

# MEDICAL SOCIETY of the STATE OF NEW YORK

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## MEMORANDUM IN SUPPORT

### IN ASSEMBLY JUDICIARY COMMITTEE

### A.4913 (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;
- \$186,630 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 Deiderich 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, a state that has enacted comprehensive medical liability reform!**

Moreover, as reported in the publication *OB-GYN News*, New York physicians had 210 malpractice payments of \$1 million or greater in 2014, shockingly 3.5 times highest than the 61 such awards for next highest state, Illinois. And it was 5 times more than the 43 such payments in California, again a state that has enacted comprehensive medical liability reform.

New York is already a huge outlier when it comes to medical malpractice awards! It is therefore little wonder that a recent analysis from the website WalletHub listed New York as the absolute 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.

At the same time physicians face these exorbitant costs, physicians continue to face stagnant or declining payments from health insurance companies by inappropriately denying, delaying and reducing payment for needed care. Indeed, a recent study reported in the *Annals of Internal Medicine* concluded that, for every hour a physician spends delivering care to patients, another 2 hours must be spent on administrative responsibilities. 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. Nearly 21% of responding physicians indicated that ¼ - ½ of their patients now face deductibles of \$2,500-\$5,000. Not only that, physicians face substantial new costs as a significant component of their revenue base will be conditioned on participation in value-based payment systems both in Medicare and in Medicaid that all but require tens of thousands of dollars (per physician) in investment and upgrading of electronic medical record systems.

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.**

5/15/17  
MMA – support

Respectfully submitted,

MSSNY DIVISION OF GOVERNMENTAL AFFAIRS