Legal/Legislative Issues

ANT - ANTITRUST LAWS

ANT-001
Physician Antitrust Relief: The Wisconsin Medical Society continues to support and work toward physician antitrust relief at both the state and federal levels. (HOD, 0411)*

DHC - DATA (HEALTH CARE)

DHC-001
Confidentiality of Prescription Information: The Wisconsin Medical Society opposes release of patient-specific prescription information (i.e., name, address) to pharmaceutical companies and other commercial interests without patient consent. (HOD, 0414)

DHC-002
Health Care Data Collection by the State of Wisconsin: The Wisconsin Medical Society supports all groups working on data collection that utilize the following principles:

- Framing the questions that need to be asked about the health care system in Wisconsin.
- Defining the data sets that will answer those questions.
- Estimating the cost of furnishing, compiling and analyzing the data sets. (HOD, 0413)

DHC-004
Wisconsin Health Care Collaborative: The Wisconsin Medical Society (Society) endorses the efforts of the Wisconsin Collaborative for Health Care Quality (WCHCQ) and supports the collection and public reporting by medical groups in Wisconsin of data consistent with the Collaborative’s measures. The Society will explore ways to support smaller medical groups in collecting a feasible subset of the data elements endorsed by the WCHCQ.

Characteristics of ideal performance measures should include the following:

- The measures must be evidence-based and broadly accepted within the medical community as valid and reliable indicators.
- The measures must have established standards for satisfactory performance assessment.
- There is the ability to collect the measures in a standardized and reliable way across multiple physicians and sites of care.
- The measure is applicable to a group of patients of sufficient size to provide a reliable estimate of physician performance in caring for patients with that condition.
• Factors include differences among patients prior to medical diagnosis and treatment (i.e. case-mix, severity of illness, comorbidity).
• Factors may also include sociodemographic characteristics that influence patient adherence to treatments.
• Data collection is open to all Wisconsin clinicians.
• Data measures include the full spectrum of care (i.e., preventive, acute, chronic, inpatient, outpatient).
• Data are verified by an independent third-party. (HOD, 0413)

DHC-005
Data Access – Federal Level: The Wisconsin Medical Society will advocate at the AMA level for a Unique Healthcare Patient Identifier Number to be available immediately. (HOD, 0410)*

DHC-006
Regional Health Information Exchanges: The Wisconsin Medical Society will work toward supporting the expansion of Regional Health Information Organizations (RHIO) to include a broader collection of health information and to allow physicians access to their patients collective RHIO record.

The Society supports the State Designated Entity (SDE) with the goal of creating a system capable of supporting a statewide health information exchange. (HOD, 0416)

DIS - DISCRIMINATION
DIS-002
Civil Unions: The Wisconsin Medical Society opposes efforts to bar any civil union other than heterosexual marriage because of the negative health care effects it may have on our gay and lesbian patients and their families and dependent children, such as
• Hospital visitation privileges
• Bereavement privileges
• Giving permission for procedures for minor children in those families
• Insurance coverage for dependent children in these families (HOD, 0411)*

DIS-005
Bullying: The Wisconsin Medical Society opposes bullying in all its forms, including bullying of lesbian, gay, bisexual, transgender, and questioning (LBGTQ) individuals, and supports legislation and policies that take responsible steps to prevent and take action against bullying.

The Wisconsin Medical Society encourages training programs for school administration, counselors, and students to become active leaders in promoting anti-bullying policies and positive school climates. (HOD, 0411)*

DIS-006
Support of the Legal Right of Civil Marriage Between Any Two Consenting Adults: The Wisconsin Medical Society recognizes that denying civil marriage based on sexual orientation is discriminatory and contributes to health care disparities affecting same-sex households. The Wisconsin Medical Society supports the legal recognition of civil marriage between any two consenting adults; and opposes laws that restrict the rights, benefits, privileges, and responsibilities granted to married couples based on one’s gender and sexual orientation. (HOD, 0412)

*Currently under five-year policy review.
DIS-007

Lesbian, Gay, Bisexual and Transgender (LGBT) Elder Health: The Wisconsin Medical Society recommends:

1. That health care providers working with geriatric populations (e.g., aging services, residential care facilities, and home care agencies) should receive training regarding the needs of lesbian, gay, bisexual, and transgender (LGBT) seniors, including:
   a. their concerns of being ostracized and abused by care providers and community members.
   b. health risks, health disparities, and prevalent diseases of LGBT seniors.
   c. how the lack of legal protections and access to social programs granted to heterosexuals causes hardship for LGBT seniors.

2. That Area Agencies on Aging (AAAs) and Aging and Disability Resource Centers (ADRCs) consistently and explicitly inquire whether clients desire counseling about the services that are available or pertinent for LGBT seniors and, whenever applicable, counsel clients about accessing these resources. (HOD, 0412)

DPS - DATA (PHYSICIAN-SPECIFIC)

DPS-001

Data Collection Law: The Wisconsin Medical Society will study and act on all appropriate and reasonable means (legislative, legal and educational) to:

- Maintain the patient privacy and confidentiality protections written into the data collection law Wis. Stat. § 153.05 (2011-12), as a result of Society advocacy on behalf of patients and physicians.
- Eliminate the assessment on physicians to fund the out-patient data collection program.
- Support funding the program with general purpose revenue in lieu of health care professional assessments.
- Closely monitor the implementation of this law to ensure that there is appropriate physician involvement and physician input/comment in determining the usefulness of the information collected and how the information will be used.
- Ensure that the law be implemented in a manner that is not administratively burdensome or that does not result in increased costs to patients and physicians.
- Advocate for patients by developing a patient education pamphlet explaining the implementation of the Data Collection Law and its possible consequences. (HOD, 0414)

DPS-004

Release of Licensure Examination Scores: The Wisconsin Medical Society supports the development of model legislation that would provide for the confidentiality of the results of the medical licensing examination including numerical scores and subtest results. (HOD, 0411)

DRU - DRUGS, REGULATION AND STANDARDIZATION

DRU-001

Guiding Principles on Prescription Drugs: The Wisconsin Medical Society supports the following policy on prescription drugs:

The Society supports appropriate legislative or regulatory programs that will ensure, to the greatest extent possible, the availability and affordability of prescription drugs for all Wisconsin patients. The following elements should be included in any legislation or regulation:

- The primary focus should be the best interest of patients.
• Allowance for the most efficacious and cost-effective treatment for patients, providing for reasonable formularies with a medically appropriate range of treatment options.
• Patients’ needs and ability to pay must be taken into consideration.
• Dealing effectively with the recent sharp escalation in the cost of prescription drugs, which is disproportionately increasing relative to overall cost increases in the health care system.

