

**AMERICAN COLLEGE OF OBSTETRICIANS & GYNECOLOGISTS, DISTRICT 2
MEDICAL SOCIETY OF THE STATE OF NEW YORK
NEW YORK CHAPTER AMERICAN COLLEGE OF CARDIOLOGY
NEW YORK AMERICAN COLLEGE OF EMERGENCY PHYSICIANS
NEW YORK CHAPTER AMERICAN COLLEGE OF PHYSICIANS SERVICES
NEW YORK CHAPTER, AMERICAN COLLEGE OF SURGEONS
NEW YORK STATE ACADEMY OF FAMILY PHYSICIANS
NEW YORK STATE NEUROLOGICAL SOCIETY
NEW YORK STATE NEUROSURGICAL SOCIETY
NEW YORK STATE OPHTHALMOLOGICAL SOCIETY
NEW YORK STATE OSTEOPATHIC MEDICAL SOCIETY
NEW YORK STATE PSYCHIATRIC ASSOCIATION
NEW YORK STATE RADIOLOGICAL SOCIETY
NEW YORK STATE SOCIETY OF DERMATOLOGY & DERMATOLOGICAL SURGERY
NEW YORK STATE SOCIETY OF ANESTHESIOLOGISTS
NEW YORK STATE SOCIETY OF PLASTIC SURGEONS
NEW YORK STATE SOCIETY OF ORTHOPEDIC SURGEONS
NEW YORK STATE SOCIETY OF OTOLARYNGOLOGY – HEAD & NECK SURGERY**

July 15, 2024

Elizabeth Fine
Counsel to the Governor
State Capitol, Executive Chamber
Albany, NY 12224

RE: A.9232-B/S.8485-B – AN ACT to amend the Estates, Powers, and Trust Law, in relation to the payment of distribution of damages in wrongful death actions.

Dear Ms. Fine:

Our respective associations, which together represent tens of thousands of physicians across the state of New York providing care to hundreds of thousands of patients each year, are writing to you to oppose the above-referenced legislation that would exponentially expand damages awardable in wrongful death actions.

We thank Governor Hochul very much for her vetoes of previous versions of this legislation in December 2023 and January 2023. The changes from previous vetoed versions have not changed the fundamental problem with this legislation - the staggering increase in liability insurance costs on top of our already unaffordable liability premiums without the inclusion of any balancing measure to contain these costs. Without such balance, this legislation will undoubtedly exacerbate the already challenging patient access to care issues we face in regions across the State of New York, particularly in underserved areas that face the greatest shortages.

As you know, previous iterations of this legislation were vetoed for a number of reasons, including concerns that the bill "would increase already high insurance burdens on families and small businesses and further strain already-distressed healthcare workers and institutions" which would be "particularly challenging for struggling hospitals in underserved communities." Her second veto message specifically articulated her concerns with the

“significant unintended consequences” of this proposal, including the impact to our community healthcare infrastructure because of the likely huge increase in liability costs it would face through these expanded liability awards.

These profound concerns about the adverse impact on our already fragile health care system have not been addressed in the latest attempt to pass this legislation. An actuarial study of the previously vetoed legislation concluded that the legislation was expected to increase New York’s already outrageously high medical liability premiums by nearly 40%.

It is important to note that the actuarial study that concluded this enormous premium impact was based almost entirely upon the component of the bill that would enable the awarding of damages for “grief and anguish”, as the current legislation continues to do, not the sections that have been revised from the bills that were previously vetoed.

