It has been my great privilege to represent you and the rest of the physicians of Georgia as MAG’s president during the past year. In 2014, MAG created a task force to examine the Certificate of Need (CON) issue in depth and to solicit a multitude of physician perspectives. In choosing the members of this task force, I considered a number of factors, including specialty, geographic location, and practice setting. I believe that the task force was balanced and represented a wide range of perspectives.

The task force was charged with 1) reviewing MAG’s existing CON policies and 2) developing any new CON policy recommendations that would be debated during this year’s House of Delegates (HOD) meeting.

This has been an important exercise due to the increased attention that the CON issue has received during the last two state legislative sessions in Georgia and because of MAG’s dramatic growth in membership.

As MAG’s president, I served as the task force chairman, which means that I witnessed the deliberations firsthand – and I can assure MAG members that the task force studied the CON issue in great depth and detail.

I would like to thank and commend the members of the CON Task Force for both their time and their significant contributions. This includes Carolyn Meltzer, M.D., and Richard Duszak, M.D., from the Emory Physicians Group; James Scott, M.D., and Christopher Walsh, M.D., from the Georgia Society of Ambulatory Surgery Centers; Justin Scott, M.D., from the Georgia Society of Anesthesiologists; Sid Moore Jr., M.D., from the Georgia Society of Ophthalmology; Charles Wilmer, M.D., from Piedmont Hospital; Robert Jansen, M.D., and Thomas Emerson, M.D., from the WellStar Medical Group; Jeff Reinhardt, M.D., and Karl Schultz Jr., M.D., from The Longstreet Clinic; Randy Rizor, M.D., from The Physicians Hospital; Douglas Lundy, M.D., from Resurgens; Robert P. Jones, M.D., and Jules Toraya, M.D., from Southcoast Medical Group; Michael P. Madaio, M.D., and Norman Thomson III, M.D., from Georgia Regents University; Charles Procter Sr., M.D., from the Georgia Society of the American College of Surgeons; Hugo D. Ribot Jr., M.D., from Cartersville Ob/Gyn Associates; Michael E. Greene, M.D., chairman of MAG’s Council on Legislation; and Manoj Shah, M.D., MAG’s President-elect.

I encourage MAG members to review the attached CON Task Force reports from the meetings that took place on May 15, June 3, July 15, and August 13.

**CON Issue Overview**

During the first task force meeting on May 15, Hall, Booth, Smith, P.C. attorney Trey Reese gave a CON issues overview. He addressed the issue’s history, the legislative developments that have taken place in the state since 2008, and the current CON laws in Georgia. Mr. Reese also discussed the pros and cons associated with CON law in Georgia. His presentation is available upon request.
Independent Physicians

During the task force’s second meeting, Victor Moldovan – who represents The Longstreet Clinic and the Southcoast Medical Group – addressed the CON issue from a multispecialty ASC perspective. He said that reforming Georgia’s CON laws was an “essential” step that needs to take place to ensure that physicians in the state have adequate career options. Mr. Moldovan also stated that hospitals in Georgia use the CON system as a mechanism to consolidate the number of facilities in the state and to eliminate career options for physicians. Mr. Moldovan concluded his remarks by stating that he believes that repealing or amending CON laws in Georgia would “level the playing field” for physicians and it would require hospitals to work with all physicians.

Health Systems Physicians

During its’ meeting on July 15, the task force heard presentations by representatives of hospital system physicians. This included Richard Duszak, M.D., with Emory Hospital, Charles Wilmer, M.D., with Piedmont Hospital, Thomas Emerson, M.D., with the WellStar Health System, and Mr. Jet Toney with the Georgia Society of Anesthesiologists (GSA).

Dr. Duszak discussed ways CON affects academic medical centers. Dr. Wilmer focused on how CON affects patients. Dr. Emerson pointed out that the health care system in Georgia does not operate like a traditional free market, and he stressed that it is imperative for hospitals to remain viable to ensure that the indigent and Medicare and Medicaid patients have access to care. Mr. Toney said that gastroenterologists and other physicians providing outpatient services have begun excluding anesthesiologists from practicing in ambulatory surgery centers (ASC) in Georgia, and, because of this experience, GSA does not believe repeal of CON would create substantial new practice opportunities for physician anesthesiologists. He said that while GSA’s current position is to oppose wholesale repeal of CON, Society leaders will, in the interest of dialogue on public policy, keep an open mind on all proposals to amend CON law.