*The Society supports continuing physician education on clinically appropriate, cost-effective prescribing in order to enhance patient access to prescription drugs.*

State-level solutions could include:
• State-funded programs to provide assistance to low income Wisconsin citizens to purchase prescription medications.
• Physician and patient education programs on the use of bio-equivalent generics.
• Purchasing pools for volume purchasers.
• Medicaid waivers.
• Pharmaceutical rebate and discount programs.

Federal-level solutions could include:
• Changing the reimportation laws for pharmaceuticals.
• Changing federal price and competition regulations.
• Restriction of direct-to-consumer marketing. (HOD, 0416)

**DRU-002**
Delays in Approving Medication for Patients: The Wisconsin Medical Society supports a policy requiring managed care organizations to provisionally approve at least a 14-day supply of non-formulary medications or, alternatively, have an individual available at all hours to review and approve requests for authorization of non-formulary prescriptions. (HOD, 0415)

**DRU-003**
Physician Leadership on National Drug Policy: The Wisconsin Medical Society supports that the United States drug policy places a greater emphasis on medical and public health approaches rather than on the criminal justice system and interdiction to reduce illegal drug use. (HOD, 0412)

**DRU-010**
Increased Standards For Pharmaceutical Approval: The Wisconsin Medical Society supports increased standards for FDA approval of new pharmaceuticals, requiring clinical trials that demonstrate the effectiveness and safety of these drugs in comparison to standard therapy, active controls and placebos. (HOD, 0411)

**DRU-011**
Direct-To-Consumer Advertising: The Wisconsin Medical Society supports the physician-patient relationship as the most appropriate venue for determining the use of prescription drugs and devices and supports efforts to control Direct to Consumer Advertising of prescription drugs and American Medical Association actions to strengthen federal efforts to more effectively regulate such advertising. (HOD, 0411)*

**DRU-012**
Controlled Substance Testing in Infants: The Wisconsin Medical Society supports allowing any hospital employee who provides health care, social worker or foster care worker to refer an infant to a physician for testing for controlled substances (if the referring party suspects that the infant has controlled substances in his or her system because of the

*Currently under five-year policy review.*
mother’s use of controlled substances while she was pregnant with the infant) without the consent of the parent or guardian to the test. (HOD, 0414)

**DRU-013**

Criteria for the Treatment of Psychoactive Substance Use Disorders: The Wisconsin Medical Society supports the use of the American Society of Addiction Medicine (ASAM) Criteria for utilization management decisions in the treatment of psychoactive substance-related disorders, as periodically updated by ASAM. (HOD, 0415)

**DRU-014**

Controlled Substances: The Wisconsin Medical Society supports the Wisconsin Prescription Drug Monitoring Program (PDMP), and supports the continued existence and funding of this database by the legislature and governor. The Society also supports efforts to network this prescription drug monitoring database with those of adjacent states. (HOD, 0414)

**DRU-015**

Direct-To-Consumer Advertising of Pharmaceutical Products: The Wisconsin Medical Society opposes direct-to-consumer advertising of prescription pharmaceuticals. The Wisconsin Medical Society support unbiased, independent and publicly funded education to consumers regarding disease states and available treatments. (HOD, 0416)

**DRU-016**

Authorization for Field Use of Naloxone to Reduce Overdose: The Wisconsin Medical Society (Society) supports development of enabling regulation and legislation, as necessary, to allow for evidence-based harm reduction strategies, along with physician and public education regarding these approaches, so that injectable naloxone or naloxone nasal spray may be readily available to persons who may be at risk of opioid overdose death, either in the context of authorized medical treatment of chronic pain or unauthorized use of heroin or prescription opioid analgesics by persons with substance use disorders. In order to meet this need, the Society supports reasonable and appropriate pricing of naloxone products such that cost does not create a barrier to use, and that access to naloxone is just and equitable. (HOD, 0416)

**DRU-017**

Pain Management: The Wisconsin Medical Society (Society) recognizes the important benefits of effective pain management and strongly encourages Wisconsin physicians to make pain assessment and management an integral part of the care of all patients. The Society:

- Supports legislation that removes barriers to effective pain control; in education programs that dispel the myths which account for the inadequate treatment of pain.
- Supports efforts to assure proper reimbursement for pain management; in working with the Medical Examining Board to ensure uniform standards of practice for responsible pain management.
- Opposes legal actions against physicians who prescribe opioids and other controlled substances to patients with terminal illness according to standard medical practice. Physicians who follow principles of practice for the use of opioids, and patients whom they treat, should not be encumbered by inappropriate scrutiny upon their practice.
- Believes that while opioids are often the drugs of choice for the management of severe acute pain and cancer pain, they may also play a role in the management of certain chronic non-cancer pain problems. (HOD, 0412)

**DRU-018**

Promote Clinical Research Into the Efficacy of Marijuana by Reclassification as a Schedule 2 Controlled Substance:

1. The Wisconsin Medical Society calls for further adequate and well-controlled studies of marijuana and related
cannabinoids in patients who have serious conditions for which preclinical, anecdotal, or controlled evidence suggests possible efficacy and the application of such results to the understanding and treatment of disease.

