

MEDICAL SOCIETY OF THE STATE OF NEW YORK



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June 16, 2023

Elizabeth Fine, Esq.
Counsel to the Governor
State Capitol, Executive Chamber
Albany, NY 12224

RE: A.6017 (Paulin S.3449 (RIVERA) - AN ACT to amend the public health law, in relation to granting immunity from liability to organizations which establish physician committees

Dear Ms. Fine:

We are writing to you relative to the above-referenced legislation that would clarify that the statutory liability protections offered for physician participants in the Committee for Physicians' Health (CPH) program extend to the organization who sponsors the program as well as to the employees of the sponsoring program acting without malice and within the scope of its functions for the committee. **The Medical Society of the State of New York supports this bill and urges that it be signed into law.**

For over 40 years, the Medical Society's Committee for Physicians' Health (CPH) has successfully facilitated needed referrals for treatment and counseling to numerous New York State physicians who are thought to be suffering from alcoholism, substance abuse, or mental illness. The New York State Legislature and various Governors have worked together to continually re-authorize this valuable program, including most recently a 5-year extension this year, until 2028, as part of the recently enacted 2023-24 State Budget. The program has only grown in its importance given the well-documented increase in stressors to physicians (and other health care providers) that were exacerbated by the Covid-19 pandemic.

Importantly, to encourage physicians with appropriate expertise to actively participate in efforts to rehabilitate physicians suffering from these conditions this statute expressly provides liability protections for those physicians who serve on these committees for actions taken within the scope of their functions for the committee.

However, a 2013 lower court decision (*Christophel v New York-Presbyterian Hosp.* (nycourts.gov)) interpreted these liability protections as not applying to the entity creating this physician committee even though the statute expressly provides liability protection for the physician members serving on this committee. Such a conclusion could not have possibly been contemplated when the law was first enacted. This decision was ultimately reversed on appeal in 2015 and the case was dismissed. However, because the appellate court did not address the issue of the statutory liability protections, there remain serious concerns that, without clarifying the scope of the liability protections offered in this legislation, it could adversely impact the functioning of the program run by the Medical Society and other similar programs in New York State.

Enactment of this legislation will enable physicians in need of treatment and counseling who have not harmed patients to continue to be able to obtain referrals for this needed treatment. In this regard, **the Medical Society of the State of New York supports this legislation urges that it be signed into law.**

Sincerely,

A handwritten signature in black ink that reads "Morris M. Auster". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

MORRIS M. AUSTER, ESQ.