

Title: Initiate Legal Action Against Hospitals and Insurers  
Introduced by: Domenic Federico, MD, for the Kent County Delegation  
Original Author: Megan Edison, MD  
Referred to: Reference Committee C  
House Action: **AMEND, APPROVE**

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Whereas, MSMS has had policy in place for 19 years opposing the use of board certification as the sole criterion for credentialing or exclusion of physicians in health care plans, and

Whereas, MSMS policy on maintenance of certification (MOC) was further refined in 2015 to oppose MOC as a condition of licensure, hospital privileges, health plan participation, and, and

Whereas, Michigan health insurers and hospitals continue to ignore repeated requests by MSMS to remove active American Board of Medical Specialties (ABMS) specific board certification as a requirement, despite this MSMS policy being in place for nearly two decades, and

Whereas, Michigan hospitals continue to ignore federal code CFR 482.12 which states "Ensure that under no circumstances is the accordance of staff membership or professional privileges in the hospital dependent solely upon certification, fellowship, or membership in a specialty body or society," and

Whereas, Michigan insurers and hospitals only allow board certification through the ABMS, refusing requests to allow physician choice in board certifying entities, thus stifling competition and creating a monopoly, and

Whereas, Michigan insurers are a national outlier in their aggressive exclusion and departicipation of physicians who choose not to participate or purchase the ABMS MOC product, and

Whereas, there is a shortage of physicians to provide care for the demand of Michigan patients, and

Whereas, discriminatory exclusion of physicians based upon ABMS MOC participation exacerbates the physician shortage, worsens access, and requires patients to find new doctors, and

Whereas, the actions of Michigan hospitals and health insurers, by requiring time-limited ABMS diplomates to purchase the onerous and expensive ABMS MOC product in order to care for patients, have created a discriminatory monopoly situation that is a restraint of trade, harming both physicians and patients; therefore be it

RESOLVED: That MSMS engage with MSMS Legal Counsel to determine whether a viable cause of action exists against Michigan hospitals and/or insurers that require American Board of Medical Specialties Maintenance of Certification as a requirement for (1) medical staff membership, privileging, credentialing, or recredentialing or (2) insurance panel participation, are in violation of anti-trust laws including the Sherman Act; and be it further

RESOLVED: That MSMS work with our American Medical Association (AMA) and our AMA's Litigation Center to determine whether the maintenance of certification programs and/or policies of

the American Board of Medical Specialties and/or any of the ABMS Medical Boards are in violation of anti-trust laws including the Sherman Act.

Committee Note: The Committee amended the first Resolved to allow MSMS Legal Counsel to research and investigate possible cause of action related to MOC and to evaluate the existing lawsuit being pursued by the Association of American Physicians & Surgeons ("AAPS") against the American Board of Medical Specialties ("ABMS").