

**AMERICAN COLLEGE OF OBSTETRICIANS & GYNECOLOGISTS, DISTRICT II
MEDICAL SOCIETY OF THE STATE OF NEW YORK
NEW YORK AMERICAN COLLEGE OF EMERGENCY PHYSICIANS
NEW YORK CHAPTER, AMERICAN COLLEGE OF CARDIOLOGY
NEW YORK CHAPTER AMERICAN COLLEGE OF PHYSICIANS SERVICES
NEW YORK CHAPTER AMERICAN COLLEGE OF SURGEONS
NEW YORK STATE ACADEMY OF FAMILY PHYSICIANS
NYS AMERICAN ACADEMY OF PEDIATRICS, CHAPTERS 1, 2 & 3
NEW YORK STATE NEUROLOGICAL SOCIETY
NEW YORK STATE NEUROSURGICAL SOCIETY
NEW YORK STATE OPHTHALMOLOGICAL SOCIETY
NEW YORK STATE OSTEOPATHIC MEDICAL SOCIETY
NEW YORK STATE PSYCHIATRIC ASSOCIATION
NEW YORK STATE RADIOLOGICAL SOCIETY
NEW YORK STATE SOCIETY OF ANESTHESIOLOGISTS
NEW YORK STATE SOCIETY OF DERMATOLOGY & DERMATOLOGICAL SURGERY
NEW YORK STATE SOCIETY OF OTOLARYNGOLOGY-HEAD AND NECK SURGERY
NEW YORK STATE SOCIETY OF ORTHOPEDIC SURGEONS
NEW YORK STATE SOCIETY OF PLASTIC SURGEONS
NORTH EAST REGIONAL URGENT CARE ASSOCIATION**

July 10, 2023

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

RE: A.6698/S.6636 - AN ACT to amend the estates, powers and trust law, in relation to payment and distribution of damages in wrongful death actions

Dear Elizabeth:

Our respective organizations, which together represent tens of thousands of physicians across the State of New York delivering care to millions of patients each year, urge you to veto A.6698/S.6636, legislation that would exponentially expand damages awardable in "wrongful death" actions.

We are grateful that Governor Hochul vetoed substantially similar legislation earlier this year. We acknowledge that A.6698/S.6636 made some small changes, such as limiting the parties who could sue for these expanded damages and slightly reducing the expanded statute of limitations. However, these changes did NOT address our fundamental concern with the bill she vetoed, which is the staggering increase in liability costs on top of our already unaffordable liability costs physicians and hospitals already face. These new costs 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.

As you know, Governor Hochul's veto message on S.74-A articulated several concerns with the bill, including that it *"would increase already high insurance burdens on families and small businesses and further strain already-distressed healthcare workers and institutions"* which would be *"particularly challenging for struggling hospitals in underserved communities"*, as well as that the bill *"passed without a serious evaluation of the impact of these massive changes on the economy, small businesses, individuals, and the State's complex health care system."*

The new bill does not address these fundamental concerns about the severe adverse impact of this legislation on our healthcare system or, for that matter, any other industry or municipality.

A July 2022 actuarial study of the vetoed legislation concluded that legislation was expected to increase New York's already outrageously high medical liability premiums by nearly 40%. It is important to note that the actuarial study that concluded this enormous premium impact was based almost entirely upon the component of the bill that would expand the types of damages awardable, as the current legislation would do, not the sections that have been revised from the earlier bill.

With awards and payouts already regularly exceeding the insurance levels typically purchased by physicians, even with the state Excess coverage, the new staggering costs this bill would impose are simply not assumable by most physician practices. Take, for example, the following physician comments about how this legislation if signed would impact patient access to care:

"Physicians are already fleeing New York, and I am considering doing so as well. I have over 2,000 patients and have had to stop accepting new patients- there is a huge demand for primary care physicians!" – Family Physician, Buffalo

"As a solo provider, I am already struggling to stay afloat, and seriously considering opting out of Medicare. This would in turn lead to more New Yorkers who can't afford to get high quality care for their chronic medical conditions like diabetes, which is my specialty. I urge you to please consider how this will impact small providers like me who provide high quality care to older New Yorkers of modest means." – Endocrinologist, NYC

"I moved back to Western NY, to raise my child around my family. As you know, Western NY is a special, and desirable place to live and retire. I have lived in other states and would hate to feel like we need to move again, this time due to potential excessive liability issues. We have a difficult time recruiting physicians to the Buffalo area, or New York State for that matter, due to liability and taxes. I have lived in states like Montana (who has a board who reviews claims before they proceed to litigation), Georgia, and Virginia. Please consider the above for those of us who prefer to stay here." – Cardiologist, Buffalo

New York already has a notorious reputation as being one the worst states in the country to deliver patient care ([Best & Worst States for Doctors \(wallethub.com\)](https://www.wallethub.com/compare/best-worst-states-for-doctors)), in large part because its liability costs and risks far exceed all other states. While some advocates claim 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 that have been enacted by nearly 30 states. New York has no such law, which is why our medical liability insurance and payout costs far exceed every other state in the country.

For example, a study from Diederich Healthcare showed that from 2019-2021, New York once again had the highest cumulative medical liability payouts of any state in the country, \$1,420,827,250, nearly twice as much as the 2^d highest state (Florida) and the 3rd highest state (Pennsylvania). It also had the highest per capita liability payment, 33% more than the 2nd highest state (Pennsylvania). It also far exceeds other large states with which we regularly compete for attracting and retaining skilled physicians such as California and Texas.

We further note that the State Legislature just enacted a State Budget where significant steps were taken to provide additional funding to help protect the stability of our various community health care providers, particularly those in underserved areas. Yet, this legislation would completely undermine these positive steps taken to protect access to care by forcing these hospitals and community-based physicians to incur gargantuan new costs.

Our organizations stand ready to work with the Legislature and the Governor to help develop balanced legislation that would ensure legal remedies for grieving families, but at the same time protect the ability of New York's physicians, hospitals, and other health care workers to continue to deliver the care our patients expect and deserve. However, this legislation remains completely one-sided.

Given New York's State reputation for being one of the worst states in the country in which to be a physician, it is imperative we take steps to ensure that we can retain and attract skilled physicians to our state to best serve the healthcare needs of our patients. Unfortunately, this bill is only marginally different from the vetoed version. It would do nothing to address the problems facing our healthcare system and, instead, make these problems far worse by adding substantial new costs at a time when they can least afford to incur them. Therefore, **we respectfully request that this legislation be vetoed.**

cc: Bella Satra, Esq., Assistant Counsel to the Governor