

July 16, 2022

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

RE: S.74-A (HOYLMAN)/A.6770 (WEINSTEIN) - AN ACT to amend to amend the estates, powers and trusts law, in relation to payment and 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 New Yorkers each year, urge you to recommend a veto of the above referenced legislation that would exponentially expand damages and lawsuits for “wrongful death” by including compensation for grief or anguish. The explosive increase in liability costs that expansions like this bill would necessitate would cause significant damage to our healthcare safety net, driving physicians out of state, and exacerbate the already challenging patient access to care issues we face.

One recent actuarial study has estimated that this legislation could increase New York’s already outrageously high medical liability premiums by nearly 40%. This extraordinary increase 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. If that were not problematic already, these costs are likely to rise for many physicians across the state for the 2022-23 policy year based upon a determination by the New York Department of Financial Services. If the actuarial assessment provided is accurate, S.74-A/A.6770 would necessitate a premium increase of over \$76,000 for a Long Island OB-GYN and over \$61,000 for a Long Island surgeon.

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 have claimed that New York’s existing wrongful death law is an outlier compared to other states’ laws, what they do not mention is that most of these other states also have comprehensive provisions to contain excessive medical liability insurance costs, including limits on damages. New York has no such law, which is why our medical liability insurance and payout costs far exceed every other state in the country.

A recent report from Diederich Healthcare showed that in 2019, New York once again had the highest cumulative medical liability payouts of any state in the country, 68% more than the state with the second highest amount (Pennsylvania). It also had the highest per capita liability payment, 10% more than the 2nd highest state (Massachusetts). It also far exceeds other large states regularly competing for physicians such as California and Texas.

Even under ordinary circumstances, this bill would have an absolutely devastating impact on our health care system and jeopardize patient access to care as physicians simply retire or move to other states. But the myriad of challenges thrust upon physicians and other

providers of health care arising from the pandemic makes this legislation absolutely unconscionable. Many physicians continue to face significant financial challenges in recovering from the huge drop in patient visits that arose from the need for social distancing. An AMA survey reported that during the height of the pandemic the average number of in-person visits to physician offices fell from 97 per week to 57. As a result, physicians averaged a 32% drop in revenue for most of 2020, with about one in five doctors seeing revenue drop by 50% or more, while nearly 1/3 saw a 25%-49% decrease. Even as we emerge from the pandemic, physicians face greatly increased overhead costs to increase safety for themselves, their staff and their patients, including excessive personal protective equipment (PPE) costs. Enacting this legislation threatens access to care to countless numbers of New Yorkers who depend on their physicians for their care.

We appreciate that last year Governor Hochul recognized these concerns in vetoing another trial lawyer-backed bill (S.473/A.2199) to permit the awarding of pre-judgment interest in certain instances, because of concerns of imposing premium increase on health care providers and municipalities at a time when their Budgets are under severe constraint due to managing the Covid pandemic. Specifically, the veto message noted:

"This bill would have a significant negative impact on defendants in litigation including hospitals, State government and local governments, all of which are already under a great amount of strain due to COVID-19... I cannot impose this burden on local municipalities and health care providers at this time. Accordingly, I am constrained to veto this bill.

As noted above, S.74-A/A.6770 will have an exponentially larger adverse impact on insurance premiums than what would have been triggered by the provisions of S.473/A.2199. Accordingly, we believe that Governor Hochul's words from the December 2021 veto message are even more relevant now. Our hospitals, community physicians, clinics, counties and cities – all of whom also oppose this bill - cannot afford the extraordinary new liability premiums and costs this legislation would necessitate. It is simply untenable.

In sum, 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 at a time when they can least afford to incur them. It would make it even more difficult for our health care system to recover from the pandemic.

To preserve access to our healthcare safety net, the Governor must veto this legislation and bring together various parties to discuss how our liability laws can be equitably reformed while preserving access to New York's magnificent but overburdened health care system.

**AMERICAN COLLEGE OF OBSTETRICIANS & GYNECONOLGISTS, DISTRICT 2
MEDICAL SOCIETY OF THE STATE OF NEW YORK
NEW YORK STATE ACADEMY OF FAMILY PHYSICIANS**