2. The Wisconsin Medical Society urges that marijuana’s status as a federal schedule 1 controlled substance be reviewed with the goal of facilitating the conduct of clinical research and development of cannabinoid-based medicines, and alternate delivery methods. This should not be viewed as an endorsement of state-based medical cannabis programs, the legalization of marijuana, or that scientific evidence on the therapeutic use of cannabis meets the current standards for a prescription drug product.

3. The Wisconsin Medical Society urges the National Institutes of Health (NIH), the Drug Enforcement Administration (DEA), and the Food and Drug Administration (FDA) to develop a special schedule and implement administrative procedures to facilitate grant applications and the conduct of well-designed clinical research involving cannabis and its potential medical utility. This effort should include: a) disseminating specific information for researchers on the development of safeguards for cannabis clinical research protocols and the development of a model informed consent form for institutional review board evaluation; b) sufficient funding to support such clinical research and access for qualified investigators to adequate supplies of cannabis for clinical research purposes; c) confirming that cannabis of various and consistent strengths and/or placebo will be supplied by the National Institute on Drug Abuse to investigators registered with the DEA who are conducting bona fide clinical research studies that receive FDA approval, regardless of whether or not the NIH is the primary source of grant support.

4. The Wisconsin Medical Society believes that effective patient care requires the free and unfettered exchange of information on treatment alternatives and that discussion of these alternatives between physicians and patients should not subject either party to criminal sanctions. (Derived from AMA Policy H-95.952). (HOD, 0412)

**DRI-019**

Principles for Proper Opioid Prescribing:
Safe Opioid Prescribing, Safe Home Medication Storage, and Safe Medication Disposal to Minimize Opioid Diversion and Overdose Deaths, While Assuring Proper Prescribing and Access to Care for Patients with Pain.

Opioid analgesics are extremely effective medications for the management of acute pain, especially pain associated with injuries or surgery. They are also extremely effective for managing cancer pain and in palliative care situations. Their use for chronic non-cancer pain remains associated with clinical controversy and, at times, with adverse outcomes. Physicians should receive more education about the problems of prescription drug diversion, misuse, addiction and overdose deaths, and steps physicians can and should take in the course of their regular daily practice to mitigate the risks of opioid prescribing and minimize the incidence of prescription drug diversion, misuse, addiction and overdose deaths.

The Wisconsin Medical Society supports the following principles:

- Physicians should include opioid analgesics as part of evidence-based treatment plans for patients, to reduce discomfort and to maximize functioning, when their use is medically necessary.
- Patients should have access to these medications when they are medically necessary so that they receive compassionate and comprehensive care when they have painful health conditions.
- Physicians should make decisions about prescribing opioids with understanding of current policies and clinical guidelines promulgated by the Wisconsin Medical Examining Board, and should be aware of and review other guidelines from the Centers for Disease Control and Prevention, Federation of State Medical Boards, Food and Drug Administration, national medical specialty societies and other entities addressing the issue of safe and responsible opioid prescribing. Neither medical practice acts nor the credentialing procedures of health plans, hospitals or clinics, should provide for limitations on or sanctions against physicians based solely on the dosages of opioid analgesics prescribed or the number of pain patients they see in their practices.

*Currently under five-year policy review.*
• Physicians should be more aware of the various indications for opioid analgesics and therapeutic alternatives based on the type of pain a patient may present with, including non-opioid pharmacotherapies for neuropathic pain and for myofascial pain syndromes.

• Physicians should be more aware of both addiction and physical dependence (withdrawal) as among the potential adverse outcomes from the long-term prescribing of opioid analgesics. Any physician who initiates a care plan involving chronic opioid analgesic therapy should be knowledgeable and comfortable in methods for safe discontinuation of opioids in tolerant individuals and for opioid withdrawal management. Physicians should encourage nursing staff in hospitals and clinics where they practice to utilize standardized rating scales for assessing the severity of opioid withdrawal.

• Physicians should not be limited to prescribing only abuse-deterrent or abuse-resistant medications as they become clinically available, but rather should have flexibility in prescribing practices, increased opportunities for education on the potential benefits of abuse-deterrent or abuse-resistant medications, and increased education about the importance of clear communication with patients on the risks and safe use of such medications.

• Physicians should be more aware of the phenomena of prescription drug diversion, misuse and overdose deaths, and should be mindful of the potential for diversion of drug supplies that originate with a legitimate prescription written for appropriate indications. Physicians should receive education on the theory, practice and utility of office-based and Emergency Department Screening and Brief Intervention processes to identify potential cases of substance use disorder. Risk assessment prior to the initiation of opioid therapy should become a regular part of medical and surgical practice.

• Physicians should receive education on how physicians can make optimal use of the Wisconsin Prescription Drug Monitoring Program.

• Physicians who prescribe controlled substances should accept the responsibilities they have to educate the patient at the time of issuing a prescription about benefits, risks and alternatives, and about safe drug storage and disposal practices that should be adhered to by patients.

• Physicians should support initiatives to establish statewide standards and methods for the effective disposal of consumer medications in all care programs (including home health care hospice programs) and facilities (including nursing homes and residential hospice programs) and which comply with state and federal waste management laws.

• Physicians should become active in their communities, volunteering their time to become community problem-solvers regarding health topics relevant to their communities and the emerging epidemics of prescription drug abuse and opioid overdose deaths.
  a. Physicians should work with schools and school boards to optimize the health education students receive regarding substance use disorders and related conditions, including facts regarding the epidemiology of overdose deaths among youth in Wisconsin.
  b. Physicians should work with their communities to support the implementation of evidence-based substance abuse prevention programs and practices, such as those in the National Registry of Evidence-based Programs and Practices developed by the Substance Abuse and Mental Health Services Administration (http://www.nrepp.samhsa.gov/01_landing.aspx).
  c. Physicians should work with citizen coalitions in their communities regarding safe drug storage and disposal with respect to controlled substances such as opioid analgesics.

