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Elizabeth Fine, Esq.
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State Capitol, Executive Chamber
Albany, New York 12224

RE: A.2199/S.473 - AN ACT to amend the civil practice law and rules, in relation to interest upon judgment
A.8040/A.7093 - AN ACT to amend the civil practice law and rules, in relation to admissibility of an opposing party's statement
A.8041/S.7052 - AN ACT to amend the civil practice law and rules, in relation to insurance disclosures

Dear Ms. Fine,

On behalf of our over 20,000 physician, resident and student members, we are writing to you to urge you that the Governor veto each of the above-referenced trio of bills passed at the end of the legislative session that if signed could have the effect of even further significantly disadvantaging defendants in litigation in New York State, including physicians and hospitals defending against malpractice claims. While these bills do not have the same gargantuan premium impact as other legislation sought by the trial bar that would expand lawsuits and awards against our state's dedicated health care professionals, they would continue to make New York's already dysfunctional medical liability adjudication system even more unbalanced and add to New York's notorious "outlier" status with regard to excessive medical liability costs.

New York's excessively pro-plaintiff liability adjudication system is in need of systemic reforms to provide more balance to help reduce our ridiculously high liability insurance premiums that are borne by our health care system, instead of proposed legislation such as these bills which would undoubtedly exacerbate these problems. New York's health care delivery system had already been facing severe financial strains due to a myriad of factors prior to the onset of the pandemic. These problems have been made even worse over the last year due to the significant drop in patient visits as a result of restrictions on elective procedures and patient reducing their visits out of their homes. While the easing of the crisis has enabled some hospitals and health care providers to begin to somewhat recover financially, it is imperative that we not make these problems any worse, so as to ensure that physicians and hospitals remain available to deliver the care New Yorkers are expecting to receive, including acting to reduce the choking costs of medical liability insurance.

New York's physicians and hospitals continue to incur the highest liability awards and costs in the country, far surpassing more populous states such as California and Texas. 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). These disturbing statistics demonstrate a major reason why New York once again received the dubious distinction as being one of the worst states in the country to be a doctor. **Therefore, it is little wonder that New York is regularly listed as one of the worst states in the country in which to be a doctor, in large part due to its overwhelming liability exposure as compared to other states in the country.**

A.2199/S.473 would require a defendant in a personal injury action, who receives a favorable ruling in trial court denying summary judgment to the plaintiff but then loses an appeal of the summary judgment denial, to pay interest from the date of the denial of the summary judgment motion. This bill fails to address the hardship faced by defendants who would be held financially responsible for litigation delays they do not have any control over and have not caused. Specifically, an appeal, especially in the severely backlogged Second Department, can take a minimum of several months and more commonly a year or a bit over one year with some appeals taking two or more years. Under this legislation, the current excessively high interest rate of 9% applicable to New York judgments would apply for the entire time it takes to complete the appeal process. We appreciate that the Governor has advanced legislation in previous Executive Budgets to reduce this excessive interest rate, and as such believe you would understand why any proposal that would further expand the application of this interest rate at a time when is decrease is desperately needed would be bad public policy.

A.8040/S.7093 would disrupt decades of legal precedent relative to the hearsay rule by permitting the introduction of a statement made by an employee who does not have "speaking authority". These statements have been appropriately precluded under the rationale that they are unreliable. It would be completely unjust for a physician or a hospital to be forced to confront an unqualified admission from a staff member such as a clerk or facility maintenance employee relative to a patient's medical treatment. This bill would essentially make all hearsay admissions made by an employee admissible, so long as they were within the scope of employment and during the time of employment. The longstanding existing law should not be changed because it will force health care providers to inappropriately confront statements that are misconstrued, unreliable, untrue, and ultimately prejudicial. Moreover, the bill is vague as to whom or what constitutes an "agent" or "employee". Physicians and hospitals have many agents and employees and this broad definition will inevitably lead to abuse in its application. Certainly, the vagueness of this provision will lead to an increase in conflict and inflate costs for all parties involved in malpractice litigation.

A.8041/S.7056 would impose excessive insurance disclosure requirements on defendants during litigation and place an enormous new risk on defendants for sanctions if these excessive demands cannot be met. For example, subparagraph (2) of the bill imposes upon the defendant an ongoing duty to update such information throughout the litigation. This amounts to essentially an impossible duty upon the defendant. Most defendants do not have the ability to analyze all of their coverages and determine the existence or order of coverage within 60 days of filing their answer in a lawsuit, and within 30 days of any changes in coverage being effectuated. Moreover, this bill requires disclosure of the insurance application itself. This is not information that is contained in the insurance agreement and would result in de facto "free" discovery for the plaintiff in determining if the defendant has assets outside of an insurance agreement to satisfy a potential judgment. This proposal seems designed to unfairly harass defendants and create pressure to settle a claim, even if it is without any merit.

In summary, these bills taken together or considered individually would do nothing to address the problems facing our health care system, as well as our deeply dysfunctional medical liability adjudication system. Instead, it would make these problems even worse by adding substantial new costs without any attempt to provide more balance to this deeply troubled system. We need liability reform to make our adjudication system more balanced

and to bring down costs, not new measures which make our system even more one-sided. Certainly, if there is a compelling public policy reason for enacting any of these measures, it should be done in the context of a balanced reform initiative that address legitimate problems on both sides. Since these bills do not do that, accordingly, we request that each of these bills be vetoed.

Thank you very much for your consideration of our concerns.

Sincerely,

MORRIS M. AUSTER

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