



# The New York State Society of Anesthesiologists, Inc.

110 East 40th Street, Suite 300, New York, NY 10016 USA

TELEPHONE: 212-867-7140 | FAX: 212-687-1005 | INTERNATIONAL: +00 followed by number | WEBSITE: [www.nyssa-pga.org](http://www.nyssa-pga.org)

## MEMO IN OPPOSITION A2370 (Dinowitz) Patient Privacy Protection Act

This bill would amend the civil practice law and rules to prohibit a physician's defense counsel in a medical liability action from conducting an interview with the plaintiff's treating physician. The legislation fails to address the need to comprehensively address New York's medical malpractice crisis, a state that has the highest liability payouts in the nation cannot sustain further changes that will increase costs medical care.

This legislation would overturn a very important New York State Court Appeals decision that affirmed a long-standing principle in our legal system that no party has a proprietary interest in a particular witness in a civil liability action. Were this Court of Appeals decision to be overturned through legislation, it would present significant problems for a physician defendant in seeking to defend him or herself in a medical liability action by unfairly limiting the opportunity to fully examine the plaintiff's health condition to evaluate the merit of the plaintiff's claim.

New York's excessively pro-plaintiff liability adjudication system is in need of systemic reforms to provide more balance to help reduce the high liability insurance premiums that are borne by our health care system, instead of proposed legislation such as this which would undoubtedly exacerbate these problems. New York's health care delivery system already faces severe financial strains due to a number of critical factors. It is imperative that the State Legislature take action to assure that physicians and hospitals remain available to deliver the care New Yorkers are expecting to receive, including acting to reduce the spiraling costs of medical liability insurance.

Malpractice payouts in New York State continue to be far out of proportion to the rest of country. This is not surprising, given that a just release report from Leverage Rx (<https://www.leveragerx.com/malpractice-insurance/2019-medical-malpractice-report/>) showed that once again New York State had far and away the highest number of cumulative medical liability payouts of any state in New York, and that this cumulative number had increased by 11% from 2017 to 2018. Claimants in New York were awarded nearly two times more than the state with the next highest amounts, Pennsylvania, and payments in New York far exceeded states such as California and Florida.

Moreover, demonstrating once again why New York is considered to be the lawsuit capitol of the country, New York had the highest per capita medical liability payment as well, averaging over \$35 per New York resident, more than 20% higher than the second highest state, New Jersey.

**We respectfully urge you to oppose this legislation and consider comprehensive malpractice reform.**

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### LEGISLATIVE REPRESENTATION

**Charles J. Assini, Jr., Esq.** | NYSSA Legislative Counsel and Representative | **Higgins, Roberts & Suprunowicz, P.C.** | 1430 Balltown Road, Schenectady, New York 12309  
TELEPHONE: 518-374-3399 | FAX: 518-374-9416 | E-MAIL: [CJAssini@HRSLaw.us.com](mailto:CJAssini@HRSLaw.us.com) and cc: [GKCarter@HRSLaw.us.com](mailto:GKCarter@HRSLaw.us.com) | WEBSITE: [www.HRSLaw.us.com](http://www.HRSLaw.us.com)

**Robert Reid, Shauneen McNally, Marcy Savage** | NYSSA Albany Lobbyists | **Reid, McNally & Savage, LLC** | 1 Commerce Plaza, Suite 402, Albany, New York 12210  
TELEPHONE: 518-465-7330 | FAX: 518-465-0273 | E-MAIL: [Bobr@lobbywr.com](mailto:Bobr@lobbywr.com) and cc: [Kellyk@lobbywr.com](mailto:Kellyk@lobbywr.com) | WEBSITE: [www.lobbywr.com](http://www.lobbywr.com)