

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

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*Division of Governmental Affairs*

**MEMORANDUM IN OPPOSITION**

**ON ASSEMBLY FLOOR CALENDAR      A.2372 (DINOWITZ)**

**IN SENATE JUDICIARY COMMITTEE      S.6081 (HOYLMAN)**

**AN ACT to amend the general obligations law, in relation  
to settlements in tort actions; and to repeal certain  
provisions of law relating thereto**

This measure would repeal current §15-108 of the General Obligations Law and re-enact a new §15-108 that would encourage the settlement of cases by requiring the non-settling co-defendant in a tort action to choose whether to reduce his/her liability exposure by the stated settlement amount or the settling tortfeasor's equitable share prior to the first opening statement of the trial. Because this legislation creates the possibility that payouts will exceed an actual jury verdict, which in turn could cause physician medical liability insurance premiums to increase at a time when no further increases can be tolerated, **MSSNY opposes this legislation.**

Under current law, the plaintiff is never entitled to receive more than what has been awarded to him/her by a jury. A jury verdict is, therefore, reduced by the greater of the dollars paid by settling defendants or the share of fault allocated by the jury to a defendant who has already settled. This bill fundamentally departs from these long-standing principles by permitting the plaintiff the potential to be unjustly enriched by collecting more than the jury ultimately determined the non-settling defendants' equitable share to be if the settling defendant settles for an amount that exceeds their equitable share of the award.

Take, for example, a case with two defendants, where defendant A agrees to settle with the plaintiff for \$80,000. The case goes to trial, where the verdict is found for the plaintiff for \$100,000, with A and B each found 50% responsible. Under current law, even though defendant B would have been obligated to pay \$50,000 if defendant A did not settle, under current law, defendant B is permitted to discharge their legal obligation to the plaintiff by paying \$20,000 because defendant A has settled for \$80,000 (\$100,000 - \$80,000). Under this proposal, defendant B would be obligated pre-trial to "roll the dice" and guess whether it is better for them to be responsible for their proportionate share or reduce their obligation by the settled amount. Therefore, there is a very good chance that defendant B would have to unnecessarily pay significantly more. Defendant B could be obligated to pay \$50,000 (instead of the \$20,000 under current law), meaning that the plaintiff would be unjustly enriched by \$30,000.

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.

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 even more costs. More balance is needed 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,

5/28/19

**MMA - oppose**

**MSSNY DIVISION OF GOVERNMENTAL AFFAIRS**