



AMERICAN SOCIETY OF  
PLASTIC SURGEONS®



THE PLASTIC SURGERY  
FOUNDATION®

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May 15, 2017

New York State Legislature  
Assembly Codes Committee  
Joseph R. Lentol, *Chair*  
LOB 630  
Albany, NY 12248

**RE: Opposing A 3339 – Regarding the Date of Discovery Rule**

Dear Committee Members:

On behalf of the American Society of Plastic Surgeons (ASPS), we request that you oppose A 3339 which, if enacted, will drive up the cost of and reduce access to health care. Founded in 1931, ASPS is the largest association of plastic surgeons in the world, representing over 7,000 members and approximately 500 New Yorkers.

ASPS promotes not only the highest quality in patient care, but also in professional and ethical standards. Because quality of care and the patient experience are of prime importance to our members, we understand the importance of compensating patients injured due to negligence. However, the troubling reality is that most medical malpractice claims are frivolous. Because this legislation will radically increase the statute of limitations for medical, dental or podiatric malpractice through a discovery of injury rule, it will also radically increase the length of time during which such frivolous suits can be brought.

Data from PIAA, an insurance industry trade association of medical liability insurers, shows that 65% of all claims that closed in 2013 were dropped, dismissed or withdrawn. 91% of the remaining cases were won by the physician defendant. In light of the sad truth that the majority of medical malpractice cases filed are baseless, imposing additional costs on the healthcare delivery system is a questionable policy decision.

As you know, the overhead that physicians pay for medical malpractice insurance is staggeringly high. Moreover, New York physicians pay premium rates that are already among the very highest in the country, if not the highest. New York lawmakers have tried to address these concerns by freezing medical liability premium rates in 2008 and 2009. However, even with these rate freezes, medical liability premiums have continued to steadily rise in New York. Many physicians pay liability premiums that far exceed \$100,000 and in some cases even exceed \$300,000. A study of similar legislation indicated that if this bill were to be enacted, medical liability premiums would need to be increased by nearly 15% or more.

The current statute of limitations was originally enacted in order to answer a medical malpractice crisis that occurred in the seventies and eighties. Rolling back this important reform will propel New York back towards another crisis, this time in the form of access to care. The cost of health care delivery is increasing every day. Overhead costs and demands on the resources of medical practices are rising due to: 1) skyrocketing medical liability premiums; 2) declining insurer payments; and 3) increasing government mandates. In fact, a recent study in Health Affairs demonstrates that physicians are spending more than \$15 billion each year on quality reporting. Simultaneously, the demand for health care services continues

to increase due to the aging of the American population and the enactment of federal health care reform.

Taken together, these trends are making the practice of medicine increasingly unattractive. We simply cannot afford to be driving away potential new providers as demands already outpace our system's capacity. Controlling the cost of medical liability insurance is essential for the health care delivery system to be able to meet the ever growing needs of the citizens of New York.

The inefficiencies of our current medical liability system, escalating and unpredictable awards, and the high cost of defending against lawsuits, including those without merit, contribute to the increase in medical liability insurance premiums, and add billions of dollars to the cost of health care in the United States each year. Reforming this costly, inefficient, and unfair liability system will result in savings for New York taxpayers while protecting patient access to care. Some states have implemented medical liability reforms that have positively impacted access to health care for patients, reduced runaway insurance premiums, and created a stable, predictable liability system. These reforms include: placing reasonable limits on non-economic damages; identifying and assuring qualified expert witnesses and strengthening the weak certificate of merit requirement.

The American Society of Plastic Surgeons appreciates this opportunity to provide comments on A 3339, and respectfully requests that you oppose this bill. Please do not hesitate to contact Patrick Hermes, Senior Manager of Advocacy and Government Affairs, with any questions at [Phermes@plasticsurgery.org](mailto:Phermes@plasticsurgery.org) or (847) 228-3331.

Sincerely,

A handwritten signature in black ink that reads "Debra Johnson MD". The signature is written in a cursive, flowing style.

Debra Johnson, MD  
President, American Society of Plastic Surgeons