

**MEDICAL SOCIETY**  
of the  
**STATE OF NEW YORK**

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**MEMORANDUM IN OPPOSITION**

**ON ASSEMBLY CODES  
COMMITTEE AGENDA**

**A.9030 (DINOWITZ)**

**IN SENATE JUDICIARY COMMITTEE**

**S.243 (DEFANCISCO)**

**AN ACT to amend the civil practice law and rules, in  
relation to enacting the “patient privacy protection act”**

This bill would amend the civil practice law and rules to prohibit a physician’s defense counsel in a medical liability action from conducting an interview with the plaintiff’s treating physician. **The Medical Society of the State of New York opposes this legislation and urges that it be defeated.**

This legislation would overturn a very important New York State Court Appeals decision that affirmed a long-standing principle in our legal system that no party has a proprietary interest in a particular witness in a civil liability action. Were this decision to be overturned through legislation, it would present significant problems for a physician defendant in seeking to defend himself or herself in a medical liability action by limiting the opportunity to fully examine the plaintiff’s health condition to evaluate the merit of the plaintiff’s claim.

New York’s dysfunctional liability adjudication system is in need of systemic reforms to reduce our huge liability insurance premiums, instead of provisions such as this proposed legislation which would undoubtedly increase them. New York’s health care delivery system already faces severe financial strains due to a myriad of factors. Therefore, it is imperative that the State Legislature take action to assure that physicians and hospitals remain available to deliver the care New Yorkers are expecting to receive, including acting to reduce the choking costs of medical liability insurance.

**Given the extraordinary costs of medical liability insurance that many physicians must pay, combined with the enormous changes in health care delivery and payment that is placing huge new financial pressures on physician practices and hospitals, it is irresponsible to consider legislation at this time that might actually increase these costs.**

The timing of this legislation and other bills to expand tort liability could not be worse. We now have multiple malpractice insurance companies operating in New York State that appear to be facing serious financial jeopardy which can ill-afford to absorb the substantial costs of a brand new cause of action. Moreover, after recently enacting a law that will further drive up our liability premiums, it would be unconscionable for New York State to pass a law that would make these problems even worse.

For many physicians currently struggling to keep their practices afloat due to the enormous changes taking place in health care delivery, this legislation could be the “final straw” to drive them out of practice and into other states. Many New York physicians pay liability premiums that far exceed \$100,000 and some even exceed \$300,000! The cost of medical liability coverage for the 2017-18 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.

**Furthermore, 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 Diederich Healthcare showed that once again New York State had by far and away the highest number cumulative medical liability payouts (over \$700 million), more than two times greater than the state with the next highest amounts, Pennsylvania (\$315 million), and far exceeding states such as California (\$235 million) and Florida (\$223 million). This is not just a product of New York’s population size. New York also had the dubious distinction of having the 2d highest per capita medical liability payouts in the country – behind New Hampshire, where one aberrant case can significantly affect the ratio.

**Therefore, it is little wonder that a recent analysis from the website WalletHub listed New York as the 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.** Legislation such as this will only make this embarrassment even worse!

At the same time physicians face these exorbitant costs, health plans continue to reduce payments to physicians by inappropriately denying, delaying and reducing payment for needed care. Exacerbating these problems are the use of high deductible health insurance plans that significant increase patient out of pocket costs. Furthermore, physicians face substantial new costs as a significant component of their revenue base will be conditioned on participation in often unwieldy value-based payment schemes both in Medicare and in Medicaid, including the need to invest tens of thousands of dollars to implement electronic medical record systems. When putting these factors together with our exorbitant liability costs, it is no surprise that regions across the State of New York face a shortage in on-call emergency specialty care, according to a recent report by HANYS.

This bill would do nothing to address the problems facing our health care system, and would instead make these problems worse. Physicians need liability cost decreases, not increases!

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

Respectfully submitted,

2/26/18

MMA - oppose

**MSSNY DIVISION OF GOVERNMENTAL AFFAIRS**