

Preliminary Report for Discussion Purposes
Standing Committee on Constitution and Bylaws
For consideration by the Revolving Reference Committee
February 6, 2019

The Standing Committee on Constitution and Bylaws (SCCB) has received from the MSNJ Board of Trustees a proposed amendment to the Medical Society of New Jersey's Constitution and Bylaws to be considered by the House of Delegates at the 2019 Annual Meeting. This report will address the proposed constitutional amendment and other amendments to the bylaws that are being proposed by the SCCB. Some of this work is the consequence of the SCCB's own governance review; some of this work was carried over from the last SCCB.

The SCCB has undertaken a governance review project to:

1. Ensure that component societies and the MSNJ have documented relationships;
2. Facilitate efforts of component societies to thrive or to merge with another component society; and,
3. Allow members to maintain status in state society, even if their county of residence or practice is not functioning.

In the course of the governance review project it became clear that the state society and many component societies do not have copies of their charters. It is important from a good governance perspective that there be accurate documents memorializing the relationship between the state society and the component societies. This is also important from a legal perspective. There may also be practical ramifications for the state society and the component societies if the relationship is not understood.

The SCCB has evaluated the charter provisions contained in the current bylaws and find them to be vague. The SCCB explored the possibility of using "affiliation agreements" instead of charters. Some associations have required their chartered entities to enter into affiliation agreements because they can be more specific about mutual purposes, goals, and objectives. Affiliation agreements may also specify the mutual obligations as well as the obligations of the granting association and its chartered entities.

National associational counsel opines that affiliation agreements are more modern and allow for a better defined relationship. An affiliation agreement creates a contractual relationship and has the added benefit of defining the roles and responsibilities of the parties.

If a component society has a charter from the state to the component entity the SCCB is in favor of allowing the relationship to continue as such so long as the charter is accurate. The SCCB recommends that any such relationship be reviewed and approved by the House of Delegates. The SCCB recommends that the bylaws be modified to be more specific and to require such a review whenever a component society changes its bylaws or its structural corporate documents. This would include merger activity since the SCCB anticipates that any merged entity would apply for and receive a new charter or affiliation agreement in the name of the new entity. Since mergers have historically been encouraged the House should endeavor to approve merged entities.

If, however, there is no documentary evidence of an existing charter, the SCCB urges such component societies to consider entering into an affiliation agreement in lieu of a charter. This is a recommendation and not a mandate. Either an accurate charter or an affiliation agreement is viewed by the SCCB to be acceptable, consistent with the proposed amendment to the MSNJ Constitution. The proposed constitutional amendment is permissive; a component society may operate under a charter or an affiliation agreement.

The SCCB has taken great care not to contravene the current dual membership model to the extent that it is feasible and serves the best interests of the state society. There is concern that a number of counties do not have staff and may not be in compliance with basic governance and legal requirements. A number of counties have lost their non-profit status. At this writing the following component societies have revoked or questionable non-profit status: **List the counties at the time that the report is finalized.**

Several counties have had difficulty filling a complete slate of officer positions for their legal entity's operations. At least one county has not scheduled an annual meeting or elected officers who are members for some time.

Approximately half of the component societies do not participate in the Nominating Committee process.

Many component societies do not send a full delegation to the annual meeting to participate in the activities of the House of Delegates.

Membership is dwindling overall. The SCCB believes it is in the best interest of the state society to allow membership to continue in the state society even if a county is not functioning. Last year the House of Delegates voted unanimously to permit "direct to state" membership in counties where the component society is not functioning. According to the 2018 bylaws amendment:

Direct payment. When a component society is not functioning, any member in that component society in good standing may send yearly dues directly to the state Society and by so doing may remain in good standing with the state Society.

The 2018 bylaws amendment raises the question of the appropriate criteria on which to determine whether or not a county is functioning. Historically, the state has not monitored the governance activities of a component society. The component societies are separate legal entities. Interference or exertion of control by the state society into the operations of the component societies increases the state's exposure to liability rendering the state responsible for the actions and conduct of the component societies. This is commonly referred to as piercing the corporate veil. While the state may become responsible for the activities of the component society if it directs or controls the component society, the opposite is not true. Generally, "parent" organization may become responsible for their component organizations if they exercise control over them, but those organizations only bear responsibility for their own conduct.

The SCCB believes it is imperative to define and develop criteria to determine whether a component society is functioning or whether its members may derive their status directly from the state. The SCCB is recommending that the bylaws be amended to include the following definition of a functioning county:

Functioning Component Society Definition. To be considered functioning, a Component Society should conduct: a business meeting at least once per year; an election of a governing body; maintenance of separate legal and non-profit status; participation in the activities of the House and other criteria as may be required by the House of Delegates.

These are minimal requirements. They are similar to the requirements of a chartered entity.

The SCCB recommends a bylaws amendment to ensure that struggling component societies are offered due process before being found not to be functional. The SCCB recommends the following language:

The Board of Trustees shall develop and publish a process to afford a non-functioning Component Society due process. The process must include: notice; an opportunity to be heard and to present evidence to prove functioning status; and, an opportunity to cure deficiencies. The Board of Trustees shall be the final arbiter on the question of whether a Component Society is functioning.

To encourage component society membership the SCCB recommends that the nexus for determining component society membership be expanded. Currently, a member may choose to affiliate with a Component Society in the county in which he or she resides or practices. (See Chapter XI, Section 5(a) Physicians may elect to hold membership in the component society of the county in which they reside or in which they practice.) In the event that both counties are not functioning the member would derive membership from the state society directly.

To encourage Component Society membership the SCCB is recommending that a third nexus be recognized. The SCCB recommends that the bylaws be amended to allow one to become a member of the next closest functioning Component Society. This membership opportunity is permissive. To make it mandatory would violate the bylaws amendment that permits direct to state membership which was adopted unanimously by the House of Delegates on 2018. The SCCB recommends that the following language be added to the bylaws:

Proximate Component Society Membership. Direct to state eligible members may petition to join an adjacent county or the next closest functioning county.

The SCCB discussed ways to reinvigorate the Nominating Committee in light of the fact that many counties do not send representatives to the Nominating Committee. Consistent with the reduction in the number of districts, it was agreed that the number of delegates should be similarly reduced.

Proposed Nominating Committee Composition:

- 3 delegates (voting) and 3 alternates (non-voting) from each of the 3 districts (total of 9 voting)
- Current president (voting if not conflicted) (total of 10)
- Immediate past president who is the chair (non-voting, unless there is a tie)

General rules on the Nominating Committee:

- One may not serve as chair if running for an AMA position; in that event the chair position goes back one president further

- Fellows may be present and ask questions during the vetting of candidates on the day of the Nominating Committee meeting. However, Fellows shall not be present during deliberations and the vote.
- The Nominating Committee should accept a gap analysis performed by the Board of Trustees to determine what qualifications/experience are needed to improve the governing body. The Board will convey that information to the chair of the Nominating Committee for his/her consideration during the deliberations.

The SCCB will present this preliminary report to the Revolving Reference Committee on February 6, 2019 and invites comments from all interested parties during the meeting. Please register for the meeting so that your comments can be considered before the report is finalized and sent to the Reference Committee for consideration by the House during the annual meeting.

January 30, 2019