

MEDICAL SOCIETY
of the
STATE OF NEW YORK

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MEMORANDUM IN OPPOSITION

ON ASSEMBLY CALENDAR

A.2370 (DINOWITZ)

**IN SENATE JUDICIARY
COMMITTEE**

S.6194 (PARKER)

**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 of 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 Court of Appeals decision to be overturned through legislation, it would present significant problems for a physician defendant in seeking to defend him or herself in a medical liability action by unfairly limiting the opportunity to fully examine the plaintiff’s health condition to evaluate the merit of the plaintiff’s claim.

New York’s excessively pro-plaintiff liability adjudication system is in need of systemic reforms to provide more balance to help reduce our ridiculously high liability insurance premiums that are borne by our health care system, instead of proposed legislation such as this which would undoubtedly exacerbate these problems. 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.

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. New York made this problem even worse by enacting legislation in 2017 that expanded the time for lawsuits to be brought against physicians and other health care providers. At a time when many New York physicians pay liability premiums that far exceed \$100,000 and some even exceed \$300,000!

Malpractice payouts in New York State continue to be far out of proportion to the rest of country. This is not surprising, given that a just release report from Leverage Rx (<https://www.leveragerx.com/malpractice-insurance/2019-medical-malpractice-report/>) showed that once again New York State had far and away the highest number of cumulative medical liability payouts of any state in New York, and that this cumulative number had increased by 11% from 2017 to 2018. 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, demonstrating once again why New York is considered to be the lawsuit capitol of the country, New York had the highest per capita medical liability payment as well, averaging over \$35 per New York resident, more than 20% higher than the second highest state, New Jersey.

Therefore, it is little wonder that a recent analysis from the website WalletHub AGAIN has listed New York as the worst state 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. 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, and the extraordinary internal costs that physicians must expand to obtain, implement and update 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 by adding substantial new costs. More balance 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,

6/17/19
MMA - oppose

MSSNY DIVISION OF GOVERNMENTAL AFFAIRS