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*This Statement of Principles was prepared by the Wisconsin Medical Society for the benefit of the physician members of the Society and the patients those physicians serve. However, these Principles apply to all licensed independent practitioners with prescribing authority. While this Statement does not use the term “prescribers,” in most cases where the term “physician” appears, the Principles could/should be generalized to reference all prescribers of opioid analgesics. (HOD, 0416)*
DRU-020
Palliative Opioid Use: The Wisconsin Medical Society (Society) supports the United Nations’ Commission on Narcotic Drugs’ Principle of Balance (CND RESOLUTION 53/4) in ensuring the availability of prescription drugs for medical purposes while preventing abuse and diversion. The Society will work to educate physicians regarding safe and effective prescribing practices, especially for opioids and other drugs prone to misuse and abuse, and supports balanced policies and efforts to achieve this objective. The Society will also advocate for continued access to medications essential to pain management, including for cancer, palliative care and hospice patients. (HOD, 0414)

DRU-021
Prevention of Prescription Drug Misuse and Addiction by At-Risk Youth: The Wisconsin Medical Society encourages parents to consider placing under lock and key all supplies of narcotic analgesic, sedative and psycho-stimulant drugs that may be prescribed to a family member. (HOD, 0413)

DRU-022
E-Prescribing of Controlled Substances: The Wisconsin Medical Society supports the option for electronically prescribed controlled substances as aligned with federal and state regulations and expresses the importance of adopting such standards to allow for this to the relevant components of the e-prescribing chain. (HOD, 0415)

DRU-0023
Implementation and Use of Effective Prescription Drug Monitoring Programs: The Wisconsin Medical Society:

- Recommends that Prescription Drug Monitoring Programs (PDMP) be user-friendly and designed such that data is available immediately after a prescription is filed, and is available immediately to clinicians or their designees with prescribing authority when they query the database and are considering prescribing a controlled substance.
- Recommends that individual PDMP databases be designed with the best available connectivity to electronic medical records, and with connectivity to other PDMP databases so that clinicians or their designees with prescribing authority can have access to PDMP controlled substances dispensing data across state boundaries or between prescribing agencies.
- Encourages clinicians or their designees with prescribing authority to use PDMP databases before prescribing prescription drugs, and to actively discuss the importance of medication safety with their patients.
- Considers PDMP data to be protected health information, and thus protected from release outside the health care system unless there is a HIPAA exception or specific authorization from the individual patient to release personal health information.
- Supports medical school and postgraduate training that incorporates curriculum topics focusing on pain medicine, addiction medicine and how best to utilize PDMP platforms for safe prescribing practices. (HOD, 0416)

DRU-024
Research and Access to Abuse-Deterrent and Abuse-Resistant Opioids: Prescription opioids can be abused by tampering, crushing, dissolving or chemically altering the medication and delivering the drug in ways other than the intended and recommended route of administration. The Wisconsin Medical Society:

- Acknowledges that scientifically rigorous research is needed to determine the long-term safety and efficacy of abuse-resistant and abuse-deterrent medications as compared to traditional opioid medications, and supports such research that takes into consideration the known routes of abuse for typical opioid medications and seeks to produce medications that reduce overall abuse.

*Currently under five-year policy review.*
• Acknowledges that increased prescribing of abuse-deterrent medications may lead some individuals to shift their drug use to other drugs or routes of administration, and supports increased research on how to ameliorate this unintended secondary effect.

• Supports reasonable and appropriate pricing of abuse-deterrent and abuse-resistant opioid formulations as they become available, so that cost does not create a barrier to their use, so that they are covered at the same level as non abuse-deterrent formulations, and so that access to such drugs is just and equitable. (HOD, 0416)

**DRU-025**

**Safe Storage and Disposal of Prescription Drugs:** The Wisconsin Medical Society:

• Supports initiatives designed to promote and facilitate safe and appropriate storage and disposal of prescription medications, including community, state or national drug “take-back” programs.

• Supports clear labeling on all medications as to the safe storage and disposal of such medicines, whether for expired medicines or for medicines that are no longer needed by the patient for whom they were prescribed.

• Encourages physicians and health care professionals who prescribe medications to discuss proper storage and disposal practices with their patients and patients’ families, and to inform their patients about upcoming drug take-back days in Wisconsin.

• Encourages initiatives to establish statewide standards and methods for the effective disposal of consumer medications in all care programs (including home health care hospice programs) and facilities (including nursing homes and residential hospice programs) and that comply with state and federal waste management laws.

• Encourages citizen coalitions to become advocates for safe drug storage and disposal, particularly for drugs that are addictive or pose the risk of overdose, such as opioid analgesics.

• Supports medical school and postgraduate training that incorporates curriculum on the role of the prescriber in educating patients on safe medication storage and disposal. (HOD, 0416)

**DRU-026**

**Good Samaritan Laws for Overdose Victims:** The Wisconsin Medical Society Supports:

• Legislation that provides legal protection to a witness or victim of an overdose, who in good faith requests or administers emergency medical assistance in order to save the life of an alcohol or drug overdose victim.

• Initiatives that create avenues for drug treatment in lieu of an arrest, prosecution, and/or conviction for the drug overdose victim after an overdose occurs, or for the individual who requests medical assistance at the time of overdose.

• Efforts to increase awareness and educate the public and law enforcement officials about existing and future Good Samaritan legislation. (HOD, 0416)

**GAM-GAMBLING**

**GAM-001**

**Internet Gambling:** The Wisconsin Medical Society believes that Internet gambling should be prohibited in Wisconsin and supports Wisconsin legislation prohibiting it. (HOD, 0411)
GAM-002
Oppose Expansion of Casino Gambling in Wisconsin: The Wisconsin Medical Society opposes the expansion of casino gaming in Wisconsin and supports a moratorium on additional casinos due to the dangers of gambling addiction and the cost to society. (HOD, 0416)

IMP-Impaired Physicians
IMP-002
Reporting Impaired, Incompetent or Unethical Behavior: The Wisconsin Medical Society believes it is imperative that physicians continue their long history of assisting authorities by reporting impaired, incompetent and unethical behavior by a colleague. Physicians should make such reports to the appropriate entity or entities, which may be one or more of the following: Medical Examining Board, law enforcement authorities, hospital peer review committees, management staff of the facility or organization.

