

MEDICAL SOCIETY of the STATE OF NEW YORK

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MEMORANDUM IN OPPOSITION

**IN ASSEMBLY RULES
COMMITTEE**

A.5612 (WEINSTEIN)

**IN SENATE FINANCE
COMMITTEE**

S. 4006 (HOYLMAN)

AN ACT to amend to amend the estates, powers and trusts law, in relation to payment and distribution of damages in wrongful death actions

This measure would amend the estates, powers and trusts law, to authorize an award in a wrongful death action to include compensation for grief or anguish, the loss of love and companionship, loss of services and support and the loss of nurture and guidance. This bill will vastly increase the amount of recoverable damages in these cases far beyond the level and intent of the law when it was first enacted and as it has been applied for generations. **In light of the already outrageously high medical liability insurance costs facing physicians and hospitals, and the threat to patient access to care this poses if left unaddressed, MSSNY strongly opposes this measure and urges that it be defeated.**

The law currently allows the decedent's estate and family members to bring separate actions - which inevitably become linked - to hold tortfeasors accountable for both economic damages and the pain and suffering caused to the decedent. The decedent's estate sues for both the decedent's economic losses and damages for the pain and suffering of the decedent. These pain and suffering damages are awarded to the decedent's estate when the jury determines that the decedent experienced pain prior to death. In virtually all cases, it is the decedent's family members who are the beneficiaries of these awards through their participation in the decedent's estate. On top of this, family members can bring their own suit for economic loss - which includes the loss of consortium and damages for custodial care.

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 would actually significantly increase these costs. Indeed, one just released actuarial study has estimated that this single bill could increase medical liability premiums by 47%. That is simply not assumable by physicians in today's already difficult practice environment.

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,

6/5/19

MMA - oppose

MSSNY DIVISION OF GOVERNMENTAL AFFAIRS