

MEDICAL SOCIETY of the STATE OF NEW YORK

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Division of Governmental Affairs
MEMORANDUM IN OPPOSITION

**IN SENATE FINANCE
COMMITTEE**

S.74-A (HOYLMAN)

**IN ASSEMBLY RULES
COMMITTEE**

A.6770 (WEINSTEIN)

AN ACT to amend to amend the estates, powers and trusts law, in relation to payment and distribution of damages in wrongful death actions

This measure would amend the estates, powers and trusts law, to authorize an award in a wrongful death action to include compensation for grief or anguish, the loss of love and companionship, loss of services and support and the loss of nurture and guidance. This bill will vastly increase the amount of recoverable damages in these cases far beyond the level and intent of the law when it was first enacted and as it has been applied for generations. *In light of the already outrageously high medical liability insurance costs facing physicians and hospitals*, not to mention the enormous reduction in patient revenue as a result of the Covid-19 pandemic that delayed elective surgeries and prevented patients from leaving their homes, **MSSNY strongly opposes this measure and urges that it be defeated.**

The law currently allows the decedent's estate and family members to bring separate actions - which inevitably become linked - to hold tortfeasors accountable for both economic damages and the pain and suffering caused to the decedent. The decedent's estate sues for both the decedent's economic losses and damages for the pain and suffering of the decedent. These pain and suffering damages are awarded to the decedent's estate when the jury determines that the decedent experienced pain prior to death. In virtually all cases, it is the decedent's family members who are the beneficiaries of these awards through their participation in the decedent's estate. On top of this, family members can bring their own suit for economic loss - which includes the loss of consortium and damages for custodial care.

Given this huge increase in the types of damages that would be awardable, **one recent actuarial study has estimated that legislation of this type could increase New York's already outrageously high medical liability premiums by 47%.** This extraordinary increase would be on top of the already exorbitant premium costs New York's physicians and hospitals continue to incur, with many specialties across the New York City and Long Island region of the state already paying hundreds of thousands of dollars per year for their liability coverage. New York has by far the highest liability awards and costs in the country, far surpassing more populous states such as California and Texas. A recent report from Diederich Healthcare showed that in 2019, New York once again had the highest cumulative medical liability payouts of any state in the country, 68% more than the state with the second highest amount (Pennsylvania). It also had the highest per capita liability payment, 10% more than the 2nd highest state (Massachusetts). **Therefore, it is little wonder that New York is regularly listed as one of the worst states in the country in which to be a doctor, in large part due to its overwhelming liability exposure as compared to other states in the country.**

Even under ordinary circumstances, this bill would have an absolutely devastating impact on our health care system, and jeopardize patient access to care as physicians simply retire or move to other states. But the myriad of challenges thrust upon physicians arising from the pandemic makes this legislation absolutely unconscionable. Many physicians continue to face significant financial challenges in recovering from the huge drop in patient visits that arose from the need for social distancing. A Fair Health study concluded – similar to a MSSNY survey – that patient visits dropped by as much as 80% this past spring. Many physicians received some stimulus payments from the federal government, but these only offset a fraction of what was lost. Indeed, 85% of respondents to a MSSNY survey reported that stimulus funds offset less than half of their losses. Furthermore, an AMA survey reported that during the pandemic the average number of in-person visits to physician offices fell from 97 per week to 57. As a result, physicians averaged a 32% drop in revenue since February, with about one in five doctors seeing revenue drop by 50% or more, while nearly 1/3 saw a 25%-49% decrease. Even as we emerge from the pandemic, physicians face greatly increased overhead costs to increase safety for themselves, their staff and their patients, including excessive personal protective equipment (PPE) costs. *Advancing this legislation threatens access to care to countless numbers of New Yorkers who depend on their physicians for their care.*

This bill would do nothing to address the problems facing our health care system, and would instead make these problems worse by adding substantial new costs. It would make it even more difficult for our health care system to recover from the pandemic. More balance is needed is needed in our civil justice system, rather than make it even more one-sided.

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

Respectfully submitted,

6/2/21

MMA - oppose

MSSNY DIVISION OF GOVERNMENTAL AFFAIRS