

MEDICAL SOCIETY of the STATE OF NEW YORK

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MEMORANDUM IN OPPOSITION

**ON ASSEMBLY CODES COMMITTEE
AGENDA**

A.1500 (WEINSTEIN)

IN SENATE JUDICIARY COMMITTEE

S. 412 (DEFRANCISCO)

**AN ACT To Amend To Civil Practice Law And Rules, In
Relation To Permitting A Plaintiff To Recover Against A
Third Party Defendant In Certain Cases**

This bill would amend the CPLR to permit a plaintiff to bypass the defendant he or she sued to collect a judgment from a third party defendant who or which had been sued by the defendant for contribution or indemnification as a result of the underlying action. **The Medical Society of the State of New York opposes this legislation.**

New York's dysfunctional liability adjudication system is in need of systemic reforms to reduce our huge liability insurance premiums, instead of provisions such as this proposed legislation which would undoubtedly increase them. New York's health care delivery system already faces severe financial strains. The implementation of health care reform will only further test the ability of New York's health care system to meet this likely increased patient demand. Therefore, it is imperative that the State Legislature take action to assure that physicians and hospitals remain available to deliver the care New Yorkers are expecting to receive, including acting to reduce the choking costs of medical liability insurance.

Given the extraordinary costs of medical liability insurance that many physicians must pay, combined with the enormous changes in health care delivery and payment that is placing huge new financial pressures on physician practices and hospitals, it is irresponsible to consider legislation at this time that might actually increase these costs. Many New York physicians already pay liability premiums that far exceed \$100,000 and some even exceed \$300,000!

The timing of this legislation and other bills to expand tort liability could not be worse. We now have multiple malpractice insurance companies operating in New York State that in serious financial jeopardy which can ill-afford to absorb the substantial costs of a brand new cause of action. Moreover, with the US House's recent passage of the AHCA, there is enormous uncertainty in our health care system because of proposals in the AHCA that could profoundly restructure New York's Medicaid system.

For many physicians currently struggling to keep their practices afloat due to the enormous changes taking place in health care delivery, this legislation could be the "final straw" to drive them out of practice and into other states. Many New York physicians pay liability premiums that far exceed \$100,000 and some even exceed \$300,000! The cost of medical liability coverage for the 2015-16 year is:

- \$338,252 for a neurosurgeon in Nassau and Suffolk counties;
- \$186,630 for an obstetrician in Bronx and Richmond counties;
- \$141,534 for an orthopedic surgeon in Nassau and Suffolk Counties;
- \$132,704 for a general surgeon in Kings and Queens counties, and
- \$134,902 for a vascular surgeon or cardiac surgeon in Bronx and Richmond counties.

Moreover, malpractice payouts in New York State continue to be far out of proportion to the rest of country. For example, a recently released report by Diederich Healthcare showed that once again New York State had by far and away the highest number cumulative medical liability payouts (\$711,718,250), nearly two times greater than the state with the next highest amounts, Pennsylvania (\$374,018,550), and far exceeding states such as California (\$263,874,600) and Florida (\$248,911,150). At the same time, New York had by far and away the highest per-capita medical liability payments in the country, far exceeding the second highest state Massachusetts by nearly 20%, the third highest state Pennsylvania by 23%, and the fourth highest state New Jersey by 26%. **Remarkably, it was more than 500% more than California!**

It is little wonder that a recent analysis from the website WalletHub listed New York as the worst state in the country in which to practice medicine, in large part due to its overwhelming liability exposure as compared to other states in the country. Legislation such as this will only make this embarrassment even worse!

At the same time physicians face these exorbitant costs, health plans continue to reduce payments to physicians by inappropriately denying, delaying and reducing payment for needed care. Exacerbating these problems are the increasingly large patient balances that are accruing as a result of a significant increase in the use of high deductible health insurance plans. At the same time, physicians face substantial new costs as a significant component of their revenue base will be conditioned on participation in often unwieldy value-based payment schemes both in Medicare and in Medicaid, including the need to invest tens of thousands of dollars to implement electronic medical record systems. When factoring all these problems together, it is no surprise that regions all across New York State are beginning to see shortages in several specialties, according to reports issued by the Center for Health Workforce Studies.

With all these enormous changes occurring in patient care delivery, physicians need comprehensive reform of our flawed civil justice system and reduction in our medical liability costs, not legislation that increases costs and exacerbates existing problems.

This bill would do nothing to address the problems facing our health care system, and would instead make these problems worse. Physicians need liability cost decreases, not increases!

For all of the reasons stated above, we urge that this measure be defeated.

Respectfully submitted,

5/22/17
MMA - oppose

MSSNY DIVISION OF GOVERNMENTAL AFFAIRS