hospitals. Mr. Auster said he had.

Dr. Eng raised the issue of NPs and PAs potentially replacing physicians in hospitals. Mr. Auster asked if there was solid proof that MSSNY could use in its advocacy. Dr. Litvack noted a hospital in Chicago that had replaced physicians with PAs and NPs, but more research was needed if it was the result of the

passage of law that made that possible. Dr. Eng also noted a similar scenario in Milwaukee, WI. Dr. Eng also noted that there was confusion on the part of patients with regard to who is treating them. She also suggested an additional pathway for IMGs to practice in New York and in the country.

Dr. Vieth discussed a study from Arizona where NPs did not actually go to rural areas like they promised. Dr. Litvack noted a similar scenario in Oregon. Mr. Auster noted the AMA workforce maps that show that non-physicians practice in the same regions where physicians practice. He also noted that the hospitals have a strong interest in eliminating supervision and collaboration requirements because they can save money. Dr. Rapaport noted that in fact it does not save money since there is a higher use of imaging by non-physicians, a finding which has been incorporated into MSSNY memos.

Dr. Eng asked for a website link or blog where collected studies could be viewed by physicians, and physicians could add to the information as they become available. Mr. Auster noted that this Committee has been doing that but he would look into whether there was a section on MSSNY's website to display this information.

### **Specialty by Specialty Issues**

Dr. Rapaport noted that NYS Radiological Society received a grant to push back against legislation sought by PAs to perform unsupervised fluoroscopy. It includes a developing a series of short videos of what a radiologist does and protecting patient safety, and promoting those videos through social media.

In addition to the annual fight to prevent scope expansion by podiatrists, Dr. Slough noted that the NYS Orthopedic Society is working with HANYS to address prior authorization hassles. Mr. Auster noted that MSSNY has been working on legislation on this issue and participated in a DFS workgroup to reduce pre-authorization hassles. Both NYSSOS and MSSNY are looking at the Texas "gold card" law.

Dr. Vieth brought up the lack of transparency in patients knowing who is treating them. Mr. Auster brought up state and federal regulations to require ID cards and the profession of the person providing care, but others noted that requirement did not provide enough information. Dr. Fougner noted the problem of an NP getting a doctorate and introducing themselves as a "doctor", and that these badges often say "doctor" not "physician". Dr. Fougner suggested amending patient bill of rights to note that patient has the right to request a physician. Dr. Blutinger agreed that it was important for patients know who is treating them. Dr. Eng reiterated the importance of non-physicians identifying their profession when they meet the patient.

### **Other Issues**

Mr. Auster noted the ongoing collaborative efforts with the various specialty societies regarding their scope legislative issues as well as many other legislative issues, including a joint meeting next week. For example, he noted how the NY Chapter of the American College of Physicians initiated a specialty sign on letter in opposition to the bill eliminating NP collaboration requirements.

Dr. Vieth and Dr. Rapaport raised concerns with PAs and NPs labeling themselves as hospitalists.

Dr. Eng raised the importance of having physicians see evidence of what this Committee is doing, including through billboards, advertisements or other mechanisms to have patients become more aware of whether or not they are being treated by a physician. Dr. Litvack noted it would need to have a catchy message such as "Ask for a Physician". Dr. Vieth noted the Physicians for Patient Protection (PPP) had raised money to put up billboards in other states.

Dr. Vieth also raised concerns with various media sources (like the New York Times) inappropriately conflating osteopathic physicians with naturopaths. Mr. Auster noted that MSSNY also works closely with the NYS Osteopathic Medical Society and the AOA on a variety of issues.

The Committee members discussed having another meeting in February. The meeting ended at 8:30 AM.