# New York State Senate

Notice of Public Hearing

**Senate Standing Committee on Insurance**
Neil D. Breslin, Chair

**Senate Standing Committee on Health**
Thomas K. Duane, Chair

**Senate Standing Committee on Codes**
Eric T. Schneiderman, Chair

**SUBJECT:** Medical Malpractice Reform

**PURPOSE:** The purpose of this hearing is to (1) identify the fundamental causes of high medical malpractice costs; (2) explore potential solutions to help create a medical malpractice system that encourages quality, accessible medical care; (3) promote patient safety; (4) treat victims of malpractice fairly; (5) sets reasonable insurance costs for health providers; and (6) promotes a healthy marketplace for medical liability insurers.

**December 1st, 2009**

**10:00 a.m.**

**Hearing Room B**

**Legislative Office Building**

**Albany, New York**

New York is home to one of the nation's best health care systems. Despite past successes in making health care more affordable and available to New Yorkers, long-term reform of the medical malpractice structure has not yet been achieved. Considering that health care costs are impacted by medical malpractice rates, it is imperative that we have a medical liability structure in place which ensures that medical malpractice rates remain stable and appropriate, while also guaranteeing that malpractice victims are adequately compensated, and doctors adequately protected.

In 1973 the medical malpractice insurance market was largely divided between two companies: Employers Insurance Company of Wausau and the Professional Insurance Company. In the fall of 1973 Professional was placed in liquidation. In December of 1973, Employer - which had increased its premiums by 1,000% during the preceding seven year - announced it was terminating its medical malpractice insurance program.

It became apparent to the New York State Insurance Department (SID) that if no action was taken, most of the State's physicians and surgeons would be without insurance creating a state-wide health care crisis.

SID and the New York State Medical Society drafted legislation to establish a joint underwriting association (JUA) comprised of all insurance companies writing liability insurance in New York. The JUA would be required to provide coverage to any licensed New York doctor. While the bill was pending, the Medical Society was able to secure an agreement with the Argonaut Insurance Company to insure its members at a rate 93.5% higher than Employers. Within months they sought to raise those rates an additional 196.8%. SID blocked the increase and Argonaut left the marketplace.

These events occurred against the backdrop of a rising number of judgments against medical providers in malpractice cases. No insurance company would take on the business, leaving physicians and their dependents vulnerable.

MLMIC (Medical Liability Mutual Insurance Company) was created under the sponsorship of the Medical Society and licensed by NYS on May 28th, 1975 and began operations on July 1st, 1975. By the end of 1976 MLMIC covered 16,000 physicians and MMIA insured another 4,000.

Chapter 109 of the laws of 1975 created Medical Malpractice Insurance Association (MMIA) in order to provide a market for medical malpractice insurance to both doctors and hospitals. MMIA was a JUA consisting of all insurers writing personal injury liability insurance in New York State. Also in 1975, the Superintendent was empowered to prior approve all medical malpractice insurance rates in order to provide closer oversight.

Once the crisis of 1975 was averted several other insurers entered the marketplace: Hospital Underwriters Mutual Insurance Company; Group Council Mutual Insurance Company; Physicians Reciprocal Insurers (PRI); Frontier Insurance Company; and Academic Health Professional Insurance Association.

Physicians were no longer faced with the problem of availability that had existed in the mid-1970's. Price and affordability subsequently became the central issues.

By 1985, New York State faced a second crisis. Rate levels had begun to increase by more than 15% each year since 1974. By 1985, rates were more than five times greater than those in 1974. Physicians were also concerned that the policies they were purchasing, although covering up to $1 million per claim with an aggregate claim limit of $3 million per year, were still insufficient with the increasing number of multi-million dollar verdicts and settlements. In 1985 most actuaries believed that many medical malpractice insurers were either insolvent or on the brink of insolvency.

Also in 1985, the Legislature enacted Judiciary Law §474-a which established the fee structure for attorneys in medical malpractice cases. It is a sliding scale which still exists today: 30% for the first $250,000; 25% for the next $250,000; 20% for the next $500,000, 15% for the next $250,000, and 10% for any recovery over $1.25 million.

