Memorandum in Opposition
S4080 (DeFrancisco)

AN ACT to amend the civil practice law and rules, in relation to accrual of causes of action for medical, dental and podiatric malpractice

The New York American College of Emergency Physicians (New York ACEP) is strongly opposed to Senate S4080 (DeFrancisco) to:

- change the statute of limitations from two and half years to a date of discovery law;
- provide that an action shall commence no later than seven years from the act, omission or failure complained of or last treatment where there is continuous treatment for the same illness, injury or condition which gave rise to the act, omission or failure;
- provide that where the action is based upon the discovery of a foreign object in the body of a patient, the action may be commenced within one year of the date of such discovery or the date of discovery of facts which would lead to such discovery, whichever is earlier;
- provide for actions to be filed for incidents that occur within one year prior to the effective date of the bill; and
- provide that the bill is effective immediately.

An actuarial study by New York ACEP by Milliman (Milliman Actuarial Study, 4-9-14) on a similar bill found that enacting a “date of discovery” law would increase medical liability premiums by nearly 15%, in excess of $150 million per year. **The amendment to this bill to allow cases to be brought retroactively prior to the effective date of this bill will significantly increase the impact on premiums.**

New York State’s medical liability environment is among the worst in the nation and was recently given a Grade of F by the American College of Emergency Physicians. New York has the highest number of malpractice award payments (6.1 per 100,000 people), a twelve-fold increase since 2009. In addition, the State has some of the highest average medical liability premiums in the country for primary care physicians and specialists with few insurers writing policies (America’s Emergency Care Environment, A State-by-State Report Card, American College of Emergency Physicians, 2014).

According to a report by Diederich Healthcare in the March 15, 2014 *Washington Post*, cumulative malpractice payouts in New York State are already the highest in the country ($689.9 million), nearly two times greater than the State with the next highest amounts, Pennsylvania ($356.9 million), and far exceeding states such as California ($275 million) and Florida ($199.4 million).

**A recent analysis from the website Medscape listed New York as the worst state in the country in which to practice medicine, in large part due to its overwhelming liability exposure as compared to other states in the country.**

Proponents of the legislation argue that many other states have incorporated “date of discovery” exceptions into their statutes of limitation. However, well over half of these states have enacted caps on non-economic damages in medical liability actions and those that do not cap damages have enacted other reforms which provide lower medical liability insurance premiums.
While many medical liability cases brought result in no payment, physicians who treat the most high-risk patients are sued on a frequent basis. For example, the Medical Liability Mutual Insurance Company spent over $800,000,000 in the previous decade to defend physicians and hospitals on whose behalf no payments were ever made to the plaintiffs.

There is no question that this legislation, if enacted, would have disastrous consequences on New York’s health care system, potentially causing another malpractice crisis in this state even more serious than those in 1975-76 and 1985-86. Enactment of this bill would have a direct impact on accessible health care for New Yorkers.

The New York American College of Emergency Physicians strongly urges the New York State Legislature to defeat S4080 (DeFrancisco).