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March 21, 2011

The Honorable Andrew M. Cuomo
Governor of the New York State
New York State Capitol Building
Albany, NY 12224

The Honorable Sheldon Silver
New York State Assembly Speaker
Legislative Office Building, Rm. 932
Albany, NY 12248

The Honorable Dean G. Skelos
New York State Senate Majority Leader
Legislative Office Building, Rm. 909
Albany, NY 12247

The Honorable Brian M. Kolb
New York State Assembly Minority Leader
Legislative Office Building, Rm. 933
Albany, NY 12248

The Honorable John L. Sampson
New York State Senate Democratic Conference Leader
Legislative Office Building, Rm. 907
Albany, NY 12247

Re: Over 1,500 Public Citizen Supporters in New York Sign Petition Objecting to Proposal to Limit Patients' Rights

Dear Governor Cuomo, Speaker Silver, Majority Leader Skelos, Minority Leader Kolb, and Conference Leader Sampson:

Public Citizen is a nonpartisan, nonprofit consumer interest organization with more than 225,000 members and supporters nationwide, including a large presence in New York. Since its founding in 1971, Public Citizen has advocated on behalf of consumers before the Congress, the executive branch, and the courts.

We were alarmed to learn that Gov. Cuomo had endorsed a proposal to limit the rights of patients injured by medical negligence as part of an effort to reform the state Medicaid program—Medicaid Redesign Team Proposal 131. We alerted our New York members and

supporters and, in less than 24 hours, over 1,000 New Yorkers signed a petition against the proposal. The attached petition contains over 1,500 signatures.

Proposal 131 seeks to impose on New Yorkers a one-size-fits-all \$250,000 cap on noneconomic damages for medical malpractice awards and establish a payment fund for neurologically impaired infants. Both these proposals are arbitrary and inhumane, but most significantly, they would take away New Yorkers' legal rights and shield doctors and hospitals from accountability for negligent medical errors that injure and kill patients. Inexplicably, the proposal is being put forward when the number of malpractice payments is at a record low in New York, according to the latest data from the National Practitioner Data Bank (NPDB). Further, the governor's stated intention to reduce Medicaid costs would be nullified by this proposal because it will shift the costs of caring for injured patients from the negligent doctors and hospitals to Medicaid and other taxpayer-funded programs.

Across the board caps on damages deny compensation for real injuries such as the pain and suffering that accompany any loss of normal functions (e.g. blindness, paralysis or loss of a limb, and the inability to engage in daily activities). Caps are most harmful to the catastrophically injured and the underprivileged, as well as children, women, and seniors. In addition, blocking the families of brain-damaged infants from vindicating their rights in court and forcing them to seek to cover costs from a "medical indemnity fund" would add unconscionable burdens, delays and costs. Instead of the costs being paid by insurers of negligent doctors, parents whose babies need lifelong medical treatment for brain injuries due to malpractice could spend the rest of their lives fighting for adequate financial assistance from a state fund.

This proposal is particularly egregious at a time when New York's state medical board is performing poorly in its duty to discipline doctors and minimize risk to patients. A recent Public Citizen analysis found that about 50 percent of physicians in New York with at least one clinical privilege report (hospital disciplinary action) had no New York licensure board action taken against them (or at least none reported to the NPDB, which collects this data).¹

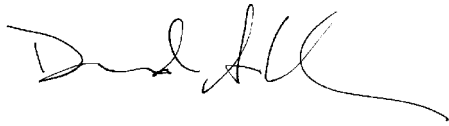
Instead of giving bad medical providers immunity from liability, New York's leaders should prioritize patient safety in the state's budget. Reducing medical errors will in turn reduce costs. Indeed, a recent study of New York obstetricians found that a comprehensive patient safety program reduced the number of medical errors, which led to an immediate and substantial reduction in malpractice compensation.²

We urge you to heed the requests of your state residents and remove Proposal 131 from your budget.

Sincerely,

¹ Public Citizen. State Medical Boards Fail to Discipline Doctors with Hospital Actions Against Them. (2011). <http://www.citizen.org/hrg1937> and <http://www.citizen.org/documents/1937B.pdf>.

² Amos Grunebaum, MD; Frank Chervenak, MD; Daniel Skupski, MD. Effect of a comprehensive obstetric patient safety program on compensation payments and sentinel events. American Journal of Obstetrics & Gynecology (Feb. 2011).



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