Ambulatory Surgery Centers

On August 13, the task force heard from the Georgia Society of Ambulatory Surgery Centers (GSASC). GSASC President Andy King stated that GSASC’s primary CON concern is related to placing further limits on physician practices. He added that GSASC will take steps to ensure that physician-owned ASC are able to practice without further interference from the state. Mr. King stressed the importance of ASC in Georgia. GSASC members Sid Moore, M.D., and Jim Scott, M.D., also gave presentations on why ASC are an important part of Georgia’s health care system.

Final Meeting

During its final meeting on September 6, the task force developed its recommendations for MAG’s HOD. The task force reviewed MAG Policy 205.989, “Certificate of Need – Laws & Regulations,” which will undergo a requisite five-year review during this year’s HOD meeting. If the policy is extracted, the HOD will decide whether to reaffirm the policy or sunset the policy with new language. MAG’s Council on Legislation reviewed this policy and has recommended that the HOD reaffirm the policy. The current policy (205.989) states that...

“It is the position of the Medical Association of Georgia that Certificate of Need is anti-competitive, restricts the development of physician-owned and operated ambulatory surgical procedure and imaging centers, laboratories, and ancillary services, and limits the ability of physicians to deliver high quality, cost-effective care to Georgia’s patients.
The Medical Association of Georgia opposes Certificate of Need and supports the repeal of Certificate of Need laws in general and specifically as they apply to physician-owned and operated outpatient diagnostic centers, imaging centers, ambulatory surgical centers, laboratories and ancillary services. The Medical Association of Georgia will endeavor to educate legislators and the business community about the policy benefits of eliminating Certificate of Need.

Until Georgia’s Certificate of Need laws are repealed, the Medical Association of Georgia opposes any changes to such laws that would make it more difficult for physicians to establish and operate ambulatory surgical centers, such as making it more difficult to obtain an exemption from Certificate of Need review or decreasing the capital, equipment, single-specialty physician-owned ASC, or joint venture ASC expenditure thresholds.

With respect to exemptions from Certificate of Need review (and obtaining a Letter of Non-Reviewability), the Medical Association of Georgia supports expanding the exemption from Certificate of Need review for single-specialty physician-owned ambulatory surgical centers to multi-specialty physician-owned ambulatory surgical centers. In the alternative, the Medical Association of Georgia supports recognition as a “single-specialty”, for purposes of the single-specialty exemption from Certificate of Need review (and obtaining a Letter of Non-Reviewability) for physician-owned ambulatory surgical centers, any specialty or subspecialty recognized by the American Board of Medical Specialties or an equivalent board. The Medical Association of Georgia opposes statutory or regulatory provisions that authorize a competitor of an applicant for an exemption from Certificate of Need review (and Letter of Non-Reviewability) to challenge a determination by the Department of Health that the applicant’s proposed project is exempt from Certificate of Need review.

The Medical Association of Georgia will support MAG members who seek legal remedies to Certificate of Need provisions that are unfair to physicians.”

During this final meeting, task force members broke into small groups for consideration of four questions:

1. Should multispecialty practices be allowed to open ambulatory surgery centers (ASCs) without having to obtain a CON?
2. Should multispecialty practices be allowed to purchase a single specialty practice with a LNR ASC without having to go through the CON process?
3. What would each group be willing to compromise to achieve a YES to the questions above?
4. What should MAG’s position on CON be for the 2015 General Assembly, i.e., support, oppose or neutral?

Each small group discussion lasted approximately two hours. Each group included four to five physicians with a diversity of opinions that were based on the positions of the different groups. Following a small group discussion, the large group convened to discuss solutions.

After a total of five hours of discussion and debate, the CON task force developed two recommendations for the HOD that were passed by the majority of the task force members, though the recommendations were not unanimous.

I sincerely hope that these reports will provide our delegates with the information that they need to engage in a meaningful discussion about the future of CON in Georgia during the HOD meeting that will take place at Callaway Gardens in Pine Mountain on October 18-19.

It has been my honor to serve as your president, and it has been my honor to work with so many physicians who are genuinely dedicated to organized medicine.
Recommendations:

1. That the Medical Association of Georgia (MAG) support a pilot/demonstration project lasting five years allowing multispecialty clinics the ability to purchase a single specialty practice with a LNR ASC without having to go through the certificate of need process. Those practices participating in the pilot are allowed to keep functioning as the practices under a permanent exemption did under the pilot if the study results show the pilot/demonstration pilot was detrimental to the community.

