

MEDICAL SOCIETY of the STATE OF NEW YORK

Liz Dears, Esq.
Senior Vice President/
Chief Legislative Counsel

Division of Governmental Affairs
MEMORANDUM IN OPPOSITION

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A.2365 (WEINSTEIN)

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S.1046 (DEFRANCISCO)

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 was issued in 2007 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 physicians already pay extraordinary costs for obtaining medical liability insurance, costs that far exceed what physicians in virtually all other states must pay. Therefore, it is irresponsible to advance a "stand-alone" measure that would actually make this problem even worse without enacting other measures to fix the failures of our medical liability adjudication system, to bring down these extraordinary costs.

New York physicians, particularly those who practice in the NYC-metropolitan region, pay medical liability premiums that are far more than most of their colleagues across the country. For example, for just a single year of coverage, the cost of medical liability coverage for the 2012-13 policy year was:

- \$315,524 for a neurosurgeon in Nassau and Suffolk counties;
- \$183,247 for an Ob-GYN in Bronx and Richmond counties;
- \$111,989 for a general surgeon in Kings and Queens counties; and
- \$109,019 for an vascular surgeon or cardiac surgeon in Bronx and Richmond counties

Moreover, a study released by Diedrich Health Care detailed that medical liability payments in New York State continue to be far out of proportion to the rest of the country. While the report shows an improving medical liability cost climate across the country, it also shows that the medical liability cost problem continues to get worse in New York State. As you will note, according to the report, medical liability payments in New York State in 2012 totaled \$763 million, an amount that is nearly 13% higher than the amount of medical liability payments made in 2011 (\$677 million). Furthermore, New York's total was more than two times higher than the State with the second highest amount, Pennsylvania (\$316 million), and three times more total medical liability payments than California (\$223 million), a state with a significantly larger number of physicians.

As New York physicians continue to drown in a sea of overwhelming overhead costs, other states are passing measures to assure patients can continue to access necessary physician care. For example, in just the last year, three more states, North Carolina, Oklahoma and Tennessee, enacted laws to provide meaningful limits on non-economic awards in medical liability actions, bringing to over 30 the number of states who have enacted limitations on non-economic damages in medical liability actions. The time for change is now!

The problems of the medical liability adjudication system do not just impact physicians – it impacts the cost of all health care. Studies have shown that billions of dollars in health care costs are unnecessarily spent each year due to the practice of “defensive medicine”, such as unnecessary MRIs, CT scans and specialty referrals. The costs of this phenomenon vary based upon the studies, but are undoubtedly immensely significant:

- A 2010 study by Dr. Michelle Mello of the Harvard Public School of Health reported in *Health Affairs* concluded that defensive medicine cost the healthcare system \$45.6 billion annually;
- A 2009 study by the Congressional Budget Office (CBO) showed that enactment of medical liability reforms would reduce the federal deficit by \$54 billion over 10 years largely due to reducing defensive medicine;
- A 2008 study by the Massachusetts Medical Society of eight specialties indicated that \$1.4 billion was spent annually in just the state of Massachusetts alone for defensive medicine;

New York State physicians have extraordinary overhead costs. These costs, combined with ongoing efforts of market-dominating health insurers to constrain payment for patient care, make New York State an increasingly unattractive state in which to practice medicine. To reduce the huge health care costs in our State Budget which are attributable to medical liability costs, we urge that the medical liability reform be enacted. Unfortunately, this bill would do nothing to address these 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 respectfully urge that this measure be defeated.

Respectfully submitted,

LIZ DEARS, ESQ.

**6/4/13
MMA – oppose**