

ALBANY REPORT

Legislative developments impacting the New York medical professional liability marketplace



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New York 2019 Regular Legislative Session Concludes

Overall Legislative Issues

The regular session of the New York State Legislature adjourned on June 21. While there is always a potential for them to reconvene prior to the end of the year, the Legislature is not currently scheduled to return until January 2020.

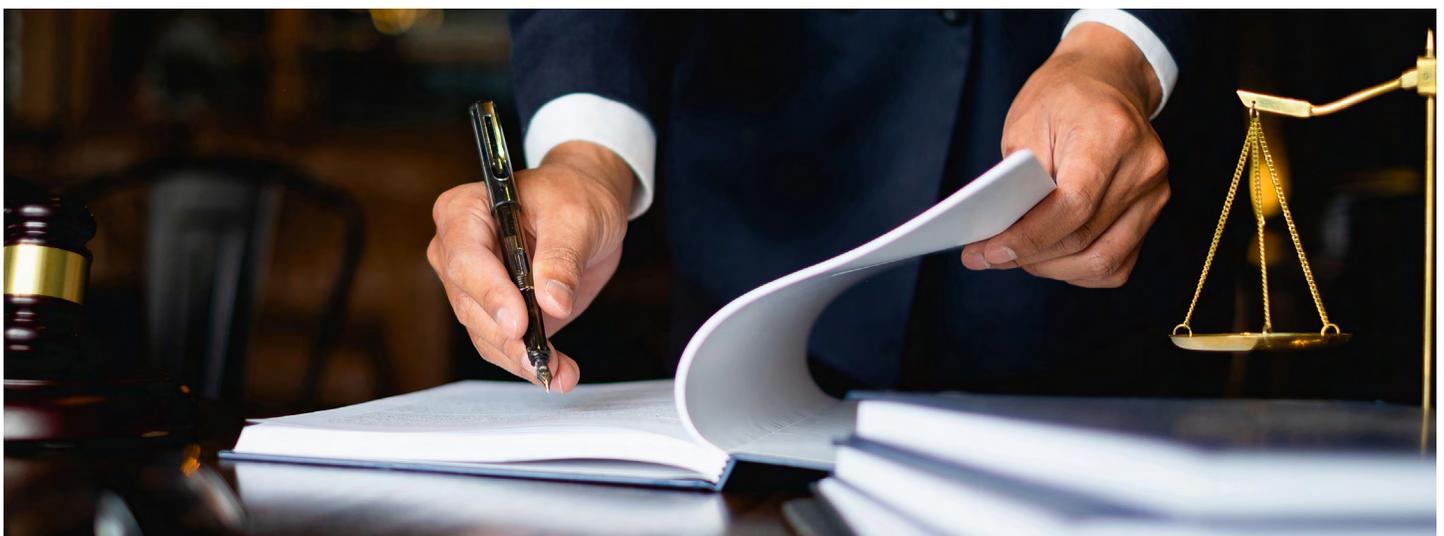
This year was quite different from prior years as a result of the one-party dominance of both the Assembly and Senate by Democratic majorities. Several bills that would not have been passed in prior years due to their negative impact on businesses were enacted by both houses. These measures include a

very pro-tenant rent control law and a climate protection act that implements drastic reductions in greenhouse emissions that have not been done anywhere else in the country.

The New York medical professional liability insurance business was unfortunately not spared from this new phenomenon. There were numerous New York Trial Lawyers Association (NYSTLA) bills receiving serious consideration by both houses. These measures included two bad faith bills that would cost the overall insurance industry approximately \$7 billion, a bill to expand damages in wrongful death cases that would

raise medical malpractice premiums by double digits according to respected estimates, a bill to expand the hearsay exception for employees making a statement against their employer's interest, and a large expansion of the General Business Law consumer protection statute.

Working with our healthcare and insurance industry partners in opposition to these measures, most of the NYSTLA bills did not advance but, unfortunately, two of their bills did pass both houses. One bill, A2373/S6552, would permit a plaintiff to bypass the defendant they sued and go after a party who is not named in the lawsuit



but who may be liable to the original defendant for some or all of the damages the plaintiff is seeking from the original defendant. The second bill, A2372/S6081, would require a non-settling defendant in a lawsuit with multiple defendants to choose, prior to trial, whether to have the jury verdict reduction for any damages awarded (the reduction being done to reflect the fact that the settling defendants had a share of liability) calculated by subtracting the amount the settling defendants paid or the settling defendants' percentage of liability. The current law requires the non-settling defendants' share of the Jury verdict damages be reduced by the GREATER of the settling defendants' share of liability or the amount paid in settlement by the settling defendant. This current law ensures that a plaintiff will never receive MORE in damages than was awarded by the jury. This bill would now allow for a plaintiff to receive more in damages than the jury awarded, depending upon which reduction method is chosen by the non-settling defendant. MLMIC will be seeking a veto on both bills.

Other Legislative Issues

MLMIC continues to support legislation that would reduce the risks

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involved with practicing medicine and thereby allow healthcare practitioners to provide the best possible care to their patients. One of these legislative proposals is medical malpractice peer review and quality improvement programs for qualifying medical group practices, S1801 Rivera/A1164 Gottfried. MLMIC continued its longtime advocacy of these programs with our support of this bill and its provisions for strong confidentiality and immunity protections under New York law. Unfortunately, this bill was strongly opposed by NYSTLA and the bill did not pass either

house. A second issue involved the creation of a maternal mortality review board to study and make recommendations regarding the unacceptably high rate of maternal deaths and how to reduce these tragedies. This measure, A3276/S1819, did pass both houses

The increased receptivity of the new legislative majority in the Senate to support all NYSTLA's legislation is an alarming development for physicians, dentists, hospitals and all other participants in the New York State healthcare sector, and is a development that needs to be closely monitored and opposed.

Questions? Email Marc Crow at mcraw@fakslaw.com or call Marc at (518) 786-2777.

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