While such reporting is important, it is also important to keep in mind that allegations are very different from findings of fact.

Physicians should support:
- Observation of the principles of due process during disciplinary hearings or other procedures involving physician participants at all levels.
- Maintaining the confidentiality of the reporting physician, to the extent possible within the constraints of the law, by entities engaged in review of physician behavior.
- Laws that provide immunity to those who report impaired, incompetent or unethical conduct.

The medical profession should make known its commitment to protect the public from incompetent, impaired or unethical physicians by better communicating its efforts and initiatives at maintaining high ethical standards and quality assurance. (HOD, 0413)

IMP-003
State Medical Examining Board Funding and Functioning: The Wisconsin Medical Society supports current license fees to help fully fund and staff the State Medical Examining Board so it can effectively perform its duty to oversee physician practice and investigate complaints against physicians in a timely manner to protect the health of the people of Wisconsin. (HOD, 0415)

IMP-004
Physicians with Disruptive Behavior: This Opinion is limited to the conduct of individual physicians and does not refer to physicians acting as a collective, which is considered separately in AMA Opinion 9.025, “Collective Action and Patient Advocacy.”

1. Personal conduct, whether verbal or physical, that negatively affects or that potentially may negatively affect patient care constitutes disruptive behavior. (This includes but is not limited to conduct that interferes with one’s ability to work with other members of the health care team.) However, criticism that is offered in good faith with the aim of improving patient care should not be construed as disruptive behavior.

2. Each medical staff should develop and adopt bylaw provisions or policies for intervening in situations where a physician’s behavior is identified as disruptive. The medical staff bylaw provisions or policies should contain procedural safeguards that protect due process. Physicians exhibiting disruptive behavior should be referred to a medical staff wellness-or equivalent-committee.

3. In developing policies that address physicians with disruptive behavior, attention should be paid to the following elements:

*Currently under five-year policy review.
(a) Clearly stating principal objectives in terms that ensure high standards of patient care and promote a professional practice and work environment.

(b) Describing the behavior or types of behavior that will prompt intervention.

(c) Providing a channel through which disruptive behavior can be reported and appropriately recorded. A single incident may not be sufficient for action, but each individual report may help identify a pattern that requires intervention.

(d) Establishing a process to review or verify reports of disruptive behavior.

(e) Establishing a process to notify a physician whose behavior is disruptive that a report has been made, and providing the physician with an opportunity to respond to the report.

(f) Including means of monitoring whether a physician’s disruptive conduct improves after intervention.

(g) Providing for evaluative and corrective actions that are commensurate with the behavior, such as self correction and structured rehabilitation. Suspension of responsibilities or privileges should be a mechanism of final resort. Additionally, institutions should consider whether the reporting requirements of Opinion 9.031, "Reporting Impaired, Incompetent, or Unethical Colleagues," apply in particular cases.

(h) Identifying which individuals will be involved in the various stages of the process, from reviewing reports to notifying physicians and monitoring conduct after intervention.

(i) Providing clear guidelines for the protection of confidentiality.

(j) Ensuring that individuals who report physicians with disruptive behavior are duly protected. (I, II, VIII) (HOD, 0411)*

**IMP-005**

**Physician Health Program Statement of Principles:** The Wisconsin Medical Society believes that physician health is essential to quality of care, patient safety, and the health of the medical profession. The Society will work with other organizations to facilitate, through legislation and other means, the establishment of an independent, effective, nonpunitive and confidential physician health program. (HOD, 0413)

**LIA-LIABILITY AND MALPRACTICE ISSUES**

**LIA-001**

**Reviewer’s Responsibility:** The Wisconsin Medical Society believes that whenever a patient’s care or medication is reviewed and denial of payment for treatment or approval of a prescribed medication is made, the reviewer’s name, title, final decision and rationale for the decision should be documented. The patient and the patient’s physician should be notified in writing and the right to appeal the decision should be preserved. (HOD, 0412)

**LIA-002**

**Medical Liability Insurance Coverage and Telemedicine:** The Wisconsin Medical Society believes:

1. An out-of-state physician practicing telemedicine over state lines into Wisconsin should be required to carry primary medical liability insurance at the minimum state level mandated with a company licensed to do business in Wisconsin.

2. An out-of-state physician, whose principal place of practice is not Wisconsin, practicing telemedicine over states lines into Wisconsin, should also be required to carry coverage through the Injured Patients and Families Compensation Fund (IPFCF). The IPFCF should determine the appropriate assessment and exemptions.
3. The Medical Examining Board should seek proof of medical liability insurance coverage during the licensure application process for telemedicine practitioners. (HOD, 0412)

**LIA-004**

**Wrongful Birth:** The Wisconsin Medical Society supports legislation that would prohibit action or suits against a physician based on the claim that, but for the act or omission of the physician, a person would not have been born alive but would have been aborted. (HOD, 0411)

**LIA-007**

**Medical Liability in a Managed Care Environment:** The Wisconsin Medical Society supports legislation to prohibit managed care entities from inserting language in their contracts with physicians that hold the managed care organization harmless if harm befalls a patient as a result of the acts or omissions of the managed care organization. (HOD, 0411)

**LIA-008**

**Access to Medical Malpractice Database:** The Wisconsin Medical Society supports omitting specific provider identification from medical malpractice data on closed claims released to designated parties in the appropriate specialty society or regulatory body. (HOD, 0412)

**LIA-013**

**Immunity From Medical Malpractice Actions for Charitable and Civic Work:** The Wisconsin Medical Society supports development of legislation that would provide immunity from medical malpractice actions for all physicians who volunteer to help at charitable clinics and programs, and those who are involved in legitimate medical and public health work for state, county and local civic purposes. (HOD, 0415)