2. That MAG aggressively support challenging the legislature to continue to search for ways to improve the health care of Georgia.

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September 17, 2014

William Silver, MD
Medical Association of Georgia
1849 The Exchange, Suite 200
Atlanta, Georgia 30339

Dear Dr. Silver,

We write to urge the Medical Association of Georgia (MAG) to confirm its longstanding position that Georgia’s Certificate of Need (CON) law should be repealed. The groups listed below endorse that position and maintain their own position that the law should be repealed in its entirety.

Further, we urge MAG not to join with others to introduce or support any CON legislation in the 2015 GA Legislative Session. We see no evidence that the political climate is favorable to amending CON statutes. While it is doubtful that any CON legislation could pass the General Assembly, we believe that introducing CON legislation endangers the meaningful reforms enacted in the 2008. If the issue is on the table, the existing statute that grants the option to physicians to apply for a Letter of Non Reviewability (LNR) when developing physician-owned ambulatory surgery centers (ASCs) becomes vulnerable to repeal or amendment.

Most of us were involved in the recent MAG CON Task Force that provided a forum for physicians to state their opinions and the positions of the groups they represent. It is safe to say there was no agreement among the physicians on task force regarding CON legislation. In fact, the general consensus was that MAG should not engage in the matter legislatively in 2015.

The medical specialty societies and groups represented below believe the best course is to preserve the status quo in 2015 and they, therefore will oppose any CON legislation introduced this session. If MAG engages in CON legislation, the house of medicine may appear fractured which could negatively impact our work on other more important patient centered healthcare legislation.

We urge MAG, by withholding their support for any legislation amending Georgia’s CON statutes in 2015, to join us in protecting the provisions currently in place for their members whose practices have invested in 341 physician-owned ASCs in the state.

Sincerely,

Sid Moore, MD     Andy King
Legislative Chair    President
GA Society of Ophthalmology    GA Society of Ambulatory Surgery Centers

Kay Kirkpatrick, MD     Alex Gross, MD
President     President
Resurgens Orthopaedics    GA Society of Dermatology and Dermatological Surgery
MEMORANDUM

TO: MAG CON COMMITTEE
FROM: Dr. Jones, Dr. Toraya and Dr. Reinhardt
RE: Draft President’s Report
DATE: September 17, 2014

Thank you for giving us the opportunity to review the draft of the Presidents Report before it is finalized. We have reviewed it and discussed it amongst ourselves and have several concerns as follows:

1. The Committee identified four questions it would address at the end of the process. Those questions are identified in the Report. The members of the Committee agreed that if we could not reach a consensus on the questions the issue would be sent to the House of Delegates (“HOD”) without a recommendation. That is basically what occurred. We were unable to agree on any specific recommendations. The Report suggests that there was a vote to approve the recommendations identified in the Report with a majority vote. That is not correct. We made some progress about a pilot program of some type but no consensus was reached on it and we do not support the Recommendation No. 1 as drafted. We understood that if there was no consensus that the entire matter would go to the HOD as stated in the four questions. The fact that some of the members or even a majority agreed with some version of the recommendation is not what we agreed as a Committee would be reported. There had to be a consensus and there was not. The Report implies that the Recommendations were the product of some formal process and gives greater weight to the Recommendations than there should be. Moreover, Recommendation No. 2 was not discussed at all. As a result, we ask that the Recommendations be deleted in their entirety and the Report simply state that no consensus was reached.

2. The Report does not reflect the vigorous debate regarding the matter amongst the members. As you now, we fully support an exemption for physician group multi-specialty surgery centers and that the multi-specialty groups be allowed to acquire single specialty practices that have an ASC and keep the ASC as a single specialty ASC. The Report does not properly emphasize our position on this matter and glosses over the nature of the debate. We are concerned that those unfamiliar with the issue will assume the Report represents some kind of consensus on the issue (with some minor opposition) and that the Recommendations should be adopted as is. Again, we ask that the Recommendations be deleted in their entirety and that the Report simply say no consensus was reached. Also, the Report should reflect that there was sharp division in the Committee about the issue and as a result should be considered by the HOD without a recommendation.

3. We realize that there are different points of view about this issue and it would be helpful if some consensus could be reached on it. Where a consensus is not reached the matter should go to the HOD for deliberation. That has been the process in the past and we ask that be the process now.

Thank you again for your participation and work on this very important matter and look forward to seeing you at the HOD.