After years of financial instability in the late 1980's, the market stabilized and MMIA's surplus grew considerably in the 1990's.

MMIA saw its market share dwindle in the 1990's as the marketplace became more competitive and the experience of the voluntary market improved. As of 1997, approximately 600 (2%) of New York State's 30,000 insured physician's purchased primary coverage through MMIA.

As previously mentioned, prior to 2000, MMIA provided medical malpractice insurance in New York pursuant to Article 55 of the Insurance Law. Chapter 147 of the Laws of 2000 amended Insurance Law §5502 (c) and dissolved MMIA transferring its fund's balance of approximately $800 million to the State. At the same time, NY Insurance Law §5502 (c) (2) (D) mandated the Superintendent to prescribe a plan for the equitable distribution of insured's who are unable to secure coverage in the voluntary market to authorized medical malpractice insurers.

Accordingly, the Superintendent promulgated Part 430 of New York Comp. Codes R. & Reg., tit. 11 (Regulation 170) on June 30th, 2000 on an emergency basis and later adopted on a permanent basis effective March 7th, 2001, and established the Medical Malpractice Insurance Plan (MMIP) as an assigned risk mechanism for providing medical malpractice insurance to all eligible health care providers who are unable to secure coverage in the private market.

However, the regulation also authorized the Superintendent to approve an alternative mechanism for allocating such risks, which the insurers opted for. As a result, all authorized stock, mutual and reciprocal insurers that write medical liability risks in New York, obtained the Superintendent's approval to participate in the pool as an alternative to receiving direct assignments of eligible health care providers through MMIP. The pool itself issues the policies, and each member shares the liability on a several basis in proportion to the direct written premium the insurers has in the medical malpractice market.

The major difference between MMIA and MMIP is that MMIA included all liability insurers in New York State while MMIP includes only medical liability insurers, a significantly narrower

base. In fact, only 3 companies write approximately 90% of the medical malpractice business in New York State, thereby assuming the amount of risk commensurate with their market share. This accounts for a dollar for dollar reduction in a company's surplus.

New York State now has a medical malpractice marketplace that is in severe distress. Medical liability rates have been frozen each of the past two years and the few remaining insurers in the marketplace are thinly capitalized. This has the potential to limit the ability of providers to purchase affordable medical liability coverage and could leave victims of medical malpractice with little or no recourse.

The Committees would like to hear from representatives from government, provider organizations, insurers, advocates, attorney's and businesses.

**Persons wishing to present pertinent testimony to the Committees at this public hearing should complete and return the enclosed reply form as soon as possible. Oral testimony is by invitation only. Fifteen copies of any prepared testimony should be submitted at the hearing registration desk. Written testimony will also be accepted and may be sent to the contact person listed on the reply form. In order to publicize the hearing further, please inform interested parties of the Committee's interest in receiving written testimony from all sources.**

In order to meet the needs of those who may have a disability, the Senate, in accordance with their policy of non-discrimination on the basis of disability, as well as the 1990 Americans with Disabilities Act (ADA), has made its facilities and services available to all individuals with disabilities. For individuals with disabilities, accommodations will be provided, upon reasonable request, to afford such individuals access and admission to Senate and Assembly facilities and activities.

# PUBLIC HEARING REPLY FORM

**Please submit this form by November 13th, 2009**

**Persons wishing to submit written or oral testimony at the public hearing are requested to complete this reply form as soon as possible and mail or fax it to:**


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NAME: ______________________________________________

TITLE: ______________________________________________

ORGANIZATION: ______________________________________________

ADDRESS: ______________________________________________

E-MAIL: ______________________________________________

TELEPHONE: ______________________________________________

CELL PHONE: ______________________________________________

___ I would like to submit written testimony, but do not wish to make a public statement at the hearing on December 1st, 2009.

___ I would like to make a public statement at the hearing on December 1st, 2009. My statement will be limited to 10 minutes, and I will answer any questions which may arise. I will provide fifteen copies of my prepared statement.

___ I will address my remarks to the following subjects:

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