

MEDICAL SOCIETY of the STATE OF NEW YORK

Morris M. Auster, Esq.
Senior Vice President /
Chief Legislative Counsel

Division of Governmental Affairs
MEMORANDUM IN SUPPORT

**IN ASSEMBLY JUDICIARY
COMMITTEE**

A.4897 (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.

Physicians in many other states have seen their premiums reduced in the last several years, while the liability premiums for New York physicians continue to rise. Physicians in New York face far greater liability insurance costs and exposure than their colleagues in other states. By way of example, a neurosurgeon practicing on Long Island pays an astounding \$338,252 premium for just one year of insurance coverage and an OB/GYN practicing in the Bronx or Staten Island has a premium of \$186,630. By comparison, an OB-GYN practicing in Los Angeles, CA pays less than \$50,000, about 25% of New York's staggering premiums.

This is not surprising, given that a recent report by Diederich Healthcare showed that once again New York State had far and away the highest number of cumulative medical liability payouts. Claimants in New York were awarded nearly two times more than the state with the next highest amounts, Pennsylvania, and payments in New York far exceeded states such as California and Florida. Moreover, despite New York being one of the largest states in the country by population, it also had the highest per capita liability payouts in the country.

New York is already a huge outlier when it comes to medical malpractice awards! Yet despite being outlier, New York actually enacted legislation in 2017 that expanded the ability of patients to sue their doctors without including any countervailing measure to help contain these costs. It is therefore little wonder that a recent analysis from the website

WalletHub lists New York year after year as one of the worst states 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.

The problems of the medical liability adjudication system do not just impact physicians – they impact the cost of all health care. Several studies have shown that billions of dollars are unnecessarily spent each year due to the practice of defensive medicine, such as unnecessary MRIs, CT scans and specialty referrals. These defensive medicine costs are likely to go up further with the enactment of this new law, as many physicians will believe they have no choice but to recommend patients for additional diagnostic tests or refer to specialists, beyond what they believe is clinically indicated, to better assure the record is “complete” in case they are to be sued many years later. While estimates vary about the cost impact to the health care system, an MIT study reported in a July 2018 *New York Times* article found the possibility of a lawsuit increased the intensity of health care that patients received in the hospital by about 5%.

New York must follow the lead of the many, many other states that have passed legislation to bring down the gargantuan

cost of medical liability insurance. This legislation would enact a number of measures that have been enacted by other states to contain these exorbitant costs, including expert witness reforms, assuring expert physician review before malpractice suits are filed, and reasonable limitations on the non-economic component of an award.



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

3/20/19
MMA – support

Respectfully submitted,

MSSNY DIVISION OF GOVERNMENTAL AFFAIRS