



February 9, 2009

## **MEMORANDUM IN OPPOSITION**

### **S.1729 (SCHNEIDERMAN) / A.4627 (WEINSTEIN)**

**AN ACT to amend the civil practice law and rules, in relation to the limitations of time within which an action for medical, dental, or podiatric malpractice accrues; and providing for one year revival of previously dismissed actions.**

On behalf of **New Yorkers for Lawsuit Reform (NYLR)**, a broad based coalition of businesses, professionals, health providers, municipalities, not-for-profits, insurers and concerned citizens we are writing to urge that this bill be HELD.

This legislation would dramatically increase the cost of healthcare in New York by altering the rules concerning the application of the statute of limitations in medical malpractice cases. Working families, businesses, and public sector employers simply cannot afford this legislation.

Assuming for the sake of argument that this proposal has merit, (a position which is not at all conceded), the impact of this bill will be to force a dramatic increase in the cost of New York's medical malpractice liability system and the cost for healthcare in New York generally. The prospective adoption of a "discovery statute" would exacerbate the problem of defensive medicine, add hundreds of millions of dollars to the direct cost of malpractice insurance (primary and excess coverage), and gives rise to substantial additional unknown costs for re-opened cases.

New York's healthcare reimbursement system is already broken. The fact that our state has 2.6 million people without health insurance, who are a serious illness or injury away from the need to file for bankruptcy, with the devastating psychological and emotional impact of a bankruptcy, is simply unacceptable. This bill will unquestionably significantly increase the number of uninsured who are the immediate victims of a broken healthcare system.

It is critical that this legislation be held. We urge the Governor and legislative leaders to convene a blue ribbon commission to address the need for radical change in the present delivery methodology for healthcare in our state, including its liability component. Serious consideration is warranted regarding the use of medical courts for liability determinations in New York and in the entire United States. Judges educated in medicine should be deciding medical malpractice cases. Such an approach may be radical, however the fact that 46 million people in our country are without health insurance provides compelling evidence that not only is New York's system broken, but our nation's healthcare system is broken as well.

New York could show outstanding leadership to Washington and our sister states by addressing our liability crisis via radical surgery. The use of medical courts to determine liability would help to significantly reduce the role defensive medicine plays in escalating the cost of healthcare. If physicians are permitted to follow sound cost sensitive protocols in lieu of "cover your butt at all costs medicine" the system can be saved. The number of unnecessary, costly and potentially dangerous tests presently woven throughout our medical delivery system can no longer be tolerated. Billions of dollars are being lost annually in New York and our sister states as a result of these unnecessary tests and procedures. In addition to medical courts, serious consideration must be given to the use of limitations on pain and suffering awards in a manner similar to that employed in many of our sister states. Other tort reform measures must be fully explored as well.

In light of the foregoing it is essential that this bill be held and a more comprehensive review be undertaken to determine the steps needed to fix our broken healthcare and medical liability systems.

Respectfully submitted,

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Executive Director  
**New Yorkers for Lawsuit Reform**