



July 19, 2017

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

I write to you to respectfully request that you **veto S.6800 (DeFrancisco)** which will soon be sent to your desk for executive action. This bill would change the statute of limitations for instances of medical, dental, and podiatric malpractice from two and a half years from the date of alleged injury to either: 1) two and a half years from the date the patient discovers or should have reasonably discovered a failure to diagnose cancer or a malignant tumor; or 2) the date of the last treatment where there is continuous care for the same illness, injury or condition which gave rise to the accrual of an action.

New York already has the highest per-capita medical liability payouts in the country. Nearly 20% of all the medical liability payouts in the US are paid in New York—a number equivalent to more than the total medical liability payouts for the entire Midwest.¹ This bill would only make things worse. The enactment of this legislation would increase the cost of medical liability insurance for doctors and hospitals and have a detrimental impact on New Yorkers' access to care, especially when it comes to women seeking breast cancer screenings. In fact, nearly one in three radiologists contemplate avoiding mammography due to fear of litigation, a figure that will likely increase should this legislation be enacted.² This legislation would encourage resource-wasting “defensive medicine” and further drive medical professionals to other states. Medscape and Wallet Hub already rank New York as the worst state for physicians to practice each year.

Given the current liability climate and instability of the state's medical malpractice system, this legislation should not be signed. Rather, your office and the legislature should work with all stakeholders to develop comprehensive reform before extending the statute of limitations to allow patients to file claims for

¹ Diederich Healthcare. “2017 Medical Malpractice Payout Analysis.” <http://www.diederichhealthcare.com/the-standard/2017-medical-malpractice-payout-analysis/>. February, 2017.

² Elmore JG, Tapline SH, Barlow WE, et al. “Does litigation influence medical malpractice?” Radiological Society of North America. <https://doi.org/10.1148/radiol.2361040512>. 2005.

medical malpractice. Indeed, twenty-eight of the states that have exceptions in their statute of limitations for date of discovery as described in the bill have also enacted legislation to cap non-economic damages.

A measure similar to the one recommended by the Medicaid Redesign Team in 2011, as endorsed by your office and included in that year's executive budget proposal, to cap non-economic damages at \$250,000 should be approved before contemplating any extension of the statute of limitations. At the time, the Medicaid Redesign Team estimated that such a cap could reduce medical liability insurance premiums by 24% statewide.³

For the reasons listed here, the Lawsuit Reform Alliance of New York strongly urges you to veto the aforementioned legislation and work toward developing a system that balances the needs of all impacted parties.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. B. Stebbins', written in a cursive style.

Thomas B. Stebbins
Executive Director
Lawsuit Reform Alliance of New York

CC: Alphonso B. David, Counsel to the Governor

³ Precious, Tom. "Hospital tax tops panel's list of reforms State team to propose Medicaid changes." The Buffalo News. <http://buffalonews.com/2011/02/18/hospital-tax-tops-panels-list-of-reforms-state-team-to-propose-medicaid-changes/>. February, 2011.