

MEDICAL SOCIETY of the STATE OF NEW YORK

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MEMORANDUM IN SUPPORT

IN ASSEMBLY JUDICIARY COMMITTEE

A.5648 (SCHIMMINGER)

AN ACT to amend the civil practice law and rules, in relation to enacting the "medical liability reform act"; and to repeal subparagraph (ii) of paragraph 1 of subdivision (d) of section 3101 of such law and rules relating to disclosure of expert witnesses in medical, dental and podiatric medical malpractice actions

This bill would amend the civil practice law and rules to enact a number of important reforms to the dysfunctional medical liability adjudication system to reduce the exorbitant and rapidly rising cost of medical liability insurance. **The Medical Society strongly supports this bill.**

New York physicians find it increasingly difficult to maintain a viable practice, as they find themselves caught in an ever-tightening squeeze between exorbitant and rapidly rising medical liability premiums on the one hand, and decreasing reimbursement from commercial payors and Medicare on the other. This growing squeeze is already beginning to have a significant impact upon patient access to care in many regions of the State. It is a problem which will only become worse unless action is taken by the Legislature.

While the slashing of payments by health insurers and the huge increase in insurer deductibles and administrative hassles are shrinking practice revenue, New York physicians continue to pay liability premiums that far exceed those in any other state. These combined effects if unaddressed will result in a continued erosion of our patients' access to needed care. Many New York physicians pay premiums that far exceed \$100,000 and some even exceed \$300,000! The cost of medical liability coverage for the 2015-16 policy year is:

- \$338,252 for a neurosurgeon in Nassau and Suffolk counties;
- \$186,639 for an Ob-GYN in Bronx and Richmond counties;
- \$132,704 for a general surgeon in Kings and Queens counties; and
- \$134,902 for an vascular surgeon or cardiac surgeon in Bronx and Richmond counties

Little wonder, as malpractice payouts in New York State continue to be far out of proportion to the rest of country. For example, in 2013, according to a report by Diederich Healthcare, New York State had by far and away the highest number cumulative medical liability payouts, nearly two times greater than the state with the next highest amounts, Pennsylvania, and far exceeding states such as California and Florida. Additionally, the report indicated that the New York per capita medical liability payment of \$38.83 was far away the highest in the country, exceeding the second highest state Pennsylvania by 57%, the third highest state New Jersey by 67%, and the fourth highest state Massachusetts by 74%. Remarkably, it was 13 times greater than Texas!

Another recent article in *OB-GYN News* details that New York State has by far and away the greatest number of medical liability awards of greater than \$1 million (210), 3.5x highest than Illinois (61), the state with the second highest total and nearly 5x greater than California (43), a state with a far greater number of physicians;

These enormous costs are driven by a wildly unpredictable medical liability adjudication system that studies have shown results in numerous cases where awards are made despite the absence of any negligence whatsoever. Moreover, under the current system studies have shown that often those truly injured by negligence do not sue. Physicians who treat the most high-risk patients are sued with astounding regularity in New York State. Every 5 years, 65% of our neurosurgeons are sued, as well as nearly 50% of our surgical specialists and OB-GYNs.

Meanwhile, a recent study by the Medical Group Management Association concluded that practice expenses per physician have risen more than 50% in the past decade, nearly twice as much as inflation generally, and compared with a 3% increase in Medicare reimbursement over the same time. Physicians must spend tens of thousands of dollars to implement electronic medical record systems into their practice workflow at the same time that insurers continue to increase the administrative burdens they place on physicians seeking to assure their patients can obtain needed care. This is not surprising give that nearly 83% of physicians responding to a MSSNY survey indicated that the time they spend obtaining authorizations from health insurers for needed patient care had increased in the last three years, and nearly 60% indicated it had increased significantly.

As such, New York can no longer sustain such an expensive and flawed medical liability adjudication system if we wish to assure that our healthcare system will be able to accommodate the patient demand that comes as our population ages, as well as the over 2,000,000 newly insured patients who are starting to receive coverage through New York's new health insurance Exchange.

If this legislation were to be enacted, it would work to substantially reduce insurance premiums, and bring about greater stability in the health care system. In particular, it should be noted that California physicians pay far less than what New York physicians pay for liability premiums, and 90% of Texas physicians have seen a 30% reduction in their liability insurance costs since the enactment of a cap in their state in 2003. In fact, the state of Texas has been flooded with applications from physicians wishing to practice there as a result of its enactment of a non-economic damages cap. Many other states have also taken similar action since then. We need the follow the example of these other states if we are to better assure that our aging and increasingly resource-dependent patient population continue to have access to the quality care they need and deserve.

Based upon the foregoing, the Medical Society of the State of New York supports this legislation and urges its enactment.

5/15/15
MMA – support

Respectfully submitted,

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