

June 19, 2017

New York State Assembly
The Honorable Carl E. Heastie, *Speaker of the House*
LOB 932
Albany, NY 12248

RE: **Oppose Legislation that will Exacerbate Defensive Medicine**

Dear Speaker Heastie and Honorable Members of the New York State Assembly:

On behalf of the New York State Society of Plastic Surgeons (NYSSPS) and the American Society of Plastic Surgeons (ASPS), who collectively represent 586 board-certified plastic surgeons in the state, we strongly urge you to oppose the following package of bills which, if enacted, will compromise accessibility to cost effective, quality care:

- Statute of Limitations S.4080 (DeFrancisco) /A.3339 (Weinstein)
Alters the statute of limitations for medical malpractice cases by converting it to a “discovery” statute and extending the statute of limitations
- Contingency Fees S6738 (DeFrancisco)/A.8466 Weinstein
Eliminates the statutory cap on attorney contingency fees in medical, dental or podiatric malpractice judgments or settlements
- Arons Decision S.243 (DeFrancisco)/A.1404 (Weinstein)
Prohibits defense counsel in a malpractice lawsuit from privately interviewing a plaintiff’s treating physicians.
- Pre-Trial Liability Determination A.1415 (Weinstein)
Allows plaintiffs in certain cases to collect more than the amount awarded by a jury
- Wrongful Death S.411 (DeFrancisco)/A.1386 (Weinstein)
Would allow damages to be awarded in a wrongful death suit for the emotional pain and suffering of those who have been affected by a death. Current law allows damages to be recovered for the pain and suffering of the injured patient, and the funds go to the estate if the patient is deceased.

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. These above mentioned bills will only serve to exacerbate the current deficiencies in the system. Rather, we urge the members of the legislature to focus on comprehensive reforms that will reduce defensive medicine and create a more stable and friendly environment to practice.

ASPS and NYSSPS promote 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 due process as well as fairly compensating patients injured due to negligence. However, the troubling reality is that most medical malpractice claims are frivolous. 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.

Furthermore, the overhead that physicians pay for medical malpractice insurance is staggeringly high. 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. These bills as proposed would roll back many of the important reforms that have kept New York from reaching another crisis.

Taken together, these trends are making the practice of medicine increasingly unattractive. New York was recently ranked as the worst state in the nation in which to practice medicine, in large part to its huge liability costs as compared to most other states. 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.

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 have expanded certificate of merit regulations to ensure the expert signing the affidavit qualifies as an expert in the same medical field in which the defendant health care provider practices; established a specific set of standards of expertise and knowledge for experts to qualify as witnesses; and provided reasonable limits on non-economic damages.

The American Society of Plastic Surgeons and New York State Society of Plastic Surgeons appreciate this opportunity to provide comments on these bills, and respectfully request that you oppose them. Please do not hesitate to contact Patrick Hermes, Senior Manager of Advocacy and Government Affairs, with any questions at Phermes@plasticsurgery.org or (847) 228-3331.

Sincerely,



Debra Johnson, MD
President, American Society of Plastic Surgeons



Kaveh Alizadeh, MD
President, New York State Society of Plastic Surgeons

cc: Members of the New York State Assembly