**LIA-014**

**Changes in Effectiveness of Medical Mediation Panels:** The Wisconsin Medical Society supports an effective mediation panel system. (HOD, 0414)

**LIA-015**

**Legislative Priorities for Medical Liability Reform:** The Wisconsin Medical Society recognizes the following priorities for medical liability reform:

- Alternative approaches to birth-related injuries.
- Broader financing mechanisms.
- Reduction of physicians’ liability exposure.
- Changes to the claims handling process.
- Reform of the current tort system. (HOD, 0415)

**LIA-019**

**Application of Liability Limits for State-Employed Physicians to all Physicians:** The Wisconsin Medical Society supports applying the elements of the state system of liability coverage and statute of limitations presently in effect for state-employed physicians to all Wisconsin physicians. (HOD, 0412)

**LIA-020**

**Settlement of Frivolous Suits:** The Wisconsin Medical Society believes that medical liability insurance companies should:

- Not settle malpractice actions against physicians for reasons of fiscal expedience.

*Currently under five-year policy review.*
• Aggressively pursue appropriate legal counteractions against those plaintiffs and/or their attorneys who commence, use or continue frivolous actions. (HOD, 0411) *

**LIA-021**

**Expert Testimony in Medical Liability Actions:** The Wisconsin Medical Society urges all physicians to make themselves available to review medical liability claims and, when appropriate, testify in liability actions. (HOD, 0411) *

**LIA-022**

**Mediation of Medical Liability Claims:** The Wisconsin Medical Society supports mandatory pre-trial mediation to reduce the number of frivolous medical liability lawsuits. (HOD, 0412)

**LIA-025**

**Pap Smear Screening:** The Wisconsin Medical Society supports the following guidelines for review of pap smears in the context of potential litigation:

The pap smear is the most effective cancer screening test in medical history and has been associated with a significant decrease in the death rate due to a prevalent cancer in the United States. If the pap smear is to continue as an effective cancer screening procedure, it must remain widely accessible and reasonably priced for all women, including those with low incomes and those at high risk.

It must be recognized that the pap smear is a screening test that involves subjective interpretation by screening cytologists of the 50,000-100,000 cells that are present on a typical pap smear. Even the best laboratories have an irreducible false negative rate. Although rescreening can reduce this rate, zero-error performance can never be attained as the result of many factors, but particularly due to both the subjectivity involved in making diagnostic determinations in many difficult cases and because of inherent imprecision in the process of specimen collection.

The finding of a false negative pap smear is not necessarily evidence of practice below the standard of care. Whether a false negative smear is the result of negligence must be judged not only on the basis of the individual result, but also in context of overall laboratory performance on pap smears.

The diagnosis, atypical cells of undetermined significance, represents a poorly defined entity with poor inter- and intra-observer reproducibility. Therefore, disputed case of atypical cells of undetermined significance are not likely to represent reasonable groups of allegations of practice below the standard of care.

Pap smear slides assessed for possible litigation should be reviewed without knowledge of clinical outcome. This review should simulate the normal screening situation as closely as possible. This may be accomplished as a screening process including the contested case as one of a number of pap smears representing a variety of disease states. Review with knowledge of subsequent development of carcinoma biases the objectivity of the review and does not reflect standard practice.

A court reviewing the qualifications proffered by physician-witnesses should consider or utilize these prerequisite criteria:

• The physician maintains a current and unrestricted license to practice medicine in his/her state of practice.
• The physician is certified by the appropriate ABMS specialty or subspecialty board.

The standard of care should be that of the reasonable and prudent practitioner. Courts should recognize that a false negative result is not sufficient proof of negligence. Rather, they should look to whether overall pap smear practices of the laboratory meet the standard of care.
Compensation of the physician-witness should reasonably reflect the time and effort expended by the witness in preparation, depositions and trial. Compensation of a physician-witness contingent on the outcome introduces the possibility of bias and should not be permitted. (HOD, 0410)*

**LIA-028**

**Extension of Malpractice Exemption for Charity Care:** The Wisconsin Medical Society supports providing malpractice immunity for all prearranged charity care, regardless of where the pro bono services are provided. (HOD, 0412)

**LIA-029**

**Enactment of Reasonable Contingency Fee Limits in Malpractice Actions:** The Wisconsin Medical Society supports reasonable limits on attorney fees in medical liability actions utilizing strict sliding fee scales, as already enacted in some other states, in order to ensure that injured patients receive the greatest amount possible of their medical liability settlements. Provisions within the sliding fee scales would not allow for either the court nor the client to pay the attorneys more than the scale directs. (HOD, 0412)

**LIA-030**

**Legislative Priority of the Wisconsin Medical Society:** The Wisconsin Medical Society affirms that medical liability reform should remain a legislative priority. (HOD, 0412)

**LIA-031**

**Medically Accurate Informed Consent:** The Wisconsin Medical Society opposes government-mandated language in informed consent documents and discussions. (HOD, 0414)

**SCO-SCOPE OF PRACTICE**

**SCO-001**

**Scope of Practice:** The Wisconsin Medical Society believes that health care professionals should work as partners in health care within the limitations of each profession’s legal scope of practice. The Society also recognizes that the practice of medicine and other health care professions are dynamic disciplines. Enhancements in technology, advances in science, improvements in education and training and changes in health care delivery may necessitate changes in the scopes of practice for non-physician health care professions. In evaluating whether a change or expansion in a non-physician health care profession’s scope of practice is necessary and appropriate, the Society will, at a minimum, evaluate answers to the following questions:

1. Are members of the profession appropriately educated, trained and experienced in the actions, treatments, responsibilities or procedures for which authority is sought to ensure that if the profession’s scope is changed as proposed the care patients receive:
   a. Is competent and of high quality?
   b. Adheres to accepted or reasonable standards of patient safety?
2. Has a genuine patient-care need been identified sufficiently to justify the degree of changes requested to the profession’s scope of practice?
3. Are corresponding changes to the profession’s liability insurance requirements necessary to ensure that patients may be adequately compensated in situations of professional malpractice?
4. Will the changes proposed have a negative impact on the cost of or access to health care?
5. Are the proposed changes unambiguous so that
   a. Patients may easily understand the limits of the profession’s legal authority and practice?

