



NEW YORK STATE SOCIETY OF ORTHOPAEDIC SURGEONS

P.O. Box 38004 * ALBANY, NY 12203
(TEL) 518-439-0000 * (FAX) 518-207-0080
WWW.NYSSOS.ORG

Memorandum in Opposition to Legislation A.1056 (Weinstein)

AN ACT to amend the civil practice law and rules, in relation to the limitations of time within which an action for medical, dental, or podiatric malpractice accrues.

The New York State Society of Orthopaedic Surgeons strongly opposes the enactment of A.1056 which would negatively impact the availability and access to care for New York's patients by altering the statute of limitations for medical, dental and podiatric malpractice actions to a "discovery" statute.

Negative Impact on Access

New York experienced critical reforms in the mid 1970's and 1980's that assured the availability and affordability of medical liability insurance at a time when no insurer was willing to write liability policies for physicians. One of the most important provisions of the reforms included a statute of limitations which had been completely eviscerated. The reforms diverted a health care crisis in New York State. However, if enacted, this legislation would essentially reverse these reforms endangering New York's health care system at a time when demand for health care has increased with over 865,000 newly insured New Yorkers.

While approximately 2/3 of all medical liability cases result in no payment to the plaintiff, malpractice payouts in New York State continue to be far out of proportion to the rest of country. Lawsuits can take an average 3.5 years to close from the time it is indexed, and the costs to defend these cases significantly add to the already astronomical cost of medical liability insurance. Studies have shown that this unpredictable adjudication system results in 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. The extensive time required for physicians to be away from the office while defending these cases directly impacts the availability of care for patients. New York needs its physicians to be in their practices, not in the court room.

Untenable Rate Increases

New York physicians pay premium rates that are among the very highest in the country, if not the highest. Even with the rate freezes in 2008 and 2009, medical liability premiums have continued to steadily rise in New York. Many physicians pay liability premiums that exceed \$100,000.

For example, the cost of medical liability coverage for the 2013-14 policy year was:

- \$104,057 – for orthopaedic surgeons practicing in New York and Westchester Counties;
- \$133,932 – for orthopaedic surgeons practicing in Kings and Queens Counties;
- \$143,328 – for orthopaedic surgeons practicing in Bronx and Richmond Counties; and
- \$145,919 – for orthopaedic surgeons practicing in Nassau and Suffolk Counties

If enacted, this legislation takes a significant step backward from the 2008-2009 important freezes and may increase liability rates by almost 16%. Increases in costs like these will only exacerbate the effects of an already stressed delivery system and present practices with undue decisions as to whether or not they can remain open and available to see patients.

NY Lacks a Cap on Non-Economic Damages

Proponents of this measure argue that many other states have incorporated such “date of discovery” exceptions into their statutes of limitation for medical liability actions. However, it must be noted that well over half of these states with “date of discovery” rules also have enacted caps on non-economic damages in medical liability actions, thereby significantly offsetting the enormous costs of this provision. New York does not have any restrictions on how much a person can recover in a medical malpractice lawsuit and is one of only 15 states that does not have medical malpractice damage caps. Moreover, physicians in those states that have “date of discovery” rules, but no caps on damages, pay far less in medical liability insurance premiums than those paid by physicians in New York City, Long Island and the Hudson Valley. The vast majority of these states, furthermore, have an outside limit on the lengths of the discovery toll.

The New York State Society of Orthopaedic Surgeons remains committed to working together towards fair and meaningful liability reform.

Orthopaedic Surgeons Urge the Members of the New York State Legislature to Oppose this Bill