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Health Law Section  
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**“The MSSNY/OPMC Relationship”**

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**MSSNY AND THE OPMC**

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**A Strong Collaborative Relationship  
Forged By Shared Objectives**

## **EXAMPLES IN WHICH MSSNY AND THE OPMC ACT COLLABORATIVELY**

- **Wellness and leadership programs for physicians**
- **Committee For Physician Health**

## **One Basis For The Perception Of Institutional Tension Lines**

**MSSNY's Myriad Efforts To Ensure That The  
Disciplinary Process Does Not Impose Outcomes That  
Are Disproportionate To The Professional Misconduct  
Alleged To Be Involved**

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## **ONE EXAMPLE OF MSSNY EFFORTS TO STRIKE A PROPER MIDDLE GROUND**

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### **MSSNY's 2017 OPPOSITION TO BUDGET PROVISIONS DESIGNED TO INCREASE THE POWER OF THE DOH TO INVESTIGATE ALLEGED PHYSICIAN MISCONDUCT**

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## **EFFORTS BY MSSNY TO OFFSET THE COLLATERAL CONSEQUENCES OF OPMC SANCTIONS**

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### **250.995 OPMC and Medicaid:**

MSSNY should encourage the Office of Medicaid Services to discontinue its policy of excluding physicians from its panel solely because they are on probation with the Office of Professional Medical Conduct. (HOD 2007-93; Reaffirmed HOD 2017)

### **175.972: OPMC Inform Physicians of Untended Consequences**

Utilizing legislative, regulatory or other relief against the Office of Medicaid Inspector General, the Medical Society of the State of New York will seek a prohibition from removing a physician from the State Medicaid program solely on the basis that the physician entered into a consent order with the Board of Professional Medical Conduct. (HOD 2014-100)

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## **EFFORTS BY MSSNY TO OFFSET THE COLLATERAL CONSEQUENCES OF OPMC SANCTIONS (CONTINUED)**

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**175.979: consequences of Involuntary Termination of Medicaid Participation:**

MSSNY will work with the New York State Office of Professional Medical Conduct (OPMC), the New York State Office of Medicaid Inspector General (OMIG), The Joint Commission, the Healthcare Association of New York State (HANYS) and the Greater New York Hospital Association (GNYHA) to remedy the situation where disciplined physicians are allowed by OPMC to retain their medical licenses but are effectively relieved of any ability to treat their patients because of the regulatory cascade imposed by OMIG, hospitals and third party payers. (HOD 2010-69)

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## **EFFORTS BY MSSNY TO OFFSET THE COLLATERAL CONSEQUENCES OF OPMC SANCTIONS (CONTINUED)**

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**175.980 Physicians as Medicaid Providers While in Supervised Recovery: MSSNY will:**

1) request that the New York State Office of Professional Conduct (OPMC) and the New York State Office of the Medicaid Inspector General (OMIG) should work together cooperatively to permit physicians who are participating in a program of rehabilitation that includes practicing only in a monitored setting to maintain enrollment as a participating provider in the New York State Medicaid Program; and

2) urge the New York State OMIG to recognize the plan of rehabilitation developed by the OPMC and Committee for Physician Health to permit physicians to return to the practice of medicine in a monitored setting and reinstate such physicians in the New York State Medicaid Program. (HOD 2009-111)

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## MAXIMIZING PHYSICIAN INVOLVEMENT

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### **230.999 Maximizing Involvement of Physicians and Physician Organizations in Review Process:**

MSSNY is continuing to evaluate the physician discipline process as revised by Chapter 606 of the laws of 1991, and, if determined to be necessary, to make recommendations on additional legislative refinements that will further the principles of maximizing the involvement of licensed physicians and recognized physician organizations in the process pursuant to which professional conduct of physicians is reviewed, so as to expedite and simplify this process, thus making it more fair to the accused physician and to the public. (HOD 1991-9; Reaffirmed HOD 2014)

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## MAXIMIZING PHYSICIAN INVOLVEMENT

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### **250.993: Physicians Serving on the OPMC Hearing Committee**

MSSNY will seek legislation or regulation requiring that at least one of the two physicians serving on the hearing committee of the OPMC charged with the responsibility of listening to and reviewing written and oral testimony alleging possible physician misconduct, be in active practice and of the same or similar specialty of the physician being charged, thereby assuring that the physician in question is being truly evaluated and judged by his peers and that the facts, as presented, are reviewed based upon appropriate sound medical decisions. (HOD 2013-119)

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## PHYSICIAN PROFILE UPDATES

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### 250.992 Amendment to OPMC Reporting Requirement Associated with Physician Profile Updates

Under New York State Law, failure of a physician to update his/her profile within six (6) months of license renewal, can be considered as professional misconduct and reportable to the OPMC for immediate action. The Medical Society of the State of New York will seek regulation/legislation to allow a 60-day grace period for physicians to comply after receipt of a warning letter, and if a physician still does not comply after the 60 days grace period, then and only then should it be considered a reportable event. MSSNY, county and specialty societies will immediately begin to notify their members about the importance and urgency of updating their individual profiles in a timely and expeditious manner.

In an effort to ensure that physicians comply with the requirement of updating their profile, MSSNY will request there be notification with a direct link to [www.nydoctorprofile.com](http://www.nydoctorprofile.com) which must be completed prior to submission of the registration renewal when a physician renews his/her license online and for those physicians who may still renew their registration via paper, a copy of their updated profile must be included and sent together with the registration renewal. (HOD 2014-102)

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## OTHER MSSNY EFFORTS

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### 250.991 Modernizing OPMC

The Medical Society of the State of New York will continue working with the New York State Department of Health and the Office of Professional Medical Conduct (OPMC) to educate physicians about the procedures and activities of the OPMC. MSSNY will seek to have any complaint that has been determined by OPMC to be invalid or dismissed after a period of two years expunged. (HOD 2018-61)

### 250.997 Changes to OPMC Procedures:

MSSNY will seek legislation and/or regulation which create a statute of limitations on all investigations and hearings of the OPMC. Such legislation will provide that any accused physician receive within a reasonable period of time, in advance of any interview, a copy of all documentary evidence (including expert witness reports) which can be admissible at any hearing of the OPMC and that the physician be informed of his/her right to bring counsel to an interview along with receiving a transcript of the interview. MSSNY support any changes designed to reform the activities of the OPMC which protect the public against incompetent and impaired physicians while protecting due process rights of such physicians. (HOD 2003-51; Reaffirmed HOD 2004-56, HOD 2006-77 & HOD 2007-92)