*Currently under five-year policy review.*
b. Members of the profession may not expand the scope of professional practice without appropriate legislative action?

When these criteria are met, the Society will work to ensure that proposed changes to non-physician health care professional practice acts and regulations accomplish their stated intentions in consultation with medical subspecialties affected by these changes. (HOD, 0415)

**SCO-002**

**Regulation of Telemedicine:** The Wisconsin Medical Society supports the following principles governing the regulation of telemedicine:

1. In order to protect the quality of the health care provided to Wisconsin residents and to provide for adequate redress of negligence claims, the practice of telemedicine should be regulated by the state of Wisconsin. In order for a physician to practice telemedicine into Wisconsin, that physician should be required to first secure a full license to practice medicine and surgery in Wisconsin.

2. For the purposes of licensure to practice telemedicine in this state, and except as specified below, telemedicine shall be defined as follows.

   Telemedicine is the practice of medicine between a physician who is located outside of this state and a patient within this state. Telemedicine includes either the rendering of a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient, or the treatment of that patient by that physician. It does not matter by what means, electronic or otherwise, the physician communicates or obtains information about the patient or renders opinions or treatment.

3. For the purposes of licensure to practice medicine in Wisconsin, telemedicine does not include the following:
   a. A physician who engages in the practice of medicine across state lines in an emergency.
   b. Occasional consultation or demonstration by electronic or other means by licensed physicians of other jurisdictions with licensed physicians of this state unless there exists an ongoing, regular, or contractual arrangement for providing these consultations or opinions.
   c. The practice of medicine between a physician and patient that occurs via electronic means across state lines that is a minor component of an ongoing physician-patient relationship between that physician and that patient that routinely occurs in the state in which that physician is located.
   d. A physician in another state who, as an employee or agent of a corporation, provides occupational consultative services, excluding services provided within a physician/patient relationship, involving the employees of that corporation in this state.
   e. The acts of medical specialists located in other jurisdictions who provide episodic consultations to physicians located in this state who practice in the same specialty.

It is the Society’s position that it is in the best interest of the patient that, in any telemedical physician-patient relationship, a physician licensed in Wisconsin should retain control and remain responsible for the provision of care for the patient. (HOD, 0414)

**SCO-003**

**Licensing of Hyperbaric Chambers in Wisconsin:** The Wisconsin Medical Society supports establishing licensing requirements and minimal regulations for the operation and maintenance of hyperbaric chambers within the state. (HOD, 0414)

**SCO-005**

**Approach to Specific Clinical Situation:** The Wisconsin Medical Society generally opposes any legislation that would either prescribe or proscribe a particular medical or surgical approach to any specific clinical situation. (HOD, 0411)
**SCO-007**

**Statutory Dependent Prescribing Authority for Physician Assistants:** The Wisconsin Medical Society supports legislative initiatives that support statutory dependent prescribing authority for physician assistants, but opposes any effort of Physician Assistants to become independent. (HOD, 0414)

**SCO-010**

**Scope of Practice for Physician Assistants and Nurse Practitioners:** The report of the American Medical Association (AMA) Board of Trustees on physician assistants and nurse practitioners, as amended and adopted at the 1995 Annual Meeting of the AMA House of Delegates, was accepted as Wisconsin Medical Society policy. The report offered the following guidelines for the roles and responsibilities of physician assistants and nurse practitioners:

*Model Guidelines for Physician/Nurse Practitioner Integrated Practice*

The physician is responsible for the supervision of nurse practitioners and other advanced practice nurses in all settings. While the Wisconsin nurse practice act and administrative rules provide for “the execution of procedures and techniques in the treatment of the sick under the general or special supervision of a physician” (Wis. Stat. sec. 441.114.), advanced practice nurses and nurse practitioners who have qualified for and received a certificate to prescribe can prescribe on an independent basis. This may affect the physician’s responsibility for the supervision of nurse practitioners in all practice settings.

The physician is responsible for managing the health care of patients in all practice settings.

Independent prescribing authority for advanced practice nurses may affect the physician’s responsibility for managing the health care of patients in all practice settings. Advanced practice nurses, including nurse practitioners, with independent prescribing authority are required to collaborate with at least one physician, but the administrative rules with regard to prescribing loosely define collaboration and the definition does not require physician supervision of the advanced practice nurse with prescribing authority.

Health care services delivered in an integrated practice must be within the scope of each practitioner’s professional license, as defined by state law.

In an integrated practice with a nurse practitioner, the physician is responsible for supervising and coordinating care and, with the appropriate input of the nurse practitioner, ensuring the quality of health care provided to patients.

Independent prescribing authority for advanced practice nurses may affect the physician’s responsibility for supervising and coordinating care. Advanced practice nurses, including nurse practitioners, with independent prescribing authority are required to collaborate with at least one physician, but the administrative rules with regard to prescribing loosely define collaboration and the definition does not require physician supervision of the advanced practice nurse with prescribing authority.

The extent of involvement by the nurse practitioner in initial assessment, and implementation of treatment will depend on the complexity and acuity of the patients’ condition as determined by the supervising/collaborating physician.

The role of the nurse practitioner in the delivery of care in an integrated practice should be defined through mutually agreed upon written practice protocols, job descriptions, and written contracts.

These practice protocols should delineate the appropriate involvement of the two professionals in the care of patients, based on the complexity and acuity of the patients’ condition.

At least one physician in the integrated practice must be immediately available at all times for supervision and consultation when needed by the nurse practitioner.

*Currently under five-year policy review.*
Patients are to be made clearly aware at all times whether they are being cared for by a physician or a nurse practitioner.

In an integrated practice, there should be a professional and courteous relationship between physician and nurse practitioner, with mutual acknowledgment of, and respect for each other’s contributions to patient care.

