



November 21, 2008

RE: AN ACT to amend the civil practice law and rules, in relation to enacting the "medical liability reform act"

A.3139 (Schimminger)  
S.2144 (Hannon)

**MEMORANDUM IN SUPPORT**

Submitted on behalf of Submitted on behalf of the Blue Cross and Blue Shield Plans

The Blue Cross and Blue Shield Plans strongly support the enactment of this bill which seeks to restore fairness and balance to the civil justice system in New York State. This reform is necessary to stem the cost of the ever increasing number of medical malpractice lawsuits is having on the state's health care system. Over the past several years, the cost of medical malpractice lawsuits in New York has caused malpractice premiums to skyrocket. This legislation provides beneficial reforms to address these problems including: a \$250,000 cap on non-economic damages; a requirement that certificates of merit in malpractice cases include a physician's affidavit attesting to the merits of the case and a requirement that the identity of an expert witness be disclosed prior to trial. These reforms are critical to mitigate the escalating cost of health care caused by New York's dysfunctional liability system.

For many years New York physicians have paid among the highest liability premiums in the country. Currently, many high-risk specialist physicians in the New York State pay close to \$100,000 per year for their insurance. Many others pay over \$100,000 and some pay more than \$200,000. In fact, as a result of rapidly increasing liability awards, premiums for New York physicians have risen 21-32% in the last three years alone. While some other states may have seen more severe rates of liability premium insurance increases in recent years, their premiums started at much lower levels than those of New York physicians. For many New York specialist physicians, even a single-digit percentage increase in rate can require the payment of thousands of additional dollars to purchase this necessary coverage.

The major reason why malpractice premiums have gone up is simple - very high and rapidly increasing liability awards. A 2006 study conducted by PriceWaterhouse Coopers' examining "The Factors Fueling Rising Healthcare Costs" found that approximately 10 percent of the costs of medical services are attributed to the cost of litigation and defensive medicine. According to the recently released 2006 New York Verdict Survey, the median medical liability jury award in New York went up 31% (from \$1,000,000 to \$1,307,000) over the time period of 1999-2005 when compared to the period of 1997-2003. The mean medical liability jury award went up 35% (from \$6,021,474 to \$8,134,102) over the same time period. At the same time, data show the average payout for all medical liability awards (including settlements) went up 30% between 2000 and 2005. This legislation seeks to address this problem by placing a \$250,000 cap on non-economic damages to bring down the amount of judgements in medical malpractice claims.

Another reason for these increases in liability premiums is the rising cost for defending the numerous medical liability cases that have no merit. In this decade alone almost \$300,000,000 has been spent to defend physicians in meritless cases in which no payment was made to the plaintiff. This bill provides a reliable mechanism for removing frivolous claims from New York's court rooms. By adding the requirement of an affidavit of merit, signed by a physician, and providing a judge the tools to remove a malpractice claim for failure to comply with the provisions of this amended section, fewer frivolous claims will be advanced.

The increasing cost of liability insurance for physicians is beginning to impact access to care for New York patients. Across the state there have been sizable drops in the number of critically needed primary and specialist physicians. The most notable drop in access has been seen field of obstetrics. A recent study by the Center for Health Workforce Studies, (Changing Practice Patterns of Obstetricians/Gynecologists in New York, April 2006) revealed that the overall number of OB-GYNs in New York State declined by 4%. Consistent with the above study, there were large decreases in the Finger Lakes, Mohawk Valley, Western New York and in the Southern Tier. What was particularly noteworthy about this study were the declines in the number of OB-GYNs in more populated regions of the State, including New York City and the Hudson Valley. Declining access to care will continue, causing harm New York's patients, unless meaningful reform of the liability system occurs.

For all of these reasons, the Blue Cross and Blue Shield Plans strongly support this legislation as a way to reform the broken liability system.

Respectfully submitted,

HINMAN STRAUB ADVISORS, LLC  
Legislative Counsel for the Blue Cross and Blue Shield Plans