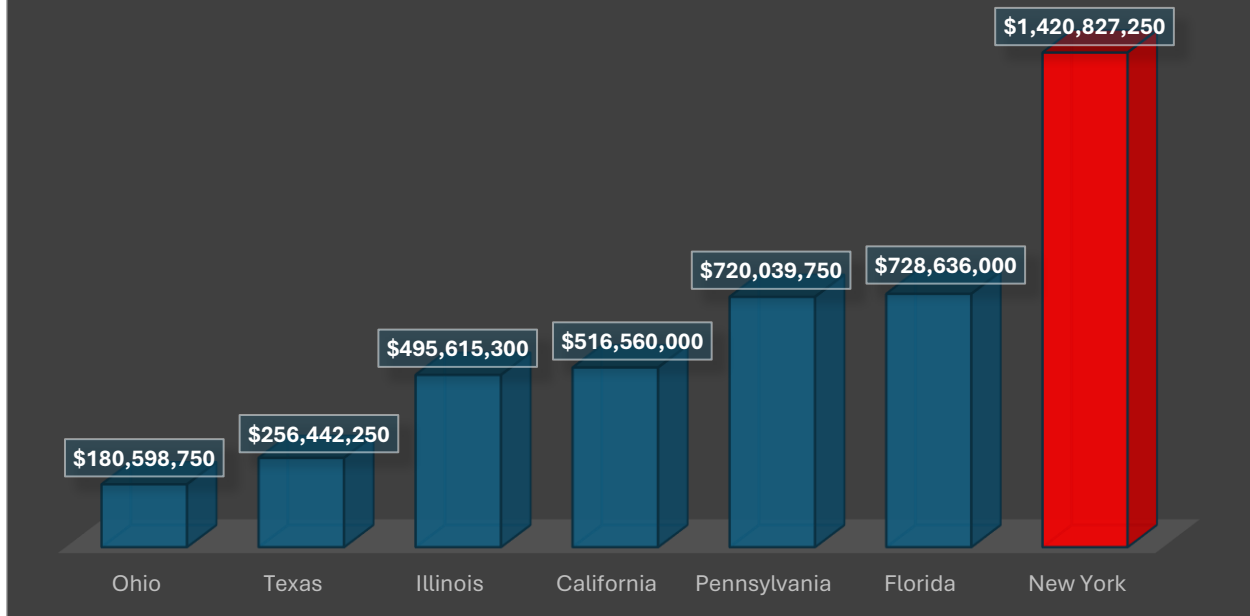
These extraordinary increases would be on top of the already exorbitant premium costs New York’s physicians and hospitals continue to incur, with many specialties across the New York City and Long Island region of the state already paying hundreds of thousands of dollars per year for their liability coverage. These costs are simply not assumable by most physician practices.

New York already has a notorious history as being one the worst states in the country to deliver patient care ([Best & Worst States for Doctors \(wallethub.com\)](https://www.wallethub.com/insights/best-worst-states-for-doctors)), in large part because its liability costs and risks far exceed all other states. While some advocates claim that New York’s existing wrongful death law is an outlier compared to other states’ laws, what they do not mention is that many other states across the country have laws that limit medical malpractice damages that can be awarded to a successful plaintiff. New York has no such limits, so the comparison is not a fair one since those states with more generous wrongful death statutes also place an upper limit on the total amount of damages awarded in the wrongful death cases brought in that state.

For example, studies from Diederich Healthcare showed that from 2019-2021, New York once again had the highest cumulative medical liability payouts of any state in the country, \$1.4 billion, nearly twice as much as the 2^d highest state (Florida) and the 3rd highest state (Pennsylvania). It also had the highest per capita liability payment, 33% more than the 2nd highest state (Pennsylvania). It also far exceeds other large states regularly competing for physicians such as California and Texas.

TOTAL LIABILITY PAYOUTS 2019-2021

Source: Diederich Healthcare



It is astounding that, as we recently completed a state Budget cycle where there was much emphasis placed on addressing gaps in patient access, that a measure is again being considered that would undermine the significant new investments contained in this Budget. This bill would do nothing to address the problems facing New York's healthcare system and, instead, make these problems far worse by adding substantial new costs at a time when they can least afford to incur them.

We reiterate that the latest version of this legislation has not addressed the enormous patient access to care challenges that you identified as a possible outcome in your previous veto messages. Therefore, the above-listed physician advocacy associations again respectfully request that this legislation also be vetoed. Instead, we urge that that comprehensive legislation be developed that would both address the concerns of grieving families while also taking steps to reduce excessive liability costs, so that we may protect patient access to an already strained health care system. We cannot enact liability reform on a piecemeal basis.

Thank you very much for your consideration of our profound concerns.

cc: Bella Satra, Esq., Assistant Counsel to the Governor