Physicians and nurse practitioners should review and document, on a regular basis, the care of all patients with whom the nurse practitioner is involved. Physicians and nurse practitioners must work closely enough together to become fully conversant with each other’s practice patterns.

_Suggested Guidelines for Physician/Physician Assistant Practice_

The physician is responsible for managing the health care of all patients in all settings.

Health care services delivered by physicians and physician assistants must be within the scope of each practitioner’s authorized practice as defined by state law.

The physician is ultimately responsible for coordinating and managing the care of patients, and with the appropriate input of the physician assistant, ensuring the quality of health care provided to patients.

The physician is responsible for the supervision of the physician assistant in all settings.

The role of the physician assistant in the delivery of care should be defined through mutually agreed upon guidelines that are developed by the physician and the physician assistant and based on the physician’s delegatory style.

The physician must be available for consultation with the physician assistant at all times either in person or through telecommunication systems or other means.

The extent of the involvement by the physician assistant in the assessment and implementation of treatment will depend on the complexity and acuity of the patient’s condition and the training and experience and preparation of the physician assistant, as adjudged by the physician.

Patients should be made clearly aware at all times whether they are being cared for by a physician or a physician assistant.

The physician and physician assistant together should review all delegated patient services on a regular basis, as well as the mutually agreed upon guidelines for practice.

The physician is responsible for clarifying and familiarizing the physician assistant with his/her supervising methods and style of delegating patient care. (HOD, 0411)

**SCO-012**

**Mandating Insurance Coverage for Acupuncture Treatment:** The Wisconsin Medical Society opposes mandating insurance coverage for the diagnosis and treatment of a condition by an acupuncturist. (HOD, 0412)

**SCO-014**

**Laser Surgery:** The Wisconsin Medical Society believes that laser surgery should be performed only by individuals licensed to practice medicine and surgery, or by those categories of practitioners currently licensed by the state to perform surgical services. (HOD, 0412)

**SCO-015**

**Electrodiagnostic Medicine:** The Wisconsin Medical Society affirms that performing needle electromyography is the practice of medicine, and work to discourage other non-physician health care professionals from expanding their scope of practice to include performing needle electromyography.
The Wisconsin Medical Society works to discourage physicians from interpreting needle electromyographic studies that they did not actually perform, through methods including CPT coding modifiers to create a distinction between needle EMGs performed by a physician and those performed by another provider, even if later interpreted by a physician, and discouraging reimbursement for needle electromyography that was not actually performed by a physician. (HOD, 0412)

**SCO-016**

**Health Consultations for Direct-to-Consumer Genetic Tests:** The Society supports legislation regulating Direct-to-Consumer genetic testing so that when such testing is conducted at the request of someone other than a physician, the laboratory report to the patient must state in bold type that the patient has the responsibility to contact a physician for test consultation and interpretation. (HOD, 0411)*

**SCO-017**

**X-Ray technology:** In response to 2009 Act 106, the Wisconsin Medical Society supports a physician-led collaborative effort (including family physicians, internists, orthopaedists, rheumatologists, hand surgeons, radiologists and other specialties that use X-ray technology) with representation from each of these fields to lead Wisconsin in the areas of radiographic patient safety, image quality, responsible cost controls, and access for our patients. (HOD, 0411)*

**SCO-018**

**Radiologic Safety, Quality, Cost and Access:** In response to 2009 Act 106, the Wisconsin Medical Society supports a physician-led collaborative effort (including family physicians, internists, orthopaedists, rheumatologists, hand surgeons, radiologists, anesthesiologists and other specialties that use X-ray technology) with representation from each of these fields to lead Wisconsin in the areas of radiographic patient safety, image quality, responsible cost controls, and access for our patients. (HOD, 0412)

**TOR-TORT REFORM**

**TOR-001**

**Legislative Action in IPFCF Changes:** The Wisconsin Medical Society supports the following positions in regard to the Injured Patients and Families Compensation Fund (IPFCF):

- Only named fund participants are responsible for the base insurance awards in IPFCF settlements of a case.
- Participation in the IPFCF should be mandatory, except for those exempted under state law as of 2012.
- Specialty-specific rate changes should be actuarially justified over a period of at least two consecutive years by the consulting actuary and by the IPFCF Board of Governors. (HOD, 0412)

**TOR-005**

**Malpractice Reform:** The Wisconsin Medical Society supports the following principles in regard to medical malpractice:

- A reasonable cap on non-economic damages.
- Educating the public of the added cost to health care imposed by medical malpractice costs.
- Maintain the concept of comparative negligence, but replace joint and several liability with a determination of the defendant’s obligation to pay based on the proportion of damages his or her negligence is found to bear to the actual injury, not on ability to pay as a ‘deep pocket’ defendant.
- The elimination of punitive damages except in cases of intentional torts.
- The prohibition of double recovery in compensation for an injury.

*Currently under five-year policy review.*
• The court in which a civil tort action is conducted shall review and approve the amount of every contingency fee paid as being reasonable to the circumstances.
• Maintaining the IPFCF threshold at a reasonable level.
• Supporting loss prevention measures.
• Support the requirement that claimant attorneys must file certificates of merit.
• Support the establishment of uniform and reasonable statute of limitations.
• Support prohibiting indemnitors from settling claims without the consent of the insured. (HOD, 0414)

TOR-012

IPFCF: The Wisconsin Medical Society supports the idea that the Injured Patients and Families Compensation Fund, including any net worth of the Fund, is held in irrevocable trust for the sole benefit of patients and families who are proper claimants of the Fund and physicians and other health care professionals participating in the Fund.

Money collected for the Fund should not be used for any other purpose of the state. The Fund is established to curb the rising costs of health care by financing part of the liability incurred by physicians and other health care professionals as a result of medical malpractice claims and to ensure that proper claims are satisfied.

The Society opposes any action or legislation, that threatens to destabilize the medical malpractice climate in the State of Wisconsin, as that climate currently benefits our citizens’ access to medical care. (HOD, 0411)